

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

S. 2609--B

A. 3009--B

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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

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

LBD12574-03-3

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 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); 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); to amend the tax law, in relation to the credit for the rehabilitation of historic homes (Part V); to amend the

tax law, in relation to allowing certain tax-free interdistributor sales of highway diesel motor fuel (Part W); and to amend the tax law, in relation to updating the farming exemption in the highway use tax to reflect current industry practice (Part X)

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

12 PART A

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

16 1. The term "corporation" as used in this section shall include an
17 association, within the meaning of paragraph three of subsection (a) of
18 section seventy-seven hundred one of the internal revenue code (includ-
19 ing a limited liability company), a publicly traded partnership treated
20 as a corporation for purposes of the internal revenue code pursuant to
21 section seventy-seven hundred four thereof and any business conducted by
22 a trustee or trustees wherein interest or ownership is evidenced by
23 certificates or other written instruments. Every corporation, joint-
24 stock company or association formed for or principally engaged in the
25 conduct of canal, steamboat, ferry (except a ferry company operating
26 between any of the boroughs of the city of New York under a lease grant-
27 ed by the city), express, navigation, pipe line, transfer, baggage
28 express, omnibus, taxicab, telegraph, or telephone business, or formed
29 for or principally engaged in the conduct of two or more such busi-
30 nesses, and every corporation, joint-stock company or association formed
31 for or principally engaged in the conduct of a railroad, palace car,
32 sleeping car or trucking business or formed for or principally engaged
33 in the conduct of two or more of such businesses and which has made an
34 election pursuant to subdivision ten of section one hundred eighty-three
35 of this article, and every other corporation, joint-stock company or
36 association principally engaged in the conduct of a transportation or
37 transmission business, except a corporation, joint-stock company or
38 association formed for or principally engaged in the conduct of a rail-
39 road, palace car, sleeping car or trucking business or formed for or
40 principally engaged in the conduct of two or more of such businesses and
41 which has not made the election provided for in subdivision ten of
42 section one hundred eighty-three of this article, and except a corpo-
43 ration, joint-stock company or association principally engaged in the
44 conduct of aviation (including air freight forwarders acting as princi-
45 pal and like indirect air carriers) and except a corporation principally

1 engaged in providing telecommunication services between aircraft and
2 dispatcher, aircraft and air traffic control or ground station and
3 ground station (or any combination of the foregoing), at least ninety
4 percent of the voting stock of which corporation is owned, directly or
5 indirectly, by air carriers and which corporation's principal function
6 is to fulfill the requirements of (i) the federal aviation adminis-
7 tration (or the successor thereto) or (ii) the international civil
8 aviation organization (or the successor thereto), relating to the exist-
9 ence of a communication system between aircraft and dispatcher, aircraft
10 and air traffic control or ground station and ground station (or any
11 combination of the foregoing) for the purposes of air safety and naviga-
12 tion and except a corporation, joint-stock company or association which
13 is liable to taxation under article thirty-two of this chapter, shall
14 pay for the privilege of exercising its corporate franchise, or of doing
15 business, or of employing capital, or of owning or leasing property in
16 the metropolitan commuter transportation district in such corporate or
17 organized capacity, or of maintaining an office in such district, a tax
18 surcharge for all or any part of its years commencing on or after Janu-
19 ary first, nineteen hundred eighty-two but ending before December thir-
20 ty-first, two thousand [thirteen] EIGHTEEN, which tax surcharge, in
21 addition to the tax imposed by section one hundred eighty-three of this
22 article, shall be computed at the rate of eighteen percent of the tax
23 imposed under such section one hundred eighty-three for such years or
24 any part of such years ending before December thirty-first, nineteen
25 hundred eighty-three after the deduction of any credits otherwise allow-
26 able under this article, and at the rate of seventeen percent of the tax
27 imposed under such section for such years or any part of such years
28 ending on or after December thirty-first, nineteen hundred eighty-three
29 after the deduction of any credits otherwise allowable under this arti-
30 cle; provided, however, that such rates of tax surcharge shall be
31 applied only to that portion of the tax imposed under section one
32 hundred eighty-three of this article after the deduction of any credits
33 otherwise allowable under this article which is attributable to the
34 taxpayer's business activity carried on within the metropolitan commuter
35 transportation district as so determined in the manner prescribed by the
36 rules and regulations promulgated by the commissioner; and provided,
37 further, that the tax surcharge imposed by this section shall not be
38 imposed upon any taxpayer for more than [three] FOUR hundred [seventy-
39 two] THIRTY-TWO months.

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

43 The term "corporation" as used in this section shall include an asso-
44 ciation, within the meaning of paragraph three of subsection (a) of
45 section seventy-seven hundred one of the internal revenue code (includ-
46 ing a limited liability company), and a publicly traded partnership
47 treated as a corporation for purposes of the internal revenue code
48 pursuant to section seventy-seven hundred four thereof. Every corpo-
49 ration, joint-stock company or association formed for or principally
50 engaged in the conduct of canal, steamboat, ferry (except a ferry compa-
51 ny operating between any of the boroughs of the city of New York under a
52 lease granted by the city), express, navigation, pipe line, transfer,
53 baggage express, omnibus, taxicab, telegraph or local telephone busi-
54 ness, or formed for or principally engaged in the conduct of two or more
55 such businesses, and every corporation, joint-stock company or associ-
56 ation formed for or principally engaged in the conduct of a surface

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

1 ters of one percent rate of tax provided for in subdivision one of
2 section one hundred eighty-four of this article were applicable to such
3 telephone and telegraph businesses for taxable years commencing on or
4 after January first, nineteen hundred eighty-five and ending on or
5 before December thirty-first, nineteen hundred eighty-nine; and
6 provided, further, that the tax surcharge imposed by this section shall
7 not be imposed upon any taxpayer for more than [three] FOUR hundred
8 [seventy-two] THIRTY-TWO months. Provided, however, that for taxable
9 years beginning in two thousand and thereafter, for purposes of this
10 subdivision the tax imposed under section one hundred eighty-four of
11 this article shall be deemed to have been imposed at the rate of three-
12 quarters of one percent, except that in the case of a corporation,
13 joint-stock company or association which has made an election pursuant
14 to subdivision ten of section one hundred eighty-three of this article,
15 for purposes of this subdivision the tax imposed under section one
16 hundred eighty-four of this article shall be deemed to have been imposed
17 at the rate of six-tenths of one percent.

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

21 (1) Every utility doing business in the metropolitan commuter trans-
22 portation district shall pay a tax surcharge, in addition to the tax
23 imposed by section one hundred eighty-six-a of this article, for all or
24 any parts of its taxable years commencing on or after January first,
25 nineteen hundred eighty-two but ending before December thirty-first, two
26 thousand [thirteen] EIGHTEEN, to be computed at the rate of eighteen
27 percent of the tax imposed under section one hundred eighty-six-a of
28 this article for such taxable years or any part of such taxable years
29 ending before December thirty-first, nineteen hundred eighty-three after
30 the deduction of any credits otherwise allowable under this article, and
31 at the rate of seventeen percent of the tax imposed under such section
32 for such taxable years or any part of such taxable years ending on or
33 after December thirty-first, nineteen hundred eighty-three after the
34 deduction of credits otherwise allowable under this article except any
35 utility credit provided for by article thirteen-A of this chapter;
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-six-a of this article after the deduction of credits otherwise allow-
39 able under this article, except any utility credit provided for by arti-
40 cle thirteen-A of this chapter, which is attributable to the taxpayer's
41 gross income or gross operating income from business activity carried on
42 within the metropolitan commuter transportation district; and provided,
43 further, that the tax surcharge imposed by this section shall not be
44 imposed upon any taxpayer for more than [three] FOUR hundred [seventy-
45 two] THIRTY-TWO months.

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

49 1. For the privilege of exercising its corporate franchise, or of
50 doing business, or of employing capital, or of owning or leasing proper-
51 ty in a corporate or organized capacity, or of maintaining an office in
52 the metropolitan commuter transportation district, for all or any part
53 of its taxable year, there is hereby imposed on every corporation, other
54 than a New York S corporation, subject to tax under section two hundred
55 nine of this article, or any receiver, referee, trustee, assignee or
56 other fiduciary, or any officer or agent appointed by any court, who

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

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

42 1. For the privilege of exercising its franchise or doing business in
43 the metropolitan commuter transportation district in a corporate or
44 organized capacity, there is hereby imposed on every taxpayer subject to
45 tax under this article, other than a New York S corporation, for the
46 taxable years commencing on or after January first, nineteen hundred
47 eighty-two but ending before December thirty-first, two thousand [thir-
48 teen] EIGHTEEN, a tax surcharge, in addition to the tax imposed under
49 section fourteen hundred fifty-one of this article, at the rate of eigh-
50 teen percent of the tax imposed under such section fourteen hundred
51 fifty-one of this article, for such taxable years or any part of such
52 taxable years ending before December thirty-first, nineteen hundred
53 eighty-three after the deduction of any credits otherwise allowable
54 under this article, and at the rate of seventeen percent of the tax
55 imposed under such section for such taxable years or any part of such
56 taxable years ending on or after December thirty-first, nineteen hundred

1 eighty-three after the deduction of any credits otherwise allowable
2 under this article; provided however, that such rates of tax surcharge
3 shall be applied only to that portion of the tax imposed under section
4 fourteen hundred fifty-one of this article after the deduction of any
5 credits otherwise allowable under this article which is attributable to
6 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, two thousand, such surcharge shall be calculated as if the rate
12 of the basic tax computed under subsection (a) of section fourteen
13 hundred fifty-five of this article was nine percent.

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

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

49 (A) excluding one or more factors therein;

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

53 (C) any other similar or different method which allocates such taxes
54 by attributing a fair and proper portion of such taxes to the metropol-
55 itan commuter transportation district. The commissioner from time to
56 time shall publish all rulings of general public interest with respect

1 to any application of the provisions of the preceding sentence. The
2 commissioner may promulgate rules and regulations to further implement
3 the provisions of this section.

4 (3) Such tax surcharge shall be computed at the rate of eighteen
5 percent of the taxes imposed under sections fifteen hundred one and
6 fifteen hundred ten of this article as limited by section fifteen
7 hundred five of this article, as allocated to such district, for such
8 taxable years or any part of such taxable years ending before December
9 thirty-first, nineteen hundred eighty-three after the deduction of any
10 credits otherwise allowable under this article, at the rate of seventeen
11 percent of the taxes imposed under such sections as limited by section
12 fifteen hundred five of this article, as allocated to such district, for
13 such taxable years or any part of such taxable years ending on or after
14 December thirty-first, nineteen hundred eighty-three and before January
15 first, two thousand three after the deduction of any credits otherwise
16 allowable under this article, and at the rate of seventeen percent of
17 the taxes imposed under sections fifteen hundred one, fifteen hundred
18 two-a, and fifteen hundred ten of this article, as limited or otherwise
19 determined by subdivision (a) or (b) of section fifteen hundred five of
20 this article, as allocated to such district, for such taxable years or
21 any part of such taxable years ending after December thirty-first, two
22 thousand two after the deduction of any credits otherwise allowable
23 under this article; provided, however, that the tax surcharge imposed by
24 this section shall not be imposed upon any taxpayer for more than
25 [three] FOUR hundred [seventy-two] THIRTY-TWO months. Provided however,
26 that for taxable years commencing on or after July first, two thousand,
27 and in the case of taxpayers subject to tax under section fifteen
28 hundred two-a of this article, for taxable years of such taxpayers
29 beginning on or after July first, two thousand and before January first,
30 two thousand three, such surcharge shall be calculated as if (i) the
31 rate of the tax computed under paragraph one of subdivision (a) of
32 section fifteen hundred two of this article was nine percent and (ii)
33 the rate of the limitation on tax set forth in section fifteen hundred
34 five of this article for domestic, foreign and alien insurance corpo-
35 rations except life insurance corporations was two and six-tenths
36 percent.

37 S 7. This act shall take effect immediately.

38 PART B

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

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

1 (reporting of books, films, etc. with respect to sexually explicit
2 conduct).

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

5 (8) "RELOCATED TELEVISION PRODUCTION" SHALL MEAN, NOTWITHSTANDING THE
6 LIMITATIONS IN SUBPARAGRAPH (I) OF PARAGRAPH THREE OF THIS SUBDIVISION,
7 A TELEVISION PRODUCTION THAT IS A TALK OR VARIETY PROGRAM THAT FILMED AT
8 LEAST FIVE SEASONS OUTSIDE THE STATE PRIOR TO ITS FIRST RELOCATED SEASON
9 IN NEW YORK, THE EPISODES ARE FILMED BEFORE A STUDIO AUDIENCE OF TWO
10 HUNDRED OR MORE, AND THE RELOCATED TELEVISION PRODUCTION INCURS (I) AT
11 LEAST THIRTY MILLION DOLLARS IN ANNUAL PRODUCTION COSTS IN THE STATE, OR
12 (II) AT LEAST TEN MILLION DOLLARS IN CAPITAL EXPENDITURES AT A QUALIFIED
13 PRODUCTION FACILITY IN THE STATE.

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

16 (4) Additional pool 2 - The aggregate amount of tax credits allowed in
17 subdivision (a) of this section shall be increased by an [addition]
18 ADDITIONAL four hundred twenty million dollars in EACH YEAR STARTING IN
19 two thousand ten[, four hundred twenty million dollars in two thousand
20 eleven, four hundred twenty million dollars in two thousand twelve, four
21 hundred twenty million dollars in two thousand thirteen and four hundred
22 twenty million dollars in two thousand fourteen] THROUGH TWO THOUSAND
23 NINETEEN provided however, seven million dollars of the annual allo-
24 cation shall be available for the empire state film post production
25 credit pursuant to section thirty-one of this [chapter] ARTICLE IN TWO
26 THOUSAND THIRTEEN AND TWO THOUSAND FOURTEEN AND TWENTY-FIVE MILLION
27 DOLLARS OF THE ANNUAL ALLOCATION SHALL BE AVAILABLE FOR THE EMPIRE STATE
28 FILM POST PRODUCTION CREDIT PURSUANT TO SECTION THIRTY-ONE OF THIS ARTI-
29 CLE IN EACH YEAR STARTING IN TWO THOUSAND FIFTEEN THROUGH TWO THOUSAND
30 NINETEEN. This amount shall be allocated by the governor's office for
31 motion picture and television development among taxpayers in accordance
32 with subdivision (a) of this section. If the [director of the governor's
33 office for motion picture and television development] COMMISSIONER OF
34 ECONOMIC DEVELOPMENT determines that the aggregate amount of tax credits
35 available from additional pool 2 for the empire state film production
36 tax credit have been previously allocated, and determines that the pend-
37 ing applications from eligible applicants for the EMPIRE STATE FILM post
38 production tax credit pursuant to section thirty-one of this [chapter]
39 ARTICLE is insufficient to utilize the balance of unallocated EMPIRE
40 STATE FILM post production tax credits from such pool, the remainder,
41 after such pending applications are considered, shall be made available
42 for allocation in the empire state film tax credit pursuant to this
43 section, subdivision thirty-six of section two hundred ten and
44 subsection (gg) of section six hundred six of this chapter. ALSO, IF
45 THE COMMISSIONER OF ECONOMIC DEVELOPMENT DETERMINES THAT THE AGGREGATE
46 AMOUNT OF TAX CREDITS AVAILABLE FROM ADDITIONAL POOL 2 FOR THE EMPIRE
47 STATE FILM POST PRODUCTION TAX CREDIT HAVE BEEN PREVIOUSLY ALLOCATED,
48 AND DETERMINES THAT THE PENDING APPLICATIONS FROM ELIGIBLE APPLICANTS
49 FOR THE EMPIRE STATE FILM PRODUCTION TAX CREDIT PURSUANT TO THIS SECTION
50 IS INSUFFICIENT TO UTILIZE THE BALANCE OF UNALLOCATED FILM PRODUCTION
51 TAX CREDITS FROM SUCH POOL, THEN ALL OR PART OF THE REMAINDER, AFTER
52 SUCH PENDING APPLICATIONS ARE CONSIDERED, SHALL BE MADE AVAILABLE FOR
53 ALLOCATION FOR THE EMPIRE STATE FILM POST PRODUCTION CREDIT PURSUANT TO
54 THIS SECTION, SUBDIVISION FORTY-ONE OF SECTION TWO HUNDRED TEN AND
55 SUBSECTION (GG) OF SECTION SIX HUNDRED SIX OF THIS CHAPTER. The gover-
56 nor's office for motion picture and television development must notify

1 taxpayers of their allocation year and include the allocation year on
2 the certificate of tax credit. Taxpayers eligible to claim a credit
3 must report the allocation year directly on their empire state film
4 production credit tax form for each year a credit is claimed and include
5 a copy of the certificate with their tax return. In the case of a quali-
6 fied film that receives funds from additional pool 2, no empire state
7 film production credit shall be claimed before the later of the taxable
8 year the production of the qualified film is complete, or the taxable
9 year immediately following the allocation year for which the film has
10 been allocated credit by the governor's office for motion picture and
11 television development.

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

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

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

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

50 S 5-a. Subdivision (a) of section 31 of the tax law, as added by
51 section 12 of part Q of chapter 57 of the laws of 2010, is amended by
52 adding a new paragraph 5 to read as follows:

53 (5) IF THE AMOUNT OF THE CREDIT IS AT LEAST ONE MILLION DOLLARS BUT
54 LESS THAN FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED OVER A TWO
55 YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH THE CREDIT MAY
56 BE CLAIMED AND IN THE NEXT SUCCEEDING TAXABLE YEAR, WITH ONE-HALF OF THE

1 AMOUNT OF CREDIT ALLOWED BEING CLAIMED IN EACH YEAR. IF THE AMOUNT OF
2 THE CREDIT IS AT LEAST FIVE MILLION DOLLARS, THE CREDIT SHALL BE CLAIMED
3 OVER A THREE YEAR PERIOD BEGINNING IN THE FIRST TAXABLE YEAR IN WHICH
4 THE CREDIT MAY BE CLAIMED AND IN THE NEXT TWO SUCCEEDING TAXABLE YEARS,
5 WITH ONE-THIRD OF THE AMOUNT OF THE CREDIT ALLOWED BEING CLAIMED IN EACH
6 YEAR.

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

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

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

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

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

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

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

33 (6)(A) THE NAME OF EACH TAXPAYER ALLOCATED A TAX CREDIT FOR EACH
34 PROJECT; PROVIDED HOWEVER, IF THE TAXPAYER CLAIMS A TAX CREDIT BECAUSE
35 THE TAXPAYER IS A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A
36 PARTNERSHIP OR A SHAREHOLDER IN A SUBCHAPTER S CORPORATION, THE NAME OF
37 EACH LIMITED LIABILITY COMPANY, PARTNERSHIP OR SUBCHAPTER S CORPORATION
38 EARNING ANY OF THOSE TAX CREDITS MUST BE INCLUDED IN THE REPORT INSTEAD
39 OF INFORMATION ABOUT THE TAXPAYER CLAIMING THE TAX CREDIT, (B) THE
40 AMOUNT OF TAX CREDIT ALLOCATED TO EACH TAXPAYER; PROVIDED HOWEVER, IF
41 THE TAXPAYER CLAIMS A TAX CREDIT BECAUSE THE TAXPAYER IS A MEMBER OF A
42 LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A SHAREHOLDER
43 IN A SUBCHAPTER S CORPORATION, THE AMOUNT OF TAX CREDIT EARNED BY EACH
44 ENTITY MUST BE INCLUDED IN THE REPORT INSTEAD OF INFORMATION ABOUT THE
45 TAXPAYER CLAIMING THE TAX CREDIT, AND (C) INFORMATION IDENTIFYING THE
46 PROJECT ASSOCIATED WITH EACH TAXPAYER FOR WHICH A TAX CREDIT WAS CLAIMED
47 UNDER SECTION 24 OR SECTION 31, AS ADDED BY CHAPTER 57 OF THE LAWS OF
48 2010, OF THE TAX LAW, INCLUDING THE NAME OF THE FILM AND COUNTY IN WHICH
49 THE PROJECT IS LOCATED; AND

50 B. THE GOVERNOR'S OFFICE OF MOTION PICTURE AND TELEVISION DEVELOPMENT
51 SHALL FILE A REPORT ON A BIENNIAL BASIS WITH THE DIRECTOR OF THE DIVI-
52 SION OF THE BUDGET AND THE CHAIRS OF THE ASSEMBLY WAYS AND MEANS COMMIT-
53 TEE AND SENATE FINANCE COMMITTEE. THE REPORT SHALL BE FILED WITHIN
54 FIFTEEN DAYS AFTER THE CLOSE OF THE CALENDAR YEAR. THE FIRST REPORT
55 SHALL COVER A TWO YEAR PERIOD THAT BEGINS ON JANUARY FIRST, TWO THOUSAND
56 THIRTEEN. THE REPORT MUST BE PREPARED BY AN INDEPENDENT THIRD PARTY

AUDITOR AND INCLUDE: (1) INFORMATION REGARDING THE EMPIRE STATE FILM PRODUCTION CREDIT AND POST PRODUCTION CREDIT PROGRAMS INCLUDING THE EFFICIENCY OF OPERATIONS, RELIABILITY OF FINANCIAL REPORTING, COMPLIANCE WITH LAWS AND REGULATIONS AND DISTRIBUTION OF ASSETS AND FUNDS; (2) AN ECONOMIC IMPACT STUDY PREPARED BY AN INDEPENDENT THIRD PARTY OF THE FILM CREDIT PROGRAMS; AND (3) ANY OTHER INFORMATION AND/OR OTHER STATISTICAL INFORMATION THAT THE COMMISSIONER OF ECONOMIC DEVELOPMENT DEEMS TO BE USEFUL IN ANALYZING THE EFFECTS OF THE PROGRAM.

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

PART C

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

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

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

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

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

(I) IN THE FORMATIVE STAGE OF DEVELOPMENT;

(II) LOCATED IN NEW YORK STATE;

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

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

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

SECTION ONE HUNDRED EIGHTY-SIX OF ARTICLE NINE; ARTICLE THIRTY-TWO; ARTICLE THIRTY-THREE; ARTICLE TWENTY-THREE, OR WOULD HAVE BEEN SUBJECT TO TAX UNDER SUCH ARTICLE TWENTY-THREE (AS SUCH ARTICLE WAS IN EFFECT ON JANUARY FIRST, NINETEEN HUNDRED EIGHTY) OR THE INCOME (OR LOSSES) OF WHICH IS (OR WAS) INCLUDABLE UNDER ARTICLE TWENTY-TWO; OR

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

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

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

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

(II) LOCATED IN NEW YORK STATE; AND

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

2. THE COMMISSIONER SHALL:

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

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

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

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

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

(III) THE CAPACITY TO SECURE SUBSTANTIAL PRIVATE AND OTHER NON-STATE GOVERNMENTAL FUNDING FOR THE PROPOSED INNOVATION HOT SPOT, IN ADDITION

TO DIRECT SUPPORT FROM THE SPONSORING ACADEMIC INSTITUTION OR RELATED FOUNDATION;

(IV) THE ABILITY AND WILLINGNESS TO COOPERATE WITH OTHER LOCAL, REGIONAL AND STATEWIDE ECONOMIC DEVELOPMENT ORGANIZATIONS, BUSINESS SUPPORT NETWORKS, VENTURE AND ANGEL CAPITAL FUNDING SOURCES, AND WORK-FORCE 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 BENEFITS UNDER SECTION THIRTY-EIGHT OF THE TAX LAW FOR FIVE TAXABLE YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH SUCH QUALIFIED ENTITIES BECOME TENANTS IN AN INNOVATION HOT SPOT.

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

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

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

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

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

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

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

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

21 (C) AN INDIVIDUAL WHO IS THE SOLE PROPRIETOR OF A QUALIFIED ENTITY OR
22 A MEMBER OF A LIMITED LIABILITY COMPANY, A PARTNER IN A PARTNERSHIP OR A
23 SHAREHOLDER IN A NEW YORK SUBCHAPTER S CORPORATION WHERE THE LIMITED
24 LIABILITY COMPANY, PARTNERSHIP, OR S CORPORATION IS A QUALIFIED ENTITY,
25 THAT IS TAXABLE UNDER ARTICLE TWENTY-TWO OF THIS CHAPTER SHALL BE
26 ALLOWED A DEDUCTION FOR THE AMOUNT OF INCOME OR GAIN INCLUDED IN ITS
27 FEDERAL ADJUSTED GROSS INCOME TO THE EXTENT THAT THE INCOME OR GAIN IS
28 ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY WHICH IS A TENANT
29 IN AN INNOVATION HOT SPOT. THE DEDUCTION IS ALLOWED FOR FIVE TAXABLE
30 YEARS, BEGINNING WITH THE FIRST TAXABLE YEAR DURING WHICH THE QUALIFIED
31 ENTITY BECOMES A TENANT IN AN INNOVATION HOT SPOT.

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

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

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

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

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

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

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

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

54 (18) THE AMOUNT OF INCOME OR GAIN INCLUDED IN FEDERAL TAXABLE INCOME
55 OF A TAXPAYER THAT IS A PARTNER IN A QUALIFIED ENTITY OR IS A QUALIFIED
56 ENTITY THAT IS LOCATED BOTH WITHIN AND WITHOUT AN INNOVATION HOT SPOT,

TO THE EXTENT THAT THE INCOME OR GAIN IS ATTRIBUTABLE TO THE OPERATIONS OF A QUALIFIED ENTITY AT THE INNOVATION HOT SPOT AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER.

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

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

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

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

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

(1) Subject to the conditions and limitations provided for in this section, a refund or credit will be allowed for taxes imposed on the retail sale of tangible personal property described in subdivision (a) of section eleven hundred five of this article, and on every sale of services described in subdivisions (b) and (c) of such section, and consideration given or contracted to be given for, or for the use of, such tangible personal property or services, where such tangible personal property or services are sold to a qualified empire zone enterprise OR TO A QUALIFIED ENTITY THAT IS ALSO A TENANT IN AN INNOVATION HOT SPOT AS PROVIDED IN SECTION THIRTY-EIGHT OF THIS CHAPTER, provided that (A) such tangible personal property or tangible personal property upon which such a service has been performed or such service (other than a service described in subdivision (b) of section eleven hundred five of this article) is directly and predominantly, or such a service described in clause (A) or (D) of paragraph one of such subdivision (b) of section eleven hundred five of this article is directly and exclusively, used or consumed by (I) such QUALIFIED EMPIRE ZONE enterprise in an area designated as an empire zone pursuant to article eighteen-B of the general municipal law with respect to which such enterprise is certified pursuant to such article eighteen-B, OR (II) SUCH QUALIFIED ENTITY IN AN INNOVATION HOT SPOT or (B) such a service described in clause (B) or (C) of paragraph one of subdivision (b) of section eleven hundred five of this article is delivered and billed to (I) such enterprise at an address in such empire zone OR (II) SUCH QUALIFIED ENTITY AT THE ADDRESS OF THE INNOVATION HOT SPOT WHERE IT IS A TENANT, or (C) the enterprise's place of primary use of the service described in paragraph two of such subdivision (b) of section eleven hundred five is at an address in such empire zone OR AT AN INNOVATION HOT SPOT; provided, further, that, in order for a motor vehicle, as defined in subdivision (c) of section eleven hundred seventeen of this article, or tangible personal property related to such a motor vehicle to be found to be used predominantly in such a zone, at least fifty percent of such motor vehicle's use shall be exclusively within such zone or at least fifty percent of such motor

vehicle's use shall be in activities originating or terminating in such zone, or both; and either or both such usages shall be computed either on the basis of mileage or hours of use, at the discretion of such enterprise. For purposes of this subdivision, tangible personal property related to such a motor vehicle shall include a battery, diesel motor fuel, an engine, engine components, motor fuel, a muffler, tires and similar tangible personal property used in or on such a motor vehicle.

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

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

S 9. This act shall take effect immediately.

PART D

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

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

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

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

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

shall be an amount equal to fifty percent of any charitable contribution deduction allowed under section one hundred seventy of the internal revenue code for taxable years beginning in two thousand nine or after two thousand [twelve] FIFTEEN.

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

S 3. This act shall take effect immediately.

PART E

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

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

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

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

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

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

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

25 (2) Royalty expense add backs. (A) Except where a taxpayer is included
26 in a combined report with a related member pursuant to subdivision four
27 of section two hundred eleven of this article, for the purpose of
28 computing entire net income or other applicable taxable basis, a taxpay-
29 er must add back royalty payments [to a] DIRECTLY OR INDIRECTLY PAID,
30 ACCRUED, OR INCURRED IN CONNECTION WITH ONE OR MORE DIRECT OR INDIRECT
31 TRANSACTIONS WITH ONE OR MORE related [member] MEMBERS during the taxa-
32 ble year to the extent deductible in calculating federal taxable income.

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

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

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

44 (3) Royalty income exclusions. For the purpose of computing entire net
45 income or other taxable basis, a taxpayer shall be allowed to deduct
46 royalty payments directly or indirectly received from a related member
47 during the taxable year to the extent included in the taxpayer's federal
48 taxable income unless such royalty payments would not be required to be
49 added back under subparagraph two of this paragraph or other similar
50 provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN
51 THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT
52 THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE
53 TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE
54 FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN
55 THIS STATE OR ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR A
56 FOREIGN NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED

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

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

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

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

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

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

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

27 (iii) Royalty payments. Royalty payments are payments directly
28 connected to the acquisition, use, maintenance or management, ownership,
29 sale, exchange, or any other disposition of licenses, trademarks, copy-
30 rights, trade names, trade dress, service marks, mask works, trade
31 secrets, patents and any other similar types of intangible assets as
32 determined by the commissioner, and [includes] INCLUDE amounts allowable
33 as interest deductions under section one hundred sixty-three of the
34 internal revenue code to the extent such amounts are directly or indi-
35 rectly for, related to or in connection with the acquisition, use, main-
36 tenance or management, ownership, sale, exchange or disposition of such
37 intangible assets.

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

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

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

54 (I) the related member during the same taxable year directly or indi-
55 rectly paid or incurred the amount to a person or entity that is not a

1 related member, and such transaction was done for a valid business and
2 the payments are made at arm's length;

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

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

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

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

52 (IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
53 TAXPAYER AND THE COMMISSIONER AGREE IN WRITING TO THE APPLICATION OR USE
54 OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMISSIONER MAY, IN HIS
55 OR HER DISCRETION, AGREE TO THE APPLICATION OR USE OF ALTERNATIVE
56 ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE CONCLUDES THAT IN THE ABSENCE

1 OF SUCH AGREEMENT THE INCOME OF THE TAXPAYER WOULD NOT BE PROPERLY
2 REFLECTED.

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

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

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

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

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

1 related to or in connection with the acquisition, use, maintenance or
2 management, ownership, sale, exchange or disposition of such intangible
3 assets.

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

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

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

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

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

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

48 (II) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT APPLY IF THE
49 TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND
50 IN THE FORM SPECIFIED BY THE COMMISSIONER, THAT: (I) THE RELATED MEMBER
51 WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN THIS STATE OR
52 ANOTHER STATE OR POSSESSION OF THE UNITED STATES OR SOME COMBINATION
53 THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
54 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE
55 EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDIC-
56 TIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT

1 APPLIED TO THE TAXPAYER UNDER SECTION SIX HUNDRED ONE OF THIS ARTICLE
2 FOR THE TAXABLE YEAR.

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

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

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

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

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

45 (B) [Controlling interest. A controlling interest shall mean (i) in
46 the case of a corporation, either thirty percent or more of the total
47 combined voting power of all classes of stock of such corporation, or
48 thirty percent or more of the capital, profits or beneficial interest in
49 such voting stock of such corporation, and (ii) in the case of a part-
50 nership, association, trust or other entity, thirty percent or more of
51 the capital, profits or beneficial interest in such partnership, associ-
52 ation, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF
53 TAX" MEANS, AS TO ANY STATE OR U.S. POSSESSION, THE MAXIMUM STATUTORY
54 RATE OF TAX IMPOSED BY THE STATE OR POSSESSION ON OR MEASURED BY A
55 RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE,
56 IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURIS-

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

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

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

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

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

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

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

53 (3) Royalty income exclusions. For the purpose of computing entire net
54 income, a taxpayer shall be allowed to deduct royalty payments directly
55 or indirectly received from a related member during the taxable year to
56 the extent included in the taxpayer's federal taxable income unless such

1 royalty payments would not be required to be added back under paragraph
2 two of this subsection or other similar provision in this chapter.]
3 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBSECTION SHALL NOT
4 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-
5 LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM
6 SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS:
7 (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE
8 OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINA-
9 TION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID,
10 ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE
11 SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH
12 PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANS-
13 ACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE
14 RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

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

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

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

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

51 (14) Related members expense add back [and income exclusion]. (A)
52 Definitions. (i) Related member [or members. For purposes of this para-
53 graph, the term related member or members means a person, corporation,
54 or other entity, including an entity that is treated as a partnership or
55 other pass-through vehicle for purposes of federal taxation, whether
56 such person, corporation or entity is a taxpayer or not, where one such

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

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

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

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

55 (B) Royalty expense add backs. (i) Except where a taxpayer is included
56 in a combined return with a related member pursuant to subdivision (f)

1 of section fifteen hundred fifteen of this article, for the purpose of
2 computing entire net income, a taxpayer must add back royalty payments
3 [to a] DIRECTLY OR INDIRECTLY PAID, ACCRUED, OR INCURRED IN CONNECTION
4 WITH ONE OR MORE DIRECT OR INDIRECT TRANSACTIONS WITH ONE OR MORE
5 related [member] MEMBERS during the taxable year to the extent deduct-
6 ible in calculating federal taxable income.

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

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

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

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

24 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT
25 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-
26 LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM
27 SPECIFIED BY THE COMMISSIONER, MEETS ALL OF THE FOLLOWING REQUIREMENTS:

28 (A) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS STATE OR ANOTHER STATE
29 OR POSSESSION OF THE UNITED STATES OR A FOREIGN NATION OR SOME COMBINA-
30 TION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID,
31 ACCRUED OR INCURRED BY THE TAXPAYER; (B) THE RELATED MEMBER DURING THE
32 SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH
33 PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (C) THE TRANS-
34 ACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE
35 RELATED MEMBER WAS UNDERTAKEN FOR A VALID 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: (A) 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; (B) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT
42 PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (C) THE AGGREGATE EFFEC-
43 TIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS
44 NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO
45 THE TAXPAYER UNDER SECTION FIFTEEN HUNDRED TWO, FIFTEEN HUNDRED TWO-A,
46 OR FIFTEEN HUNDRED TWO-B OF THIS ARTICLE 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: (A) 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; (B) THE RELATED MEMBER'S
52 INCOME FROM THE TRANSACTION WAS SUBJECT TO A COMPREHENSIVE INCOME TAX
53 TREATY BETWEEN SUCH COUNTRY AND THE UNITED STATES; (C) THE RELATED
54 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 (D) THE RELATED MEMBER'S INCOME FROM THE TRANSACTION WAS TAXED IN SUCH

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

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

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

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

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

(C) Royalty payments. Royalty payments are payments directly connected to the acquisition, use, maintenance or management, ownership, sale, exchange, or any other disposition of licenses, trademarks, copyrights,

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

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

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

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

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

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

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

53 (II) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT APPLY IF
54 THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE
55 AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, THAT: (I) THE
56 RELATED MEMBER WAS SUBJECT TO TAX ON OR MEASURED BY ITS NET INCOME IN

THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES, OR SOME COMBINATION THEREOF; (II) THE TAX BASE FOR SAID TAX INCLUDED THE ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; AND (III) THE AGGREGATE EFFECTIVE RATE OF TAX APPLIED TO THE RELATED MEMBER IN THOSE JURISDICTIONS IS NO LESS THAN EIGHTY PERCENT OF THE STATUTORY RATE OF TAX THAT APPLIED TO THE TAXPAYER UNDER SECTION 11-503 OF THIS CHAPTER FOR THE TAXABLE YEAR.

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

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

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

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

(B) [Controlling interest. A controlling interest shall mean (i) in the case of a corporation, either thirty percent or more of the total combined voting power of all classes of stock of such corporation, or thirty percent or more of the capital, profits or beneficial interest in such voting stock of such corporation, and (ii) in the case of a partnership, association, trust or other entity, thirty percent or more of the capital, profits or beneficial interest in such partnership, association, trust or other entity.] EFFECTIVE RATE OF TAX. "EFFECTIVE RATE OF TAX" MEANS, AS TO ANY CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION,

1 THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED
2 MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED
3 OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED
4 MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE
5 RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS
6 DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH
7 A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR
8 SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER
9 MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST
10 INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
11 CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT
12 APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR
13 SIMILAR ADJUSTMENT.

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

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

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

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

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

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

50 (3) Royalty income exclusions. For the purpose of computing entire net
51 income or other taxable basis, a taxpayer shall be allowed to deduct
52 royalty payments directly or indirectly received from a related member
53 during the taxable year to the extent included in the taxpayer's federal
54 taxable income unless such royalty payments would not be required to be
55 added back under subparagraph two of this paragraph or other similar
56 provision in this chapter.] EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN

1 THIS PARAGRAPH SHALL NOT APPLY TO THE PORTION OF THE ROYALTY PAYMENT
2 THAT THE TAXPAYER ESTABLISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE
3 TYPE AND IN THE FORM SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL
4 OF THE FOLLOWING REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX
5 IN THIS CITY OR ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN
6 NATION OR SOME COMBINATION THEREOF ON A TAX BASE THAT INCLUDED THE
7 ROYALTY PAYMENT PAID, ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE
8 RELATED MEMBER DURING THE SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID,
9 ACCRUED OR INCURRED SUCH PORTION TO A PERSON THAT IS NOT A RELATED
10 MEMBER; AND (III) THE TRANSACTION GIVING RISE TO THE ROYALTY PAYMENT
11 BETWEEN THE TAXPAYER AND THE RELATED MEMBER WAS UNDERTAKEN FOR A VALID
12 BUSINESS PURPOSE.

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

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

38 (IV) THE ADJUSTMENT REQUIRED IN THIS PARAGRAPH SHALL NOT APPLY IF THE
39 TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE APPLI-
40 CATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE COMMIS-
41 SIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE APPLICA-
42 TION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR SHE
43 CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE
44 TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

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

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

1 taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS
2 DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF
3 SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT
4 THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED FOR "TEN PERCENT".

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

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

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

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

55 (B) [The add back of royalty payments shall not be required if and to
56 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 entire net
11 income, a taxpayer shall be allowed to deduct royalty payments directly
12 or indirectly received from a related member during the taxable year to
13 the extent included in the taxpayer's federal taxable income unless such
14 royalty payments would not be required to be added back under paragraph
15 two of this subdivision or other similar provision in this chapter.]

16 EXCEPTIONS. (I) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION SHALL NOT
17 APPLY TO THE PORTION OF THE ROYALTY PAYMENT THAT THE TAXPAYER ESTAB-
18 LISHES, BY CLEAR AND CONVINCING EVIDENCE OF THE TYPE AND IN THE FORM
19 SPECIFIED BY THE COMMISSIONER OF FINANCE, MEETS ALL OF THE FOLLOWING
20 REQUIREMENTS: (I) THE RELATED MEMBER WAS SUBJECT TO TAX IN THIS CITY OR
21 ANOTHER CITY WITHIN THE UNITED STATES OR A FOREIGN NATION OR SOME COMBI-
22 NATION THEREOF ON A TAX BASE THAT INCLUDED THE ROYALTY PAYMENT PAID,
23 ACCRUED OR INCURRED BY THE TAXPAYER; (II) THE RELATED MEMBER DURING THE
24 SAME TAXABLE YEAR DIRECTLY OR INDIRECTLY PAID, ACCRUED OR INCURRED SUCH
25 PORTION TO A PERSON THAT IS NOT A RELATED MEMBER; AND (III) THE TRANS-
26 ACTION GIVING RISE TO THE ROYALTY PAYMENT BETWEEN THE TAXPAYER AND THE
27 RELATED MEMBER WAS UNDERTAKEN FOR A VALID BUSINESS PURPOSE.

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

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

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

1 APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR
2 SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE
3 TAXPAYER WOULD NOT BE PROPERLY REFLECTED.

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

7 (t) Related members expense add back [and income exclusion]. (1)
8 Definitions. (A) Related member [or members. For purposes of this subdi-
9 vision, the term related member or members means a person, corporation,
10 or other entity, including an entity that is treated as a partnership or
11 other pass-through vehicle for purposes of federal taxation, whether
12 such person, corporation or entity is a taxpayer or not, where one such
13 person, corporation or entity, or set of related persons, corporations
14 or entities, directly or indirectly owns or controls a controlling
15 interest in another entity. Such entity or entities may include all
16 taxpayers under this title]. "RELATED MEMBER" MEANS A RELATED PERSON AS
17 DEFINED IN SUBPARAGRAPH (C) OF PARAGRAPH THREE OF SUBSECTION (B) OF
18 SECTION FOUR HUNDRED SIXTY-FIVE OF THE INTERNAL REVENUE CODE, EXCEPT
19 THAT "FIFTY PERCENT" SHALL BE SUBSTITUTED 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 CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY
29 THE CITY ON OR MEASURED BY A RELATED MEMBER'S NET INCOME MULTIPLIED BY
30 THE APPORTIONMENT PERCENTAGE, IF ANY, APPLICABLE TO THE RELATED MEMBER
31 UNDER THE LAWS OF SAID JURISDICTION. FOR PURPOSES OF THIS DEFINITION,
32 THE EFFECTIVE RATE OF TAX AS TO ANY CITY IS ZERO WHERE THE RELATED
33 MEMBER'S NET INCOME TAX LIABILITY IN SAID CITY IS REPORTED ON A COMBINED
34 OR CONSOLIDATED RETURN INCLUDING BOTH THE TAXPAYER AND THE RELATED
35 MEMBER WHERE THE REPORTED TRANSACTIONS BETWEEN THE TAXPAYER AND THE
36 RELATED MEMBER ARE ELIMINATED OR OFFSET. ALSO, FOR PURPOSES OF THIS
37 DEFINITION, WHEN COMPUTING THE EFFECTIVE RATE OF TAX FOR A CITY IN WHICH
38 A RELATED MEMBER'S NET INCOME IS ELIMINATED OR OFFSET BY A CREDIT OR
39 SIMILAR ADJUSTMENT THAT IS DEPENDENT UPON THE RELATED MEMBER EITHER
40 MAINTAINING OR MANAGING INTANGIBLE PROPERTY OR COLLECTING INTEREST
41 INCOME IN THAT CITY, THE MAXIMUM STATUTORY RATE OF TAX IMPOSED BY SAID
42 CITY SHALL BE DECREASED TO REFLECT THE STATUTORY RATE OF TAX THAT
43 APPLIES TO THE RELATED MEMBER AS EFFECTIVELY REDUCED BY SUCH CREDIT OR
44 SIMILAR ADJUSTMENT.

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

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

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

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

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

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

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

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

1 (III) THE ADJUSTMENT REQUIRED IN THIS SUBDIVISION 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 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 SUBDIVISION SHALL NOT APPLY IF
16 THE TAXPAYER AND THE COMMISSIONER OF FINANCE AGREE IN WRITING TO THE
17 APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS. THE
18 COMMISSIONER OF FINANCE MAY, IN HIS OR HER DISCRETION, AGREE TO THE
19 APPLICATION OR USE OF ALTERNATIVE ADJUSTMENTS OR COMPUTATIONS WHEN HE OR
20 SHE CONCLUDES THAT IN THE ABSENCE OF SUCH AGREEMENT THE INCOME OF THE
21 TAXPAYER WOULD NOT BE PROPERLY REFLECTED.
22 S 13. This act shall take effect immediately and shall apply to taxa-
23 ble years beginning on or after January 1, 2013.

24

PART F

25 Section 1. Subparagraph (A) of paragraph 1, and paragraphs 4 and 5 of
26 subsection (oo) of section 606 of the tax law, subparagraph (A) of para-
27 graph 1 as amended by chapter 472 of the laws of 2010 and paragraph 4 as
28 amended and paragraph 5 as added by chapter 239 of the laws of 2009, are
29 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) If the amount of the credit [allowable under this subsection for
47 any taxable year shall exceed the taxpayer's tax for such year, the
48 excess may be carried over to the following year or years, and may be
49 applied against the taxpayer's tax for such year or years] ALLOWED UNDER
50 THIS SUBSECTION FOR ANY TAXABLE YEAR SHALL EXCEED THE TAXPAYER'S TAX FOR
51 SUCH YEAR, THE EXCESS SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE
52 CREDITED OR REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SIX
53 HUNDRED EIGHTY-SIX OF THIS ARTICLE, PROVIDED, HOWEVER, THAT NO INTEREST
54 SHALL BE PAID THEREON.

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

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

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

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

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

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

(A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand [fifteen] TWENTY, a taxpayer shall be allowed a credit as hereinafter provided, against the

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

14 (4) The credit allowed under this subsection for any taxable year
15 shall not reduce the tax to less than the dollar amount fixed as a mini-
16 mum tax by subsection (b) of section fourteen hundred fifty-five of this
17 article. [If the amount of credit allowable under this subsection for
18 any taxable year reduces the tax to such amount, the excess may be
19 carried over to the following year or years, and may be deducted from
20 the taxpayer's tax for such year or years.] HOWEVER, IF THE AMOUNT OF
21 CREDIT ALLOWED UNDER THIS SUBSECTION FOR ANY TAXABLE YEAR REDUCES THE
22 TAX TO SUCH AMOUNT, ANY AMOUNT OF CREDIT THUS NOT DEDUCTIBLE IN SUCH
23 TAXABLE YEAR SHALL BE TREATED AS AN OVERPAYMENT OF TAX TO BE CREDITED OR
24 REFUNDED IN ACCORDANCE WITH THE PROVISIONS OF SECTION ONE THOUSAND
25 EIGHTY-SIX OF THIS CHAPTER. PROVIDED, HOWEVER, THE PROVISIONS OF
26 SUBSECTION (C) OF SECTION ONE THOUSAND EIGHTY-EIGHT OF THIS CHAPTER
27 NOTWITHSTANDING, NO INTEREST SHALL BE PAID THEREON.

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

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

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

55 (4) The credit allowed under this subdivision for any taxable year
56 shall not reduce the tax due for such year to less than the minimum

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

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

22 S 5. This act shall take effect immediately and shall apply to taxable
23 years beginning on and after January 1, 2013; provided however the
24 amendments to paragraph 4 of subsection (oo) of section 606 of the tax
25 law made by section one of this act, the amendments to paragraph 4 of
26 subdivision 40 of section 210 of the tax law made by section two of this
27 act, the amendments to paragraph 4 of subsection (u) of section 1456 of
28 the tax law made by section three of this act and the amendments to
29 paragraph 4 of subdivision (y) of section 1511 of the tax law made by
30 section four of this act shall take effect January 1, 2015 and shall
31 apply to taxable years beginning on and after January 1, 2015 for quali-
32 fied rehabilitation placed in service on or after January 1, 2015.

33 PART G

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

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

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

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

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

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

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

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

4. Carryovers. In no event shall the credit under this section be allowed in an amount which will reduce the tax payable to less than the applicable minimum tax fixed by section one hundred eighty-three or one hundred eighty-five of this article. If, however, the amount of credit allowable under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Recapture amount. The recapture amount is equal to the credit allowable under this subdivision multiplied by a fraction, the numerator of which is the total recovery period for the property minus the number

1 of recovery years prior to, but not including, the recapture year, and
2 the denominator of which is the total recovery period.

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

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

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

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

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

39 (p) [Alternative fuels] ELECTRIC VEHICLE RECHARGING PROPERTY credit.

40 (1) General. A taxpayer shall be allowed a credit, to be computed as
41 hereinafter provided, against the tax imposed by this article, for
42 [alternative fuel vehicle refueling] ELECTRIC VEHICLE RECHARGING proper-
43 ty placed in service during the taxable year.

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

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

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

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

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

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

(i) draws propulsion energy from both

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

(b) an energy storage device; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 PART H

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

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

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

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

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

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

32 (a) the amendments to section 29 of the tax law made by section thir-
33 teen of this act shall apply to tax documents filed or required to be
34 filed on or after the sixtieth day after which this act shall have
35 become a law [and shall expire and be deemed repealed December 31,
36 2013], provided however that the amendments to paragraph 4 of subdivi-
37 sion (a) of section 29 of the tax law and paragraph 2 of subdivision (e)
38 of section 29 of the tax law made by section thirteen of this act with
39 regard to individual taxpayers shall take effect September 15, 2011 but
40 only if the commissioner of taxation and finance has reported in the
41 report required by section seventeen-b of this act that the percentage
42 of individual taxpayers electronically filing their 2010 income tax
43 returns is less than eighty-five percent; provided that the commissioner
44 of taxation and finance shall notify the legislative bill drafting
45 commission of the date of the issuance of such report in order that the
46 commission may maintain an accurate and timely effective data base of
47 the official text of the laws of the state of New York in furtherance of
48 effectuating the provisions of section 44 of the legislative law and
49 section 70-b of the public officers law;

50 (b) sections fourteen, fifteen, sixteen and seventeen of this act
51 shall take effect September 15, 2011 but only if the commissioner of
52 taxation and finance has reported in the report required by section

seventeen-b of this act that the percentage of individual taxpayers electronically filing their 2010 income tax returns is less than eighty-five percent;

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

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

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

S 6. This act shall take effect immediately.

PART I

Section 1. Legislative intent. The legislature seeks to demonstrate that the state of New York is open for business by promoting, attracting, and encouraging the development of business in the state. The legislature intends to encourage businesses to locate in the state and produce goods and services within the state, thereby increasing job creation and economic growth. The legislature further intends to foster economic development by showcasing various goods that are produced in New York. In order to accomplish these objectives, the legislature intends that there shall be established "Taste-NY facilities," which will sell a variety of products, including but not limited to products produced within the state, and prominently feature New York produced goods, including alcoholic beverages.

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

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

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

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

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

(II) RECEIPTS FROM SALES OF THE FOLLOWING AT A TASTE-NY FACILITY SHALL BE EXEMPT FROM THE SALES TAX IMPOSED UNDER SECTION ELEVEN HUNDRED FIVE AND THE COMPENSATING USE TAX IMPOSED UNDER SECTION ELEVEN HUNDRED TEN OF THIS ARTICLE: (1) FOOD OR DRINK FOR CONSUMPTION ON THE PREMISES OF SUCH FACILITY; (2) FOOD OR DRINK SOLD FOR CONSUMPTION OFF THE PREMISES OF

1 SUCH FACILITY THAT IS SOLD IN A HEATED STATE; (3) SANDWICHES SOLD FOR
2 CONSUMPTION OFF THE PREMISES OF SUCH FACILITY, WHETHER OR NOT SOLD IN A
3 HEATED STATE; (4) FOOD OR DRINK SOLD THROUGH VENDING MACHINES; AND (5)
4 FOOD OR DRINK SOLD IN AN UNHEATED STATE THAT IS OF A TYPE COMMONLY SOLD
5 FOR OFF-PREMISES CONSUMPTION AND IS NOT IN THE SAME FORM, CONDITION,
6 QUANTITIES AND PACKAGING AS IN ESTABLISHMENTS THAT ARE FOOD STORES OTHER
7 THAN THOSE PRINCIPALLY ENGAGED IN SELLING FOODS PREPARED AND READY TO BE
8 EATEN.

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

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

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

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

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

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

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

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

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

41 (B) EACH SAMPLE SHALL BE LIMITED:

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

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

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

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

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

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

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

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

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

15 2. LICENSES issued pursuant to sections sixty-four, sixty-four-a and
16 sixty-four-b of this article shall be effective for two years at two
17 times that annual fee, except that, in implementing the purposes of this
18 section, the liquor authority shall schedule the commencement dates,
19 duration and expiration dates thereof to provide for an equal cycle of
20 license renewals issued under each such section through the course of
21 the fiscal year. [Notwithstanding the foregoing, commencing on December
22 first, nineteen hundred ninety-eight and concluding on July thirty-
23 first, two thousand two, a licensee issued a license pursuant to section
24 sixty-four, sixty-four-a or sixty-four-b of this article may elect to
25 remit the fee for such license in equal annual installments. Such
26 installments shall be due on dates established by the liquor authority
27 and the failure of a licensee to have remitted such annual installments
28 after a due date shall be a violation of this chapter. For licenses
29 issued for less than the three-year licensing period, the license fee
30 shall be levied on a pro-rated basis.]

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

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

37 1. In addition to the annual fees provided for in this chapter, there
38 shall be paid to the authority with each initial application for a
39 license filed pursuant to section fifty-one, fifty-one-a, fifty-three,
40 fifty-eight, sixty-one, sixty-two, seventy-six or seventy-eight of this
41 chapter, a filing fee of four hundred dollars; with each initial appli-
42 cation for a license filed pursuant to section sixty-three,
43 SIXTY-THREE-B, sixty-four, sixty-four-a or sixty-four-b of this chapter,
44 a filing fee of two hundred dollars; with each initial application for a
45 license filed pursuant to section fifty-three-a, fifty-four, fifty-five,
46 fifty-five-a, seventy-nine, eighty-one or eighty-one-a of this chapter,
47 a filing fee of one hundred dollars; with each initial application for a
48 permit filed pursuant to section ninety-one, ninety-one-a, ninety-two,
49 ninety-two-a, ninety-three, ninety-three-a, if such permit is to be
50 issued on a calendar year basis, ninety-four, ninety-five, ninety-six or
51 ninety-six-a, or pursuant to paragraph b, c, e or j of subdivision one
52 of section ninety-nine-b of this chapter if such permit is to be issued
53 on a calendar year basis, or for an additional bar pursuant to subdivi-
54 sion four of section one hundred of this chapter, a filing fee of twenty
55 dollars; and with each application for a permit under section ninety-
56 three-a of this chapter, other than a permit to be issued on a calendar

1 year basis, section ninety-seven, ninety-eight, ninety-nine, or ninety-
2 nine-b of this chapter, other than a permit to be issued pursuant to
3 paragraph b, c, e or j of subdivision one of section ninety-nine-b of
4 this chapter on a calendar year basis, a filing fee of ten dollars.

5 2. In addition to the annual fees provided for in this chapter, there
6 shall be paid to the authority with each renewal application for a
7 license filed pursuant to section fifty-one, fifty-one-a, fifty-three,
8 fifty-eight, sixty-one, sixty-two, seventy-six or seventy-eight of this
9 chapter, a filing fee of one hundred dollars; with each renewal applica-
10 tion for a license filed pursuant to section sixty-three, SIXTY-THREE-B,
11 sixty-four, sixty-four-a or sixty-four-b of this chapter, a filing fee
12 of ninety dollars; with each renewal application for a license filed
13 pursuant to section seventy-nine, eighty-one or eighty-one-a of this
14 chapter, a filing fee of twenty-five dollars; and with each renewal
15 application for a license or permit filed pursuant to section fifty-
16 three-a, fifty-four, fifty-five, fifty-five-a, ninety-one, ninety-one-a,
17 ninety-two, ninety-two-a, ninety-three, ninety-three-a, if such permit
18 is issued on a calendar year basis, ninety-four, ninety-five, ninety-six
19 or ninety-six-a of this chapter or pursuant to subdivisions b, c, e or j
20 of section ninety-nine-b, if such permit is issued on a calendar year
21 basis, or with each renewal application for an additional bar pursuant
22 to subdivision four of section one hundred of this chapter, a filing fee
23 of thirty dollars.

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

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

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

47 (ii) any such premises or business constituting the overnight lodging
48 and resort facility located wholly within the boundaries of that tract
49 or parcel of land situate in the city of Canandaigua, county of Ontario,
50 beginning at a point in the northerly line of village lot nine where it
51 meets with South Main Street, thence south sixty-nine degrees fifty-four
52 minutes west a distance of nine hundred sixteen and twenty-three
53 hundredths feet to an iron pin; thence in the same course a distance of
54 fourteen feet to an iron pin; thence in the same course a distance of
55 fourteen and four-tenths feet to a point; thence south fifteen degrees
56 thirty-eight minutes and forty seconds east a distance of four hundred

1 forty-six and eighty-seven hundredths feet to a point; thence south
2 twenty-eight degrees thirty-seven minutes and fifty seconds east a
3 distance of one hundred thirteen and eighty-four hundredths feet to a
4 point; thence south eighty-five degrees and forty-seven minutes east a
5 distance of forty-seven and sixty-one hundredths feet to an iron pin;
6 thence on the same course a distance of three hundred and sixty-five
7 feet to an iron pin; thence north seventeen degrees twenty-one minutes
8 and ten seconds east a distance of four hundred fifty-seven and thirty-
9 two hundredths feet to an iron pin; thence north nineteen degrees and
10 thirty minutes west a distance of two hundred and forty-eight feet to a
11 point; thence north sixty-nine degrees and fifty-four minutes east a
12 distance of two hundred eighty-four and twenty-six hundredths feet to a
13 point; thence north nineteen degrees and thirty minutes west a distance
14 of sixty feet to the point and place of beginning, provided that such
15 facility maintains not less than one hundred twenty rooms and suites for
16 overnight lodging[,];

17 (iii) any such premises or business constituting the overnight lodging
18 facility located wholly within the boundaries of that tract or parcel of
19 land situated in the borough of Manhattan, city and county of New York,
20 beginning at a point on the northerly side of west fifty-fourth street
21 at a point one hundred feet easterly from the intersection of the said
22 northerly side of west fifty-fourth street and the easterly side of
23 seventh avenue; running thence northerly and parallel with the easterly
24 side of seventh avenue one hundred feet five inches to the center line
25 of the block; running thence easterly and parallel with the northerly
26 side of west fifty-fourth street and along the center line of the block
27 fifty feet to a point; running thence northerly and parallel with the
28 easterly side of seventh avenue one hundred feet five inches to the
29 southerly side of west fifty-fifth street at a point distant one hundred
30 fifty feet easterly from the intersection of the said southerly side of
31 west fifty-fifth street and the easterly side of seventh avenue; running
32 thence easterly along the southerly side of west fifty-fifth street
33 thirty-one feet three inches to a point; running thence southerly and
34 parallel with the easterly side of the seventh avenue one hundred feet
35 five inches to the center line of the block; running thence easterly
36 along the center line of the block and parallel with the southerly side
37 of west fifty-fifth street, one hundred feet; running thence northerly
38 and parallel with the easterly side of seventh avenue one hundred feet
39 five inches to the southerly side of west fifty-fifth street; running
40 thence easterly along the southerly side of west fifty-fifth street
41 twenty-one feet ten and one-half inches to a point; running thence
42 southerly and parallel with the easterly side of seventh avenue one
43 hundred feet five inches to the center line of the block; running thence
44 westerly along the center line of the block and parallel with the north-
45 erly side of west fifty-fourth street three feet one and one-half inch-
46 es; running thence southerly and parallel with the easterly side of
47 seventh avenue one hundred feet five inches to the northerly side of
48 west fifty-fourth street at a point distant three hundred feet easterly
49 from the intersection of the said northerly side of west fifty-fourth
50 street and the easterly side of seventh avenue; running thence westerly
51 and along the northerly side of west fifty-fourth street two hundred
52 feet to the point or place of beginning, provided that such facility
53 maintains not less than four hundred guest rooms and suites for over-
54 night lodging[,];

55 (iv) any such premises or business located on that tract or parcel of
56 land, or any subdivision thereof, situate in the Village of Lake Placid,

1 Town of North Elba, Essex County, New York; it being also a part of Lot
2 No. 279, Township No. 11, Old Military Tract, Richard's Survey; it
3 being also all of Lot No. 23 and part of Lot No. 22 as shown and desig-
4 nated on a certain map entitled "Map of Building Sites for Sale by B.R.
5 Brewster" made by G.T. Chellis C.E. in 1892; also being PARCEL No. 1 on
6 a certain map of lands of Robert J. Mahoney and wife made by G.C.
7 Sylvester, P.E. & L.S. # 21300, dated August 4, 1964, and filed in the
8 Essex County Clerk's Office on August 27, 1964, and more particularly
9 bounded and described as follows; BEGINNING at the intersection of the
10 northerly bounds of Shore Drive (formerly Mirror Street) with the
11 westerly bounds of Park Place (formerly Rider Street) which point is
12 also the northeast corner of Lot No. 23, from thence South 21°50' East
13 in the westerly bounds of Park Place a distance of 119 feet, more or
14 less, to a lead plug in the edge of the sidewalk marking the southeast
15 corner of Lot No. 23 and the northeast corner of Lot No. 24; from thence
16 South 68°00'50" West a distance of 50.05 feet to an iron pipe set in
17 concrete at the corner of Lots 23 and 22; from thence South 65°10'50"
18 West a distance of 7.94 feet along the south line of Lot No. 22 to an
19 iron pipe for a corner; from thence North 23°21'40" West and at 17.84
20 feet along said line passing over a drill hole in a concrete sidewalk,
21 and at 68.04 feet further along said line passing over an iron pipe at
22 the southerly edge of another sidewalk, and at 1.22 feet further along
23 said line passing over another drill hole in a sidewalk, a total
24 distance of 119 feet, more or less, to the northerly line of Lot. No.
25 22; from thence easterly in the northerly line of Lot 22 and 23 to the
26 northeast corner of Lot No. 23 and the point of beginning. Also includ-
27 ing the lands to the center of Shore Drive included between the norther-
28 ly straight line continuation of the side lines of the above described
29 parcel, and to the center of Park Place, where they abut the above
30 described premises SUBJECT to the use thereof for street purposes. Being
31 the same premises conveyed by Morestuff, Inc. to Madeline Sellers by
32 deed dated June 30, 1992, recorded in the Essex County Clerk's Office on
33 July 10, 1992 in Book 1017 of Deeds at Page 318;

34 (v) any such premises or business located on that certain piece or
35 parcel of land, or any subdivision thereof, situate, lying and being in
36 the Town of Plattsburgh, County of Clinton, State of New York and being
37 more particularly bounded and described as follows: Starting at an iron
38 pipe found in the easterly bounds of the highway known as the Old Mili-
39 tary Turnpike, said iron pipe being located 910.39 feet southeasterly,
40 as measured along the easterly bounds of said highway, from the souther-
41 ly bounds of the roadway known as Industrial Parkway West, THENCE
42 running S 31 ° 54' 33" E along the easterly bounds of said Old Military
43 Turnpike Extension, 239.88 feet to a point marking the beginning of a
44 curve concave to the west; thence southerly along said curve, having a
45 radius of 987.99 feet, 248.12 feet to an iron pipe found marking the
46 point of beginning for the parcel herein being described, said point
47 also marked the southerly corner of lands of Larry Garrow, et al, as
48 described in Book 938 of Deeds at page 224; thence N 07° 45' 4" E along
49 the easterly bounds of said Garrow, 748.16 feet to a 3"x4" concrete
50 monument marking the northeasterly corner of said Garrow, the northwes-
51 terly corner of the parcel herein being described and said monument also
52 marking the southerly bounds of lands of Salerno Plastic Corp. as
53 described in Book 926 of Deeds at Page 186; thence S 81° 45' 28" E along
54 a portion of the southerly bounds of said Salerno Plastic Corp., 441.32
55 feet to an iron pin found marking the northeasterly corner of the parcel
56 herein being described and also marking the northwest corner of the

1 remaining lands now or formerly owned by said Marx and DeLaura; thence S
2 07° 45' 40" W along the Westerly bounds of lands now of formerly of said
3 Marx and DeLaura and along the easterly bounds of the parcel herein
4 being described, 560.49 feet to an iron pin; thence N 83° 43' 21" W
5 along a portion of the remaining lands of said Marx and DeLaura, 41.51
6 feet to an iron pin; thence S 08° 31' 30" W, along a portion of the
7 remaining lands of said Marx and DeLaura, 75.01 feet to an iron pin
8 marking northeasterly corner of lands currently owned by the Joint Coun-
9 cil for Economic Opportunity of Plattsburgh and Clinton County, Inc. as
10 described in Book 963 of Deeds at Page 313; thence N 82° 20' 32" W along
11 a portion of the northerly bounds of said J.C.E.O., 173.50 feet to an
12 iron pin; thence 61° 21' 12" W, continuing along a portion of the north-
13 erly bounds of said J.C.E.O., 134.14 feet to an iron pin; thence S 07°
14 45' 42" W along the westerly bounds of said J.C.E.O., 50 feet to an iron
15 pin; thence S 66° 48' 56" W along a portion of the northerly bounds of
16 remaining lands of said Marx and DeLaura, 100.00 feet to an iron pipe
17 found on the easterly bounds of the aforesaid highway, said from pipe
18 also being located on a curve concave to the west; thence running and
19 running northerly along the easterly bounds of the aforesaid highway and
20 being along said curve, with the curve having a radius of 987.93 feet,
21 60.00 feet to the point of beginning and containing 6.905 acres of land.
22 Being the same premises as conveyed to Ronald Marx and Alice Marx by
23 deed of CIT Small Business Lending Corp., as agent of the administrator,
24 U.S. Small Business Administration, an agency of the United States
25 Government dated September 10, 2001 and recorded in the office of the
26 Clinton County Clerk on September 21, 2001 as Instrument #135020; [or]
27 (vi) any such premises or business located on the west side of New
28 York state route 414 in military lots 64 and 75 located wholly within
29 the boundaries of that tract or parcel of land situated in the town of
30 Lodi, county of Seneca beginning at an iron pin on the assumed west line
31 of New York State Route 414 on the apparent north line of lands reputed-
32 ly of White (lib. 420, page 155); said iron pin also being northerly a
33 distance of 1200 feet more or less from the centerline of South Miller
34 Road; Thence leaving the point of beginning north 85-17'-44" west along
35 said lands of White a distance of 2915.90 feet to an iron pin Thence
36 north 03-52'-48" east along said lands of White, passing through an iron
37 pin 338.36 feet distant, and continuing further along that same course a
38 distance of 13.64 feet farther, the total distance being 352.00 feet to
39 a point in the assumed centerline of Nellie Neal Creek; Thence in gener-
40 ally a north westerly direction the following courses and distances
41 along the assumed centerline of Nellie Neal Creek; north 69-25'-11" west
42 a distance of 189.56 feet to a point; north 63-40'-00" west a distance
43 of 156.00 feet to a point; north 49-25'-00" west a distance of 80.00
44 feet to a point; south 80-21'-00" west a distance of 90.00 feet to a
45 point; north 72-03'-00" west a distance of 566.00 feet to a point; north
46 68-15'-00" west a distance of 506.00 feet to a point; north 55-16'-00"
47 west a distance of 135.00 feet to a point; south 69-18'-00" west a
48 distance of 200.00 feet to a point; south 88-00'-00" west a distance of
49 170.00 feet to a point on a tie line at or near the high water line of
50 Seneca Lake; Thence north 25-17'-00" east along said tie line a distance
51 of 238.00 feet to an iron pipe; Thence south 82-04'-15" east along lands
52 reputedly of M. Wagner (lib. 464, page 133) a distance of 100.00 feet to
53 an iron pin; Thence north 06-56'-47" east along said lands of M. Wagner
54 a distance of 100.00 feet to an iron pipe; Thence north 09-34'-28" east
55 along lands reputedly of Schneider (lib. 429, page 37) a distance of
56 50.10 feet to an iron pipe; Thence north 07-49'-11" east along lands

1 reputedly of Oney (lib. 484, page 24) a distance of 50.00 feet to an
2 iron pipe; Thence north 82-29'-40" west along said lands of Oney a
3 distance of 95.30 feet to an iron pipe on a tie line at or near the
4 highwater line of Seneca Lake; Thence north 08-15'-22" east along said
5 tie line a distance of 25.00 feet to an iron pin; Thence south
6 82-28'-00" east along lands reputedly of Yu (lib. 405, page 420) a
7 distance of 96.53 feet to an iron pipe; Thence north 34-36'-59" east
8 along said lands of Yu a distance of 95.00 feet to a point in the
9 assumed centerline of Van Liew Creek; Thence in generally an easterly
10 direction the following courses and distances along the assumed center-
11 line of Van Liew Creek; north 72-46'-37" east a distance of 159.98 feet
12 to a point; north 87-53'-00" east a distance of 94.00 feet to a point;
13 south 71-12'-00" east a distance of 52.00 feet to a point; south
14 84-10'-00" east a distance of 158.00 feet to a point; south 59-51'-00"
15 east a distance of 160.00 feet to a point; south 83-29'-00" east a
16 distance of 187.00 feet to a point; Thence north 01-33'-40" east along
17 lands reputedly of Hansen (lib. 515, page 205) passing through an iron
18 pipe 32.62 feet distant, and continuing further along that same course
19 passing through an iron pin 205.38 feet farther, and continuing still
20 further along that same course a distance of 21.45 feet farther, the
21 total distance being 259.45 feet to the assumed remains of a White Oak
22 stump; Thence north 69-16'-11" east along lands reputedly of Schwartz
23 (lib. 374, page 733) being tie lines along the top of the south bank of
24 Campbell Creek a distance of 338.00 feet to a point; Thence south
25 57-17'32" east along said tie line a distance of 136.60 feet to a point;
26 Thence south 74-45'-00" east along said tie line a distance of 100.00
27 feet to an iron pin; Thence north 04-46'-00" east along said lands of
28 Schwartz a distance of 100.00 feet to a point in the assumed centerline
29 of Campbell Creek; Thence in generally an easterly direction the follow-
30 ing courses and distances along the assumed centerline of Campbell
31 Creek; south 71-34'-00" east a distance of 330.00 feet to a point; north
32 76-53'-00" east a distance of 180.00 feet to a point; north 83-05'00"
33 east a distance of 230.00 feet to a point; south 66-44'-00" east a
34 distance of 90.00 feet to a point; south 81-10'-00" east a distance of
35 240.00 feet to a point; south 45-29'-15" east a distance of 73.18 feet
36 to a point; Thence south 05-25'-50" west along lands reputedly of Stan-
37 ley Wagner (lib. 450, page 276) a distance of 135.00 feet to a point on
38 the assumed north line of Military Lot 75; Thence south 84-34'-10" east
39 along said lands of Wagner and the assumed north line of Military Lot 75
40 a distance of 1195.06 feet to an iron pin; Thence south 06-57'52" west
41 along said lands of M. Wagner (lib. 414, page 267) passing through an
42 iron pin 215.58 feet distant, and continuing further along that same
43 course a distance of 20.59 feet farther, the total distance being 236.17
44 feet to a point in the assumed centerline of Campbell Creek; Thence in
45 generally a south easterly direction the following course and distances
46 along the assumed centerline of Campbell Creek; north 78-23'-09" east a
47 distance of 29.99 feet to a point; south 46-09'-15" east a distance of
48 65.24 feet to a point; north 85-55'-09" east a distance of 60.10 feet to
49 a point; south 61-59'-50" east a distance of 206.91 feet to a point;
50 north 63-58'-27" east a distance of 43.12 feet to a point; south
51 28-51'-21" east a distance of 47.72 feet to a point; south 15-14'-08"
52 west a distance of 33.42 feet to a point; south 79-16'-32" east a
53 distance of 255.15 feet to a point; south 62-19'-46" east a distance of
54 75.82 feet to a point; north 76-10'-42" east a distance of 99.60 feet to
55 a point; north 82-12'55" east a distance of 86.00 feet to a point; south
56 44-13'53" east a distance of 64.08 feet to a point; north 67-52'-46"

1 east a distance of 73.98 feet to a point; north 88-13'-13" east a
2 distance of 34.64 feet to a point on the assumed west line of New York
3 State Route 414; Thence south 20-13'-30" east along the assumed west
4 line of New York State Route 414 a distance of 248.04 feet to a concrete
5 monument; Thence south 02-10'-30" west along said road line a distance
6 of 322.90 feet to an iron pin; Thence 13-14'-50" west along said road
7 line a distance of 487.41 feet to an iron pin, said iron pin being the
8 point and place of beginning; Comprising an area of 126.807 acres of
9 land according to a survey completed by Michael D. Karlsen entitled
10 "Plan Owned by Stanley A. Wagner" known as Parcel A of Job number
11 98-505. This survey is subject to all utility easements and easements
12 and right-of-ways of record which may affect the parcel of land. This
13 survey is also subject to the rights of the public in and to lands here-
14 in referred to as New York State Route 414. This survey intends to
15 describe a portion of the premises as conveyed by Ruth V. Wagner to
16 Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of
17 deeds, at Page 286. This survey also intends to describe a portion of
18 the premises as conveyed by Stanley W. VanVleet to Stanley A. Wagner by
19 deed recorded April 30, 1980 in Liber 385 of Deeds, at Page 203.

20 ALSO ALL THAT OTHER TRACT OR PARCEL OF LAND SITUATE on the east side of
21 New York State Route 414 in Military Lot 75 in the Town of Lodi, County
22 of Seneca, State of New York bounded and described as follows: Begin-
23 ning at an iron pin on the assumed east line of New York State Route
24 414, said iron pin being north 50-44'-57" east a distance of 274.92 feet
25 from the south east corner of the parcel of land herein above described;
26 Thence leaving the point of beginning north 00-26'01" east along a math-
27 ematical tie line a distance of 504.91 feet to an iron pin; Thence south
28 37-00'-20" east along lands reputedly of Tomberelli (lib. 419, page 243)
29 passing through an iron pin 176.00 feet distant, and continuing further
30 along that same course a distance of 2.01 feet farther, the total
31 distance being 178.01 feet to a point; Thence south 09-03'-55" west
32 along lands reputedly of M. Wagner (lib. 491, page 181) a distance of
33 68.19 feet to an iron pipe; Thence south 15-36'-04" west along said
34 lands of M. Wagner a distance of 300.15 feet to an iron pipe; Thence
35 south 72-04'-59" west along said lands of M. Wagner a distance of 20.49
36 feet to an iron pin, said iron pin being the point and place of begin-
37 ning. Comprising an area of 0.727 acre of lands according to a survey
38 completed by Michael D. Karlsen entitled "Plan of Land Owned by Stanley
39 A. Wagner" known as Parcel B of job number 98-505. This survey is
40 subject to all utility easements and easements and right-of-ways of
41 record which may affect this parcel of land. This survey is also
42 subject to the rights of the public in and to lands herein referred to
43 as New York State Route 414. This survey intends to describe the same
44 premises as conveyed by Henry W. Eighmey as executor of the Last Will
45 and Testament of Mary C. Eighmey to Stanley A. Wagner by deed recorded
46 July 2, 1996 in liber 542, page 92. This survey also intends to
47 describe a portion of the premises as conveyed by Ruth V. Wagner to
48 Stanley A. Wagner by deed recorded February 10, 1989 in Liber 450 of
49 deeds, at Page 286[.];

50 [The provisions of this paragraph shall not apply to] (VII) any prem-
51 ises or business located wholly within the following described parcel:
52 ALL THAT TRACT OR PARCEL OF LAND situate in the City of Corning, County
53 of Steuben and State of New York bounded and described as follows:
54 Beginning at an iron pin situate at the terminus of the westerly line of
55 Townley Avenue at its intersection with the southwesterly line of New
56 York State Route 17; thence S 00° 45' 18" E along the westerly line of

1 Townley Avenue, a distance of 256.09 feet to a point; thence S 89° 02'
2 07" W through an iron pin placed at a distance of 200.00 feet, a total
3 distance of 300.00 feet to an iron pin; thence N 00° 59' 17" W a
4 distance of 47.13 feet to an iron pin; thence S 89° 02' 07" W a distance
5 of 114.56 feet to a point situate in the southeast corner of Parcel A-2
6 as set forth on a survey map hereinafter described; thence N 14° 18' 49"
7 E a distance of 124.40 feet to an iron pin situate at the southeast
8 corner of lands now or formerly of Cicci (Liber 923, Page 771); thence N
9 14° 18' 49" E a distance of 76.46 feet to an iron pin; thence N 00° 57'
10 53" W a distance of 26.25 feet to an iron pin marking the southeast
11 corner of parcel A-1 as set forth on the hereinafter described survey
12 map; thence N 00° 58' 01" W a distance of 166.00 to an iron pin situate
13 at the northeast corner of said Parcel A-1, which pin also marks the
14 southeast corner of lands now or formerly of Becraft (Liber 1048, Page
15 1086); thence N 00° 57' 53" W a distance of 106.00 feet to an iron pin
16 situate in the southerly line of lands now or formerly of the United
17 States Postal Service; thence N 89° 02' 07" E along the southerly line
18 of said United States Postal Service a distance of 81.47 feet to a
19 point; thence N 14° 18' 49" E along the easterly line of said United
20 States Postal Service a distance of 114.29 feet to an iron pin situate
21 in the southwesterly line of New York State Route 17; thence S 32° 00'
22 31" E along the southwesterly line of New York State Route 17, a
23 distance of 358.93 feet to an iron pin; thence continuing along the
24 southwesterly line of New York state Route 17, S 38° 30' 04" E a
25 distance of 108.18 feet to the iron pin marking the place of beginning.
26 Said premises are set forth and shown as approximately 4.026 acres of
27 land designated as Parcel A (excluding Parcels A-1 and A-2) on a survey
28 map entitled "As-Built Survey of Lands of New York Inn, LLC, City of
29 Corning, Steuben County, New York" by Weiler Associates, dated December
30 27, 2001, designated Job No. 12462; [or (vii)]

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

44 Also all that tract or parcel of land, with the buildings thereon,
45 situate in the City of Schenectady, County of Schenectady, and State of
46 New York, situate in the First, formerly the Second Ward of the said
47 City, on the Northerly side of Union Street, which was conveyed by
48 William Meeker and wife to Elisha L. Freeman by deed dated the second
49 day of December 1843, and recorded in the Clerk's Office of Schenectady
50 County on December 5, 1843, in Book V of Deeds at page 392, which lot in
51 said deed is bounded and described as follows: Beginning at a point in
52 the Northerly line of Union Street where it is intersected by the East-
53 erly line of property numbered 235 Union Street, which is hereby
54 conveyed, and running thence Northerly along the Easterly line of said
55 property, One Hundred Forty and Five-tenths (140.5) feet to a point
56 sixteen (16) feet Southerly from the Southerly line of the new garage

1 built upon land adjoining on the North; thence Westerly parallel with
2 said garage, Forty-six and Seven-tenths (46.7) feet; thence Southerly
3 One Hundred Forty and Eight-tenths (140.8) feet to the Northerly margin
4 of Union Street; thence Easterly along the Northerly margin of Union
5 Street, about Forty-eight and three-tenths (48.3) feet to the point or
6 place of beginning. The two above parcels are together more particular-
7 ly described as follows: All that parcel of land in the City of Sche-
8 nectady beginning at a point in the northerly margin of Union Street at
9 the southwesterly corner of lands now or formerly of Friedman (Deed Book
10 636 at page 423) which point is about 60 feet westerly of the westerly
11 line of North College Street and runs thence N. 86 deg. 42' 20" W. 92.30
12 feet to the southeasterly corner of other lands now or formerly of
13 Friedman (Deed Book 798 at page 498); thence N. 04 deg. 06' 48" E.
14 140.50 feet to the southwesterly corner of lands now or formerly of
15 Stockade Associates (Deed Book 1038 at page 521); thence S. 87 deg. 05'
16 27" E. 46.70 feet to lands now or formerly of McCarthy (Deed Book 1129
17 at page 281); thence along McCarthy S. 00 deg. 52' 02" E. 3.69 feet to
18 the northwesterly corner of lands now or formerly of SONYMA (Deed Book
19 1502 at page 621); thence along lands of SONYMA S. 02 deg 24' 56"
20 W.34.75 feet to a corner; thence still along lands of SONYMA and lands
21 now or formerly of Magee (Deed Book 399 at page 165) S. 86 deg. 11' 52"
22 E. 42.57 feet to a corner; thence still along lands of Magee and Lands
23 of Friedman first above mentioned S. 03 deg. 10' 08" W. 102.00 feet to
24 the point of beginning. Excepting and reserving all that portion of the
25 above parcel lying easterly of a line described as follows: All that
26 tract or parcel of land, situated in the City of Schenectady and County
27 of Schenectady and State of New York, on the Northerly side of Union
28 Street bounded and described as follows: Beginning at a point in the
29 northerly line of Union Street, said point being in the division line
30 between lands now or formerly of Electric Brew Pubs, Inc. (1506 of Deeds
31 at page 763) on the West and lands now or formerly of Margaret Wexler
32 and Donna Lee Wexler Pavlovic, as trustees under Will of Ruth F. Wexler
33 (Street number 241 Union Street) on the East; thence North 03 deg. 04'
34 10" East, along the building known as Street No. 241 Union Street, a
35 distance of 30.50 feet to a point; thence North 88 deg. 45' 45" West,
36 along said building and building eve, a distance of 5.62 feet to a
37 point; thence North 03 deg. 03' 30" East, along said building eve of
38 Street No. 241 Union Street, a distance of 32.74 feet; thence South 88
39 deg. 45' 45" East, along said building eve, a distance of 1.2 feet to an
40 intersection of building corner of Street No. 241 Union Street and a
41 brick wall; thence north 03 deg. 37' 30" East, along said brick wall, a
42 distance of 14.47 feet to a point in the corner of the brick wall,
43 thence South 86 deg. 46' 45" East along said brick wall a distance of
44 4.42 feet to the intersection of brick wall with the boundary line
45 between the Electric Brew Pubs, Inc. (aforesaid) on the West and lands
46 of Margaret Wexler and Donna Lee Wexler Pavlovic, (aforesaid) on the
47 East; thence North 03 deg 10' 08" East a distance of 0.62 feet to the
48 Northeast corner of lands belonging to Margaret Wexler and Donna Lee
49 Wexler Pavlovic. Also all that tract or parcel of land commonly known
50 as the Union Street School, located on the Northeasterly corner of Union
51 and North College Streets in the First Ward of the City and County of
52 Schenectady and State of New York, more particularly bounded and
53 described as follows: Beginning at a point in the Northerly street line
54 of Union Street where it is intersected by the Easterly street line of
55 North College Street, and runs thence Northerly along the Easterly
56 street line of North College Street, one hundred seven and five-tenths

1 (107.5) feet to a point, thence easterly at an angle of ninety (90)
2 degrees, one hundred ninety-one and seventy-five hundredths (191.75)
3 feet to a point in the Northwesterly street line of Erie Boulevard
4 thence southwesterly along the Northwesterly street line of Erie Boule-
5 vard, one hundred twenty-three and eight-tenths (123.8) feet to its
6 intersection with the Northerly street line of Union Street; thence
7 Westerly along the Northerly street line of Union Street, one hundred
8 twenty-four and fifty-five hundredths (124.55) feet to the point or
9 place of beginning.

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

17 The two above parcels are together more particularly described as
18 follows: All that parcel of land in the City of Schenectady beginning at
19 a point in the northerly margin of Union Street and the northwesterly
20 margin of Erie Boulevard and runs thence along Union Street N. 86 deg.
21 42' 20" W. 124.55 feet to the easterly margin of North College Street;
22 thence along North College Street N. 05 deg 04' 40" E. 107.50 feet to
23 the southeasterly corner of lands now or formerly of McCarthy (Deed Book
24 1129 at page 279); thence along McCarthy, Cottage Alley and lands now or
25 formerly of McGregor (Deed Book 912 at page 624) S. 84 deg. 55' 20" E.
26 191.75 feet to the northwesterly margin of Erie Boulevard; thence along
27 Erie Boulevard S. 38 deg. 03' 53" W. 123.54 feet to the point of begin-
28 ning; [or (viii)]

29 (IX) any such premises or businesses located on that tract or parcel
30 of land situate in the Town of Hopewell, Ontario County, State of New
31 York, bounded and described as follows: Commencing at a 5/8" rebar found
32 on the division line between lands now or formerly of Ontario County -
33 Finger Lakes Community College (Liber 698 of Deeds, Page 466) on the
34 north and lands now or formerly of James W. Baird (Liber 768 of Deeds,
35 Page 1109) on the south; thence, North 43°-33'-40" West, on said divi-
36 sion line, a distance of 77.32 feet to the Point of Beginning. Thence,
37 North 43°-33'-40" West, continuing on said division line and through
38 said lands of Ontario County, a distance of 520.45 feet to a point on
39 the southeasterly edge of an existing concrete pad; thence, South
40 74°-19'-53" West, along said edge of concrete and the projection there-
41 of, a distance of 198.78 feet to a point on the easterly edge of pave-
42 ment of an existing campus drive; thence, the following two (2) courses
43 and distances along said edge of pavement: Northeasterly on a curve to
44 the left having a radius of 2221.65 feet, a chord bearing of North
45 30°-16'-39" East, a chord distance of 280.79, a central angle of
46 07°-14'-47", a length of 280.98 feet to a point of reverse curvature;
47 thence, Northeasterly on a curve to the right having a radius of 843.42
48 feet, a chord bearing of North 45°-25'-09" East, a chord distance of
49 534.08, a central angle of 36°-55'-01", a length of 543.43 feet to a
50 point; thence, South 30°-04'-59" East, a distance of 18.28 feet to the
51 corner of the property acquired by Ontario County (Liber 766 of Deeds,
52 Page 1112), as shown on a map recorded in the Ontario County Clerk's
53 Office as Map No. 6313; thence, the following four (4) courses and
54 distances along said property line: South 30°-04'-59" East, a distance
55 of 177.17 feet to a point; thence, South 02°-20'-33" East, a distance of
56 147.53 feet to a point; thence, South 41°-31'-35" East, a distance of

1 200.93 feet to a point; thence, South 23°-48'-53" West, along said prop-
2 erty line, and the projection thereof, through the first said lands of
3 Ontario County - Finger Lakes Community College (Liber 698 of Deeds,
4 Page 466), a distance of 517.96 feet to Point of Beginning. Said parcel
5 containing 7.834 acres, more or less, as shown on a map entitled
6 "Proposed Lease Area - Friends of the Finger Lakes Performing Arts
7 Center, Hopewell, NY", prepared by Bergmann Associates, drawing LM-01,
8 dated June 10, 2005, last revised August 17, 2005. The related PAC Prop-
9 erties are shown on the Map denominated "FLCC Campus Property, FLPAC
10 Ground Lease, Parking, Vehicular & Pedestrian Access", recorded in the
11 Ontario County Clerk's Office on December 10, 2009 in Book 1237 of Deeds
12 at page 9 and are comprised of the areas separately labeled as Parking
13 Lot 'A', Parking Lot 'G', the Ticket Booth area, the Sidewalks, and the
14 Entry Roads[.];

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

17 [The provisions of this paragraph shall not apply to] (XI) any prem-
18 ises licensed under section sixty-four of this chapter in which a
19 manufacturer or wholesaler holds a direct or indirect interest, provided
20 that: [(I)] (1) said premises consist of an interactive entertainment
21 facility which predominantly offers interactive computer and video
22 entertainment attractions, and other games and also offers themed
23 merchandise and food and beverages, [(II)] (2) the sale of alcoholic
24 beverages within the premises shall be restricted to an area consisting
25 of not more than twenty-five percent of the total interior floor area of
26 the premises, [(III)] (3) the retail licenses shall derive not less than
27 sixty-five percent of the total revenue generated by the facility from
28 interactive video entertainment activities and other games, including
29 related attractions and sales of merchandise other than food and alco-
30 holic beverages, [(IV)] (4) the interested manufacturer or wholesaler,
31 or its parent company, shall be listed on a national securities exchange
32 and its direct or indirect equity interest in the retail licensee shall
33 not exceed twenty-five percent, [(V)] (5) no more than fifteen percent
34 of said licensee's purchases of alcoholic beverages for sale in the
35 premises shall be products produced or distributed by the manufacturer
36 or wholesaler, [(VI)] (6) neither the name of the manufacturer or whole-
37 saler nor the name of any brand of alcoholic beverage produced or
38 distributed by said manufacturer or wholesaler shall be part of the name
39 of the premises, [(VII)] (7) the name of the manufacturer or wholesaler
40 or the name of products sold or distributed by such manufacturer or
41 wholesaler shall not be identified on signage affixed to either the
42 interior or the exterior of the premises in any fashion, [(VIII)] (8)
43 promotions involving alcoholic beverages produced or distributed by the
44 manufacturer or wholesaler are not held in such premises and further,
45 retail and consumer advertising specialties bearing the name of the
46 manufacturer or wholesaler or the name of alcoholic beverages produced
47 or distributed by the manufacturer or wholesaler are not utilized in any
48 fashion, given away or sold in said premises, and [(IX)] (9) except to
49 the extent provided in this paragraph, the licensing of each premises
50 covered by this exception is subject to all provisions of section
51 sixty-four of this chapter, including but not limited to liquor authori-
52 ty approval of the specific location thereof.

53 The provisions of this paragraph shall not prohibit (1) a manufacturer
54 or wholesaler, if an individual, or a partner, of a partnership, or, if
55 a corporation, an officer or director thereof, from being an officer or
56 director of a duly licensed charitable organization which is the holder

1 of a license for on-premises consumption under this chapter, nor (2) a
2 manufacturer from acquiring any such premises if the liquor authority
3 first consents thereto after determining, upon such proofs as it shall
4 deem sufficient, that such premises is contiguous to the licensed prem-
5 ises of such manufacturer, and is reasonably necessary for the expansion
6 of the facilities of such manufacturer. After any such acquisition, it
7 shall be illegal for a manufacturer acquiring any such premises to sell
8 or deliver alcoholic beverages manufactured by him to any licensee occu-
9 pying such premises.

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

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

34 PART J

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

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

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

50 (B) EITHER (I) THE AGENT OR PROJECT OPERATOR OF SUCH PROJECT MUST HAVE
51 BEEN CERTIFIED AS A PARTICIPANT IN THE EXCELSIOR JOBS PROGRAM, AS SUCH
52 TERM "PARTICIPANT" IS DEFINED IN SECTION THREE HUNDRED FIFTY-TWO OF THE
53 ECONOMIC DEVELOPMENT LAW, AND PROVIDES TO THE IDA VALID PROOF OF PARTIC-
54 IPATION IN SUCH PROGRAM, OR (II) IF SUCH AGENT OR PROJECT OPERATOR IS

1 NOT A PARTICIPANT IN SUCH PROGRAM, THE IDA, AFTER REVIEWING THE FACTS ON
2 THE RECORD, MUST FIND THAT THE AGENT OR PROJECT OPERATOR IS A BUSINESS
3 ENTITY OF THE TYPE DESCRIBED IN SUBDIVISION ONE OF SECTION THREE HUNDRED
4 FIFTY-THREE OF THE ECONOMIC DEVELOPMENT LAW AND REGULATIONS ADOPTED
5 PURSUANT TO SUCH SECTION.

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

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

20 (E) THE COMMISSIONER OF ECONOMIC DEVELOPMENT SHALL REVIEW THE IDA'S
21 FINDINGS, IF ANY, AND APPROVE OR DISAPPROVE THE PROPOSED BENEFITS OR
22 DENY THEM IF SUCH COMMISSIONER DOES NOT APPROVE SUCH IDA'S FINDINGS THAT
23 THE AGENT/PROJECT OPERATOR IS A BUSINESS ENTITY OF THE TYPE REQUIRED.
24 SUCH COMMISSIONER IS ALSO AUTHORIZED TO MODIFY THE IDA'S PROPOSED PLAN
25 BY REDUCING THE TOTAL AMOUNT OF ANY SUCH STATE SALES AND USE TAX
26 EXEMPTION BENEFITS OR BY SPECIFYING THAT SUCH BENEFITS SHALL APPLY TO
27 ONLY SOME OF THE TYPES OF PROPERTY OR SERVICES PROPOSED TO BE EXEMPT
28 FROM SUCH STATE TAXES OR BY REDUCING THE TIME PERIOD DURING WHICH SUCH
29 BENEFITS MAY BE PROVIDED. SUCH COMMISSIONER SHALL ADVISE THE IDA IN
30 WRITING OF HIS OR HER APPROVAL, DISAPPROVAL, DENIAL, OR MODIFICATION OF
31 THE IDA'S PLAN, AND SUCH APPROVAL, DISAPPROVAL, DENIAL, OR MODIFICATION
32 SHALL BIND THE IDA AS TO WHETHER THE IDA CAN PROVIDE STATE SALES AND USE
33 TAX EXEMPTION BENEFITS AND, IF APPROVED IN WHOLE OR AS MODIFIED, THE
34 AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT THE IDA CAN
35 PROVIDE WITH RESPECT TO SUCH PROJECT, THE TYPES OF PROPERTY AND SERVICES
36 THAT MAY BE ELIGIBLE FOR EXEMPTION, AND THE DURATION OF TIME DURING
37 WHICH SUCH EXEMPTION BENEFITS MAY APPLY. HOWEVER, THE IDA MAY PROVIDE
38 STATE SALES AND USE TAX EXEMPTION BENEFITS IN A LESSER AMOUNT, FOR FEWER
39 TYPES OF PROPERTY OR SERVICES, OR FOR A SHORTER PERIOD, THAN AS APPROVED
40 BY SUCH COMMISSIONER.

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

47 (G) AN IDA SHALL NOT PROVIDE STATE SALES AND USE TAX EXEMPTION BENE-
48 FITS IN AN AMOUNT GREATER, FOR PROPERTY OR SERVICES OTHER, OR FOR A TIME
49 PERIOD LONGER THAN AS APPROVED BY THE COMMISSIONER OF ECONOMIC DEVELOP-
50 MENT. ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT AN
51 IDA PURPORTS TO PROVIDE IN EXCESS OF THE AMOUNT APPROVED, OR FOR DIFFER-
52 ENT PROPERTY OR SERVICES THAN APPROVED, OR FOR A PERIOD LONGER THAN
53 APPROVED BY SUCH COMMISSIONER SHALL BE VOID FROM ITS INCEPTION, AND AN
54 AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY THAT MAKES A PURCHASE
55 OR USE WITHOUT PAYING STATE SALES AND USE TAXES, OR WHO PAID SUCH TAXES
56 BUT OBTAINED A REFUND OR CREDIT OF THEM, AS A RESULT SHALL BE REQUIRED

1 TO PAY SUCH AMOUNT OF TAX TO THE COMMISSIONER OF TAXATION AND FINANCE IN
2 ACCORDANCE WITH ARTICLES TWENTY-EIGHT AND TWENTY-NINE OF THE TAX LAW.
3 THE COMMISSIONER SHALL BE AUTHORIZED TO DETERMINE AND ASSESS STATE SALES
4 AND USE TAXES FOREGONE ON ACCOUNT OF AN AGENT, PROJECT OPERATOR OR OTHER
5 PERSON OR ENTITY NOT HAVING PAID SUCH STATE SALES OR USE TAX THAT SHOULD
6 HAVE BEEN PAID, OR WHO OBTAINED SUCH A REFUND OR CREDIT BUT SHOULD NOT
7 HAVE, IN ACCORD WITH THE APPLICABLE PROVISIONS OF THE TAX LAW, EXCEPT
8 THAT ANY STATUTE THAT LIMITS THE TIME BY WHICH THE COMMISSIONER MUST
9 DETERMINE OR ASSESS SUCH TAX SHALL NOT BEGIN TO RUN UNTIL THE COMMIS-
10 SIONER HAS RECEIVED ACTUAL NOTICE OF SUCH IMPROPER PURCHASES OR USES.

11 3. AN IDA SHALL KEEP RECORDS OF THE AMOUNT OF STATE AND LOCAL SALES
12 AND USE TAX EXEMPTION BENEFITS PROVIDED TO EACH PROJECT AND EACH AGENT
13 OR PROJECT OPERATOR, AND SHALL MAKE SUCH RECORDS AVAILABLE TO THE
14 COMMISSIONER AND STATE COMPTROLLER UPON REQUEST. SUCH IDA SHALL ALSO,
15 WITHIN THIRTY DAYS OF PROVIDING FINANCIAL ASSISTANCE TO A PROJECT THAT
16 INCLUDES ANY AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS,
17 REPORT TO THE COMMISSIONER AND THE STATE COMPTROLLER THE AMOUNT OF SUCH
18 BENEFITS FOR SUCH PROJECT, THE PROJECT TO WHICH THEY ARE BEING PROVIDED,
19 ANY LIMITATION ON THE APPLICATION OR EXERCISE OF SUCH EXEMPTIONS, THE
20 TYPES OF PROPERTY AND SERVICES TO BE EXEMPTED, THE TIME DURING WHICH
21 SUCH EXEMPTION BENEFITS APPLY, AND THE NAME AND ADDRESS OF THE AGENT OR
22 PROJECT OPERATOR OF SUCH PROJECT, TOGETHER WITH SUCH OTHER INFORMATION
23 AND SUCH SPECIFICITY AND DETAIL AS THE COMMISSIONER MAY PRESCRIBE, WITH
24 A COPY OF SUCH REPORT FURNISHED AT THE SAME TIME TO THE AGENT OR PROJECT
25 OPERATOR. THIS REPORT MAY BE MADE IN CONJUNCTION WITH THE STATEMENT
26 REQUIRED BY SUBDIVISION NINE OF SECTION EIGHT HUNDRED SEVENTY-FOUR OF
27 THIS ARTICLE OR IT MAY BE MADE AS A SEPARATE REPORT, AT THE DISCRETION
28 OF THE COMMISSIONER. AN AGENT OR PROJECT OPERATOR OR OTHER PERSON OR
29 ENTITY SHALL NOT AVAIL ITSELF OF STATE OR LOCAL SALES AND USE TAX
30 EXEMPTIONS IN EXCESS OF THE AMOUNT OR IN CONTRAVENTION OF THE TIME AND
31 OTHER LIMITATIONS SET OUT IN SUCH REPORT OR FOR PROPERTY OR SERVICES
32 OTHER THAN THOSE SET OUT IN SUCH REPORT. AN IDA THAT FAILS TO MAKE SUCH
33 RECORDS AVAILABLE TO THE COMMISSIONER OR TO THE STATE COMPTROLLER OR TO
34 FILE SUCH REPORT OR TO COMPLY WITH ANY OTHER REQUIREMENT OF THIS SUBDI-
35 VISION SHALL BE PROHIBITED FROM PROVIDING STATE SALES AND USE TAX
36 EXEMPTION BENEFITS FOR ANY PROJECT UNLESS AND UNTIL SUCH IDA COMES INTO
37 COMPLIANCE WITH ALL SUCH REQUIREMENTS.

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

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

53 6. AN IDA THAT ENTERS INTO AN AGREEMENT REQUIRING PAYMENTS IN LIEU OF
54 STATE SALES AND USE TAXES TO BE PAID TO IT SHALL REMIT THE FULL AMOUNT
55 OF ANY SUCH PAYMENTS IT RECEIVES TO THE COMMISSIONER WITHIN THIRTY DAYS
56 OF THE DATE THAT THE IDA RECEIVES THE PAYMENT, TOGETHER WITH A RETURN OR

1 REPORT REQUIRED BY THE COMMISSIONER. THE IDA SHALL SEND A COPY OF ANY
2 SUCH AGREEMENT FOR PAYMENT IN LIEU OF SUCH TAXES TO THE COMMISSIONER
3 WITHIN THIRTY DAYS OF THE DATE IT IS EXECUTED. IF THE PERSON OR ENTITY
4 REQUIRED TO MAKE SUCH PAYMENTS TO THE IDA FAILS TO DO SO TIMELY, OR IF
5 THE IDA FAILS TO REMIT SUCH PAYMENTS TO THE COMMISSIONER TIMELY, THE
6 AMOUNT OF ANY SUCH UNTIMELY PAYMENTS OR REMISSIONS, TOGETHER WITH A
7 PENALTY OF FIVE PERCENT OF THE AMOUNT OF SUCH LATE PAYMENTS AND INTEREST
8 ON SUCH LATE PAYMENTS AT THE RATE OF ONE PERCENT PER MONTH, SHALL ALL
9 BE DEEMED TO BE SALES TAX WHICH A RETURN OR REPORT SHOWS TO BE DUE UNDER
10 SECTION ONE HUNDRED SEVENTY-THREE-A OF THE TAX LAW AND SUCH AMOUNTS
11 SHALL BE PAID UPON NOTICE AND DEMAND AND SHALL BE ASSESSED, COLLECTED,
12 AND PAID IN THE MANNER PROVIDED FOR SALES TAX, AND SUCH NOTICE AND
13 DEMAND SHALL NOT BE CONSIDERED AS A NOTICE OF DETERMINATION, AS
14 DESCRIBED IN SUCH SECTION ONE HUNDRED SEVENTY-THREE-A. AN IDA SHALL JOIN
15 THE COMMISSIONER AS A PARTY IN ANY ACTION OR PROCEEDING THAT THE IDA
16 COMMENCES TO RECOVER, OBTAIN, OR OTHERWISE SEEK, ANY UNPAID PAYMENTS IN
17 LIEU OF STATE SALES AND USE TAX FROM AN AGENT, PROJECT OPERATOR OR OTHER
18 PERSON OR ENTITY. THE PROVISIONS OF THIS SUBDIVISION SHALL ALSO APPLY TO
19 ANY INTEREST OR PENALTY THAT THE IDA IMPOSES ON ANY SUCH PAYMENTS IN
20 LIEU OF TAXES OR THAT ARE IMPOSED ON SUCH PAYMENTS BY OPERATION OF LAW
21 OR BY JUDICIAL ORDER OR OTHERWISE. ANY SUCH PAYMENTS, TOGETHER WITH ANY
22 INTEREST OR PENALTIES THEREON, SHALL BE DEEMED TO BE STATE SALES AND USE
23 TAXES AND THE IDA SHALL RECEIVE ANY SUCH PAYMENTS, WHETHER AS A RESULT
24 OF COURT ACTION OR OTHERWISE, AS TRUSTEE FOR AND ON ACCOUNT OF THE
25 STATE.

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

30 8. IF AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, ANY
31 AMOUNT OF STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT,
32 PROJECT OPERATOR OR OTHER PERSON OR ENTITY, THE IDA SHALL, WITHIN THIRTY
33 DAYS OF COMING INTO POSSESSION OF SUCH AMOUNT, REMIT IT TO THE COMMIS-
34 SIONER, TOGETHER WITH SUCH INFORMATION AND REPORT THAT THE COMMISSIONER
35 DEEMS NECESSARY TO ADMINISTER PAYMENT OVER OF SUCH AMOUNT. AN IDA SHALL
36 JOIN THE COMMISSIONER AS A PARTY IN ANY ACTION OR PROCEEDING THAT THE
37 IDA COMMENCES TO RECOVER, RECAPTURE, OBTAIN, OR OTHERWISE SEEK THE
38 RETURN OF, STATE SALES AND USE TAX EXEMPTION BENEFITS FROM AN AGENT,
39 PROJECT OPERATOR OR OTHER PERSON OR ENTITY. THIS SUBDIVISION SHALL
40 APPLY TO ANY AMOUNTS OF STATE SALES AND USE TAX EXEMPTION BENEFITS THAT
41 AN IDA RECOVERS, RECAPTURES, RECEIVES, OR OTHERWISE OBTAINS, REGARDLESS
42 OF WHETHER THE IDA OR THE AGENT, PROJECT OPERATOR OR OTHER PERSON OR
43 ENTITY CHARACTERIZES SUCH BENEFITS RECOVERED, RECAPTURED, RECEIVED, OR
44 OTHERWISE OBTAINED, AS A PENALTY OR LIQUIDATED OR CONTRACT DAMAGES OR
45 OTHERWISE. THE PROVISIONS OF THIS SUBDIVISION SHALL ALSO APPLY TO ANY
46 INTEREST OR PENALTY THAT THE IDA IMPOSES ON ANY SUCH AMOUNTS OR THAT ARE
47 IMPOSED ON SUCH AMOUNTS BY OPERATION OF LAW OR BY JUDICIAL ORDER OR
48 OTHERWISE. ANY SUCH AMOUNTS OR PAYMENTS THAT AN IDA RECOVERS, RECAP-
49 TURES, RECEIVES, OR OTHERWISE OBTAINS, TOGETHER WITH ANY INTEREST OR
50 PENALTIES THEREON, SHALL BE DEEMED TO BE STATE SALES AND USE TAXES AND
51 THE IDA SHALL RECEIVE ANY SUCH AMOUNTS OR PAYMENTS, WHETHER AS A RESULT
52 OF COURT ACTION OR OTHERWISE, AS TRUSTEE FOR AND ON ACCOUNT OF THE
53 STATE.

54 9. THE COMMISSIONER SHALL DEPOSIT AND DISPOSE OF ANY AMOUNT OF ANY
55 PAYMENTS OR MONEYS RECEIVED FROM OR PAID OVER BY AN IDA OR FROM OR BY
56 ANY PERSON OR ENTITY, OR RECEIVED PURSUANT TO AN ACTION OR PROCEEDING

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

12 10. THE STATEMENT THAT AN IDA IS REQUIRED BY SUBDIVISION NINE OF
13 SECTION EIGHT HUNDRED SEVENTY-FOUR OF THIS ARTICLE TO FILE WITH THE
14 COMMISSIONER SHALL NOT BE CONSIDERED AN EXEMPTION OR OTHER CERTIFICATE
15 OR DOCUMENT UNDER ARTICLE TWENTY-EIGHT OR TWENTY-NINE OF THE TAX LAW.
16 THE IDA SHALL NOT REPRESENT TO ANY AGENT, PROJECT OPERATOR, OR OTHER
17 PERSON OR ENTITY THAT A COPY OF SUCH STATEMENT MAY SERVE AS A SALES OR
18 USE TAX EXEMPTION CERTIFICATE OR DOCUMENT. NO AGENT OR PROJECT OPERATOR
19 MAY TENDER A COPY OF SUCH STATEMENT TO ANY PERSON REQUIRED TO COLLECT
20 SALES OR USE TAXES AS THE BASIS TO MAKE ANY PURCHASE EXEMPT FROM TAX. NO
21 SUCH PERSON REQUIRED TO COLLECT SALES OR USE TAXES MAY ACCEPT SUCH A
22 STATEMENT IN LIEU OF COLLECTING ANY TAX REQUIRED TO BE COLLECTED. THE
23 CIVIL AND CRIMINAL PENALTIES FOR MISUSE OF A COPY OF SUCH STATEMENT AS
24 AN EXEMPTION CERTIFICATE OR DOCUMENT OR FOR FAILURE TO PAY OR COLLECT
25 TAX SHALL BE AS PROVIDED IN THE TAX LAW. IN ADDITION, THE USE BY AN IDA
26 OR AGENT, PROJECT OPERATOR, OR OTHER PERSON OR ENTITY OF SUCH STATEMENT,
27 OR THE IDA'S RECOMMENDATION OF THE USE OR TENDERING OF SUCH STATEMENT,
28 AS SUCH AN EXEMPTION CERTIFICATE OR DOCUMENT SHALL BE DEEMED TO BE,
29 UNDER ARTICLES TWENTY-EIGHT AND THIRTY-SEVEN OF THE TAX LAW, THE ISSU-
30 ANCE OF A FALSE OR FRAUDULENT EXEMPTION CERTIFICATE OR DOCUMENT WITH
31 INTENT TO EVADE TAX.

32 11. IN CONSULTATION WITH THE COMMISSIONER OF ECONOMIC DEVELOPMENT, THE
33 COMMISSIONER OF TAXATION AND FINANCE IS HEREBY AUTHORIZED TO ADOPT RULES
34 AND REGULATIONS AND TO ISSUE PUBLICATIONS AND OTHER GUIDANCE IMPLEMENT-
35 ING THE PROVISIONS OF THIS SECTION AND OF THE OTHER SECTIONS OF THIS
36 ARTICLE RELATING TO ANY STATE OR LOCAL TAX OR FEE, OR EXEMPTION OR
37 EXCLUSION THEREFROM, THAT THE COMMISSIONER ADMINISTERS AND THAT MAY BE
38 AFFECTED BY ANY PROVISION OF THIS ARTICLE, AND ANY SUCH RULES AND REGU-
39 LATIONS OF THE COMMISSIONER SHALL HAVE THE SAME FORCE AND EFFECT WITH
40 RESPECT TO SUCH TAXES AND FEES, OR AMOUNTS MEASURED IN RESPECT OF THEM,
41 AS IF THEY HAD BEEN ADOPTED BY THE COMMISSIONER PURSUANT TO THE AUTHORI-
42 TY OF THE TAX LAW.

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

46 S 2. The public authorities law is amended by adding a new section
47 1963-b to read as follows:

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

1 TO THE PROVISIONS OF THIS TITLE AND TO THE AUTHORITY CREATED BY THIS
2 TITLE.

3 S 3. The public authorities law is amended by adding a new section
4 2326-a to read as follows:

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

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

18 3. The term "local officer or employee" shall mean the heads (other
19 than local elected officials) of any agency, department, division, coun-
20 cil, board, commission, or bureau of a political subdivision and their
21 deputies and assistants, and the officers and employees of such agen-
22 cies, departments, divisions, boards, bureaus, commissions or councils
23 who hold policy-making positions, as annually determined by the appoint-
24 ing authority and set forth in a written instrument which shall be filed
25 with the appropriate body during the month of February; except that the
26 term "local officer or employee" shall not mean a judge, justice, offi-
27 cer or employee of the unified court system. Members, officers, and
28 employees of each industrial development agency and authority ESTAB-
29 LISHED BY THIS CHAPTER OR CREATED BY THE PUBLIC AUTHORITIES LAW shall be
30 deemed officers or employees of the county, city, village, or town for
31 whose benefit such agency or authority is established OR CREATED.

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

35 (4) "Project" - shall mean any land, any building or other improve-
36 ment, and all real and personal properties located within the state of
37 New York and within or outside or partially within and partially outside
38 the municipality for whose benefit the agency was created, including,
39 but not limited to, machinery, equipment and other facilities deemed
40 necessary or desirable in connection therewith, or incidental thereto,
41 whether or not now in existence or under construction, which shall be
42 suitable for manufacturing, warehousing, research, commercial or indus-
43 trial purposes or other economically sound purposes identified and
44 called for to implement a state designated urban cultural park manage-
45 ment plan as provided in title G of the parks, recreation and historic
46 preservation law and which may include or mean an industrial pollution
47 control facility, a recreation facility, educational or cultural facili-
48 ty, a horse racing facility, a railroad facility or an automobile racing
49 facility, provided, however, no agency shall use its funds OR PROVIDE
50 FINANCIAL ASSISTANCE in respect of any project wholly or partially
51 outside the municipality for whose benefit the agency was created with-
52 out the prior consent thereto by the governing body or bodies of all the
53 other municipalities in which a part or parts of the project is, or is
54 to be, located, AND SUCH PORTION OF THE PROJECT LOCATED OUTSIDE SUCH
55 MUNICIPALITY FOR WHOSE BENEFIT THE AGENCY WAS CREATED SHALL BE CONTIG-
56 UOUS WITH THE PORTION OF THE PROJECT INSIDE SUCH MUNICIPALITY.

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

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

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

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

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

35 S 8. Subdivision 4 of section 1963 of the public authorities law, as
36 added by section 2 of subpart C of part S of chapter 57 of the laws of
37 2010, is amended to read as follows;

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

52 (B) WITHIN THIRTY DAYS OF THE DATE THAT THE AUTHORITY'S DESIGNATION
53 DESCRIBED IN PARAGRAPH (A) OF THIS SUBDIVISION HAS BEEN AMENDED, TERMI-
54 NATED, BEEN REVOKED, OR BECOME INVALID OR INEFFECTIVE FOR ANY REASON,
55 THE AUTHORITY SHALL FILE A STATEMENT WITH THE DEPARTMENT OF TAXATION AND
56 FINANCE RELATING THERETO, ON A FORM AND IN SUCH MANNER AS IS PRESCRIBED

1 BY THE COMMISSIONER OF TAXATION AND FINANCE, IDENTIFYING EACH SUCH AGENT
2 SO NAMED BY THE AUTHORITY IN THE ORIGINAL DESIGNATION AND SETTING FORTH
3 THE TAXPAYER IDENTIFICATION NUMBER AND OTHER IDENTIFYING INFORMATION OF
4 EACH SUCH AGENT, THE DATE AS OF WHICH THE ORIGINAL DESIGNATION WAS
5 AMENDED, TERMINATED, REVOKED, OR BECAME INVALID OR INEFFECTIVE AND THE
6 REASON THEREFOR, TOGETHER WITH A COPY OF THE ORIGINAL DESIGNATION.

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

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

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

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

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

1

PART K

2 Section 1. Paragraph 42 of subdivision (a) of section 1115 of the tax
3 law, as added by section 11 of part W-1 of chapter 109 of the laws of
4 2006, is amended to read as follows:

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

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

17

PART L

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

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

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

38

PART M

39 Section 1. Subparagraphs (A) and (B) of paragraph 4 of subdivision (a)
40 of section 1134 of the tax law, subparagraph (A) as amended by section
41 21-a of part U of chapter 61 of the laws of 2011 and subparagraph (B) as
42 amended by chapter 2 of the laws of 1995, are amended to read as
43 follows:

44 (A) Where a person who holds a certificate of authority (i) willfully
45 fails to file a report or return required by this article, (ii) willful-
46 ly files, causes to be filed, gives or causes to be given a report,
47 return, certificate or affidavit required under this article which is
48 false, (iii) willfully fails to comply with the provisions of paragraph
49 two or three of subdivision (e) of section eleven hundred thirty-seven
50 of this article, (iv) willfully fails to prepay, collect, truthfully
51 account for or pay over any tax imposed under this article or pursuant

1 to the authority of article twenty-nine of this chapter, (v) fails to
2 obtain a bond pursuant to paragraph two of subdivision (e) of section
3 eleven hundred thirty-seven of this part, or fails to comply with a
4 notice issued by the commissioner pursuant to paragraph three of such
5 subdivision, [or] (vi) has been convicted of a crime provided for in
6 this chapter, OR UNDER THE PENAL LAW OF THIS STATE WHERE THE UNDERLYING
7 CONDUCT CONSTITUTES A CRIME UNDER THIS CHAPTER, OR IS CONVICTED OF A
8 CRIMINAL OFFENSE OF THE UNITED STATES, ANY OTHER STATE, OR A POLITICAL
9 SUBDIVISION OF THIS STATE OR ANY OTHER STATE, WHICH, IF COMMITTED IN
10 THIS STATE, WOULD CONSTITUTE A SIMILAR CRIME UNDER THIS CHAPTER OR (VII)
11 SUCH PERSON WOULD BE INELIGIBLE TO RECEIVE SUCH CERTIFICATE OF AUTHORITY
12 PURSUANT TO CLAUSES (I), (II), (IV) OR (V) OF SUBPARAGRAPH (B) OF THIS
13 PARAGRAPH, the commissioner may revoke or suspend such certificate of
14 authority and all duplicates thereof. Provided, however, that the
15 commissioner may revoke or suspend a certificate of authority based on
16 the grounds set forth in clause (vi) of this subparagraph only where the
17 conviction referred to occurred not more than [one year] FIVE YEARS
18 prior to the date of revocation or suspension.

19 (B) Where a person files a certificate of registration for a certif-
20 icate of authority under this subdivision and in considering such appli-
21 cation the commissioner ascertains that (i) any tax imposed under this
22 chapter or any related statute, as defined in section eighteen hundred
23 of this chapter, has been finally determined to be due from such person
24 and has not been paid in full, (ii) [a] ANY tax [due under this article
25 or any law, ordinance or resolution enacted pursuant to the authority of
26 article twenty-nine] IMPOSED BY OR PURSUANT TO THE AUTHORITY OF THIS
27 CHAPTER OR ANY RELATED STATUTE AS DEFINED IN SECTION EIGHTEEN HUNDRED of
28 this chapter has been finally determined to be due from an officer,
29 director, partner or employee of such person, and, where such person is
30 a limited liability company, also a member or manager of such person, in
31 the officer's, director's, partner's, member's, manager's or employee's
32 capacity as a person required to collect tax on behalf of such person or
33 another person and has not been paid, (iii) such person has been
34 convicted of a crime provided for in this chapter, OR UNDER THE PENAL
35 LAW OF THIS STATE WHERE THE UNDERLYING CONDUCT CONSTITUTES A CRIME UNDER
36 THIS CHAPTER, OR IS CONVICTED OF A CRIMINAL OFFENSE OF THE UNITED
37 STATES, ANY OTHER STATE, OR A POLITICAL SUBDIVISION OF THIS STATE OR ANY
38 OTHER STATE, WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE A SIMI-
39 LAR CRIME UNDER THIS CHAPTER within [one year] FIVE YEARS from the date
40 on which such certificate of registration is filed, (iv) an officer,
41 director, partner or employee of such person, and, where such person is
42 a limited liability company, also a member or manager of such person,
43 which officer, director, partner, member, manager or employee is a
44 person required to collect tax on behalf of such person filing a certif-
45 icate of registration has in the officer's, director's, partner's,
46 member's, manager's or employee's capacity as a person required to
47 collect tax on behalf of such person or of another person been convicted
48 of a crime [provided for in this chapter] SET FORTH IN CLAUSE (III) OF
49 THIS SUBPARAGRAPH WHERE THE CONVICTION REFERRED TO OCCURRED within [one
50 year] FIVE YEARS from the date on which such certificate of registration
51 is filed, (v) a shareholder owning more than fifty percent of the number
52 of shares of stock of such person (where such person is a corporation)
53 entitling the holder thereof to vote for the election of directors or
54 trustees, OR A PERSON HAVING MORE THAN FIFTY PERCENT OF THE VOTING
55 RIGHTS OF SUCH PERSON (WHERE SUCH PERSON IS A LIMITED LIABILITY COMPA-
56 NY), OR A PERSON HAVING A CONTROLLING INTEREST IN ANY FORM OF PARTNER-

SHIP (CONTROLLING INTEREST MEANING MORE THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR BENEFICIAL INTEREST IN SUCH PARTNERSHIP) who owned more than fifty percent of the number of such shares of another person (where such other person is a corporation), OR HAD MORE THAN FIFTY PERCENT OF THE VOTING RIGHTS OF A LIMITED LIABILITY COMPANY, OR HAD CONTROLLING INTEREST IN ANY FORM OF PARTNERSHIP (CONTROLLING INTEREST MEANING MORE THAN FIFTY PERCENT OF THE CAPITAL, PROFITS OR BENEFICIAL INTEREST IN SUCH PARTNERSHIP) at the time any tax imposed under this chapter or any related statute as defined in section eighteen hundred of this chapter was finally determined to be due FROM SUCH CORPORATION, PARTNERSHIP OR LIMITED LIABILITY COMPANY and where such tax has not been paid in full, or at the time such other person was convicted of a crime [provided for in this chapter] SET FORTH IN CLAUSE (III) OF THIS SUBPARAGRAPH WHERE THE CONVICTION REFERRED TO OCCURRED within [one year] FIVE YEARS from the date on which such certificate of registration is filed, [or] (vi) a certificate of authority issued to such person has been revoked or suspended pursuant to subparagraph (A) of this paragraph within [one year] THREE YEARS from the date on which such certificate of registration is filed, (VII) A CERTIFICATE OF AUTHORITY ISSUED TO ANY OTHER PERSON HAS BEEN REVOKED OR SUSPENDED PURSUANT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH WITHIN THREE YEARS FROM THE DATE ON WHICH SUCH CERTIFICATE OF REGISTRATION IS FILED AND AN OFFICER, DIRECTOR, MEMBER, MANAGER, 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

1 more than [one year] FIVE YEARS prior to the date of revocation or
2 suspension.

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

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

20 (E) After the commissioner has suspended or revoked a person's certif-
21 icate of authority, by a notice of suspension or revocation, or has
22 refused to issue a certificate of authority, by a notice of refusal, to
23 such person and such decision has become final as provided for in this
24 paragraph, or after a person's certificate of authority has expired, OR
25 A PERSON WAS NOTIFIED THAT SUCH PERSON'S CERTIFICATE OF AUTHORITY WAS
26 DEEMED TO EXPIRE PURSUANT TO PARAGRAPH FIVE OF SUBDIVISION (A) OF THIS
27 SECTION and such person has failed to renew such certificate or obtain a
28 new certificate of authority, OR WHERE A PERSON REQUIRED TO COLLECT TAX
29 HAS FAILED TO APPLY FOR SUCH CERTIFICATE OF AUTHORITY, ANY such person
30 is prohibited from engaging in any business in this state for which a
31 certificate of authority is required. If despite such prohibition such
32 person continues to be so engaged in business, the commissioner may
33 bring an action to enjoin such person from so engaging in business. NO
34 SUCH ACTION SHALL BE INSTITUTED BY THE COMMISSIONER BEFORE THE COMMIS-
35 SIONER GIVES NOTICE TO THE ATTORNEY GENERAL APPRISING HIM OR HER OF SUCH
36 ACTION AND THE NATURE AND PURPOSE THEREOF, SO THAT THE ATTORNEY GENERAL
37 MAY PARTICIPATE OR JOIN THEREIN IF IN HIS OR HER OPINION THE INTERESTS
38 OF THE STATE SO WARRANT, AND THE COMMISSIONER MAY NOT INSTITUTE SUCH
39 ACTION UNTIL TWO WEEKS AFTER PROVIDING SUCH NOTICE TO THE ATTORNEY
40 GENERAL.

41 (5) If the commissioner considers it necessary for the proper adminis-
42 tration of the sales and use taxes and prepaid taxes imposed by this
43 article and pursuant to the authority of article twenty-nine of this
44 chapter, it may require every person under this section or section
45 twelve hundred fifty-three of this chapter who holds a certificate of
46 authority to file a new certificate of registration in such form and at
47 such time as the commissioner may prescribe and to surrender such
48 certificate of authority. The commissioner may require such filing and
49 such surrender not more often than once every three years; HOWEVER, IN
50 ANY INSTANCE WHERE A HOLDER OF A CERTIFICATE OF AUTHORITY HAS FAILED TO
51 FILE A SALES TAX RETURN AS REQUIRED BY THIS CHAPTER FOR A PERIOD OF AT
52 LEAST ONE YEAR SUCH CERTIFICATE SHALL BE DEEMED EXPIRED AND THE COMMIS-
53 SIONER SHALL REQUIRE A NEW CERTIFICATE OF REGISTRATION PURSUANT TO THIS
54 SUBDIVISION. Upon the filing of such certificate of registration and, TO
55 THE EXTENT REQUIRED BY THE COMMISSIONER, the surrender of such certif-
56 icate of authority, the commissioner shall issue, within such time as

1 the commissioner may prescribe, a new certificate of authority, without
2 charge, to each registrant and a duplicate thereof for each additional
3 place of business of such registrant.

4 S 4. Subparagraph (i) of paragraph 3 of subdivision (a) of section
5 1145 of the tax law, as amended by section 48 of part K of chapter 61 of
6 the laws of 2011, is amended to read as follows:

7 (i) Any person required to obtain a certificate of authority under
8 section eleven hundred thirty-four of this part who, without possessing
9 a valid certificate of authority, (A) sells tangible personal property
10 or services subject to tax, receives amusement charges or operates a
11 hotel, (B) purchases or sells tangible personal property for resale, (C)
12 sells petroleum products, or (D) sells cigarettes shall, in addition to
13 any other penalty imposed by this chapter, be subject to a penalty in an
14 amount [not exceeding] OF five hundred dollars [for the first] A day
15 FROM THE FIRST DAY on which such sales or purchases are made, [plus an
16 amount not exceeding two hundred dollars for each subsequent day on
17 which such sales or purchases are made,] not to exceed [ten] TWENTY
18 thousand dollars in the aggregate. THE WILLFUL FAILURE TO OBTAIN OR
19 MAINTAIN A VALID CERTIFICATE OF AUTHORITY SHALL BE SUBJECT TO A PENALTY
20 IN AN AMOUNT OF ONE THOUSAND DOLLARS A DAY FROM THE FIRST DAY SUCH SALES
21 OR PURCHASES ARE MADE, NOT TO EXCEED FIFTY THOUSAND DOLLARS IN THE
22 AGGREGATE, IN ADDITION TO THE PENALTIES IMPOSED BY SUBDIVISION (B) OF
23 SECTION EIGHTEEN HUNDRED SEVENTEEN OF THIS ARTICLE, OR ANY OTHER PENALTY
24 IMPOSED BY THIS CHAPTER. FOR THE PURPOSES OF THIS SECTION, THE PENALTY
25 FOR THE WILLFUL FAILURE TO OBTAIN OR MAINTAIN A VALID CERTIFICATE OF
26 AUTHORITY SHALL BE ALTERNATE TO THE TWENTY THOUSAND DOLLAR PENALTY
27 DESCRIBED ABOVE, AND THE TERM "WILLFUL" SHALL HAVE THE SAME MEANING AS
28 "WILLFULLY" AS DEFINED IN SUBDIVISION (C) OF SECTION EIGHTEEN HUNDRED
29 ONE OF THIS CHAPTER.

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

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

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

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

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

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

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

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

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

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

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

(b) Any person required to obtain a certificate of authority under section eleven hundred thirty-four of this chapter who within five years after a determination by the commissioner[,] pursuant to such section[,] to suspend, revoke or refuse to issue a certificate of authority has become final, OR WAS NOTIFIED BY THE COMMISSIONER THAT THE PERSON'S

1 CERTIFICATE OF AUTHORITY WAS DEEMED TO HAVE EXPIRED PURSUANT TO PARA-
2 GRAPH FIVE OF SUBDIVISION (A) OF SECTION ELEVEN HUNDRED THIRTY-FOUR OF
3 THIS CHAPTER, and without possession of a valid certificate of authority
4 WILLFULLY (1) sells tangible personal property or services subject to
5 tax, receives amusement charges or operates a hotel, (2) purchases or
6 sells tangible personal property for resale, or (3) sells petroleum
7 products, shall be guilty of [a misdemeanor] CRIMINAL TAX FRAUD IN THE
8 FOURTH DEGREE. It shall be an affirmative defense that such person
9 performed the acts described in this subdivision without knowledge of
10 such determination. Any person who violates a provision of this subdivi-
11 sion, upon conviction, shall be subject to a fine in any amount author-
12 ized by this article, but not less than five hundred dollars, in addi-
13 tion to any other penalty provided by law.

14 S 9. This act shall take effect immediately, provided that the amend-
15 ments to subparagraph (A) of paragraph 4 of subdivision (a) of section
16 1134 of the tax law made by section one of this act shall be subject to
17 the expiration and reversion of such subparagraph pursuant to section 23
18 of part U of chapter 61 of the laws of 2011, as amended when upon such
19 date the provisions of section two of this act shall take effect.

20

PART N

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

23 (F) WHEN A PERSON FILES AN APPLICATION FOR A CERTIFICATE OF REGISTRA-
24 TION UNDER THIS SECTION, AND IN CONSIDERING SUCH APPLICATION THE COMMIS-
25 SIONER ASCERTAINS THE EXISTENCE OF ONE OR MORE OF THE GROUNDS FOR
26 REFUSAL OF A CERTIFICATE OF AUTHORITY IN CLAUSES (I), (II), (III), (IV),
27 AND (V) OF SUBPARAGRAPH (B) OF PARAGRAPH FOUR OF SUBDIVISION (A) OF
28 SECTION ELEVEN HUNDRED THIRTY-FOUR OF THIS CHAPTER, THE COMMISSIONER MAY
29 REFUSE TO ISSUE A CERTIFICATE OF REGISTRATION. NOTWITHSTANDING ANY
30 PROVISION OF THIS CHAPTER TO THE CONTRARY, IF THE COMMISSIONER REFUSES
31 TO ISSUE A CERTIFICATE OF REGISTRATION UNDER THIS SUBDIVISION, THE
32 COMMISSIONER SHALL UPON WRITTEN REQUEST OF THE PERSON FILING SUCH APPLI-
33 CATION DISCLOSE THE NAME OF THE PERSON OR PERSONS WHOSE TAX LIABILITIES
34 WERE GROUNDS FOR THE REFUSAL TO ISSUE THE CERTIFICATE OF REGISTRATION.

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

38 (d) Except as otherwise provided in this section, all the provisions
39 of article twenty-eight of this chapter relating to the personal liabil-
40 ity for the tax, administration, collection and determination of tax,
41 and deposit and disposition of revenue, including section eleven hundred
42 thirty-eight of this chapter relating to determination of tax and
43 section eleven hundred forty-five of this chapter (but only paragraphs
44 one and two of subdivision (a) of such section) relating to penalties
45 and interest for failure to file a return or pay tax within the time
46 required, shall apply to the applications for registration and the fees
47 for filing such applications required by this section and the penalty
48 imposed pursuant to subdivision three of this section, as if such appli-
49 cations were returns required under section eleven hundred thirty-six of
50 this chapter and such filing fees, penalties and interest were taxes
51 required to be paid pursuant to such article twenty-eight, in the same
52 manner and with the same force and effect as if the language of such
53 provisions of such article twenty-eight had been incorporated in full
54 into this article, except to the extent that any such provision is

1 either inconsistent with a provision of this section or is not relevant
2 thereto and with such other modifications as may be necessary to adapt
3 the language of such provisions to the provisions of this section.
4 [Section] EXCEPT AS PROVIDED FOR IN PARAGRAPH (F) OF SUBDIVISION ONE OF
5 THIS SECTION, SECTION eleven hundred thirty-four of such article twen-
6 ty-eight shall not apply to this section. Provided, however, that the
7 commissioner of taxation and finance shall refund or credit an applica-
8 tion fee paid with respect to the registration of a vending machine or a
9 retail place of business in this state through which cigarettes or
10 tobacco products were to be sold if, prior to the beginning of the
11 calendar year with respect to which such registration relates, the
12 certificate of registration described in paragraph (a) of this subdivi-
13 sion is returned to the department of taxation and finance, or if such
14 certificate has been destroyed, the retail dealer or vending machine
15 operator satisfactorily accounts to the commissioner for the missing
16 certificate, but such vending machine or retail place of business may
17 not be used to sell cigarettes or tobacco products in this state during
18 such calendar year, unless it is re-registered. The provisions of
19 section eleven hundred thirty-nine of this chapter shall apply to the
20 refund or credit authorized by the preceding sentence and for such
21 purposes, such refund or credit shall be deemed a refund of tax paid in
22 error provided, however, no interest shall be allowed or paid on any
23 such refund.

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

27

PART O

28 Section 1. Subparagraph (i) of paragraph (b) of subdivision 1 of
29 section 481 of the tax law, as amended by chapter 604 of the laws of
30 2008, is amended to read as follows:

31 (i) In addition to any other penalty imposed by this article, the
32 commissioner may (A) impose a penalty of not more than [one] SIX hundred
33 [fifty] dollars for each two hundred cigarettes, or fraction thereof, in
34 excess of one thousand cigarettes in unstamped or unlawfully stamped
35 packages in the possession or under the control of any person or (B)
36 impose a penalty of not more than two hundred dollars for each ten unaf-
37 fixed false, altered or counterfeit cigarette tax stamps, imprints or
38 impressions, or fraction thereof, in the possession or under the control
39 of any person. In addition, the commissioner may impose a penalty of not
40 more than seventy-five dollars for each fifty cigars or one pound of
41 tobacco, or fraction thereof, in excess of two hundred fifty cigars or
42 five pounds of tobacco in the possession or under the control of any
43 person and a penalty of not more than one hundred fifty dollars for each
44 fifty cigars or pound of tobacco, or fraction thereof, in excess of five
45 hundred cigars or ten pounds of tobacco in the possession or under the
46 control of any person, with respect to which the tobacco products tax
47 has not been paid or assumed by a distributor or tobacco products deal-
48 er; provided, however, that any such penalty imposed shall not exceed
49 seven thousand five hundred dollars in the aggregate. The commissioner
50 may impose a penalty of not more than seventy-five dollars for each
51 fifty cigars or one pound of tobacco, or fraction thereof, in excess of
52 fifty cigars or one pound of tobacco in the possession or under the
53 control of any tobacco products dealer or distributor appointed by the
54 commissioner, and a penalty of not more than one hundred fifty dollars

1 for each fifty cigars or pound of tobacco, or fraction thereof, in
2 excess of two hundred fifty cigars or five pounds of tobacco in the
3 possession or under the control of any such dealer or distributor, with
4 respect to which the tobacco products tax has not been paid or assumed
5 by a distributor or a tobacco products dealer; provided, however, that
6 any such penalty imposed shall not exceed fifteen thousand dollars in
7 the aggregate.

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

9 PART P

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

12 S 171-V. ENFORCEMENT OF DELINQUENT TAX LIABILITIES THROUGH THE SUSPEN-
13 SION OF DRIVERS' LICENSES. (1) THE COMMISSIONER SHALL ENTER INTO A WRIT-
14 TEN AGREEMENT WITH THE COMMISSIONER OF MOTOR VEHICLES, WHICH SHALL SET
15 FORTH THE PROCEDURES FOR THE TWO DEPARTMENTS TO COOPERATE IN A PROGRAM
16 TO IMPROVE TAX COLLECTION THROUGH THE SUSPENSION OF DRIVERS' LICENSES OF
17 TAXPAYERS WITH PAST-DUE TAX LIABILITIES EQUAL TO OR IN EXCESS OF TEN
18 THOUSAND DOLLARS. FOR THE PURPOSES OF THIS SECTION, THE TERM "TAX
19 LIABILITIES" SHALL MEAN ANY TAX, SURCHARGE, OR FEE ADMINISTERED BY THE
20 COMMISSIONER, OR ANY PENALTY OR INTEREST DUE ON THESE AMOUNTS OWED BY AN
21 INDIVIDUAL WITH A NEW YORK DRIVER'S LICENSE, THE TERM "DRIVER'S LICENSE"
22 MEANS ANY LICENSE ISSUED BY THE DEPARTMENT OF MOTOR VEHICLES, EXCEPT FOR
23 A COMMERCIAL DRIVER'S LICENSE AS DEFINED IN SECTION FIVE HUNDRED ONE-A
24 OF THE VEHICLE AND TRAFFIC LAW, AND THE TERM "PAST-DUE TAX LIABILITIES"
25 MEANS ANY TAX LIABILITY OR LIABILITIES WHICH HAVE BECOME FIXED AND FINAL
26 SUCH THAT THE TAXPAYER NO LONGER HAS ANY RIGHT TO ADMINISTRATIVE OR
27 JUDICIAL REVIEW.

28 (2) THE AGREEMENT SHALL INCLUDE THE FOLLOWING PROVISIONS:

29 (A) THE PROCEDURES BY WHICH THE DEPARTMENT SHALL NOTIFY THE COMMIS-
30 SIONER OF MOTOR VEHICLES OF TAXPAYERS WITH PAST-DUE TAX LIABILITIES,
31 INCLUDING THE PROCEDURES BY WHICH THE DEPARTMENT AND THE DEPARTMENT OF
32 MOTOR VEHICLES SHALL SHARE THE INFORMATION NECESSARY TO IDENTIFY INDIV-
33 IDUALS WITH PAST-DUE TAX LIABILITIES, WHICH SHALL INCLUDE A TAXPAYER'S
34 NAME, SOCIAL SECURITY NUMBER, AND ANY OTHER INFORMATION NECESSARY TO
35 ENSURE THE PROPER IDENTIFICATION OF THE TAXPAYER;

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

42 (C) ANY OTHER MATTER THE DEPARTMENT AND THE DEPARTMENT OF MOTOR VEHI-
43 CLES SHALL DEEM NECESSARY TO CARRY OUT THE PROVISIONS OF THIS SECTION.

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

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

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

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

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

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

21 (4) AFTER THE EXPIRATION OF THE FORTY-FIVE DAY PERIOD, IF THE TAXPAYER
22 HAS NOT CHALLENGED THE NOTICE PURSUANT TO SUBDIVISION FIVE OF THIS
23 SECTION AND THE TAXPAYER HAS FAILED TO SATISFY THE PAST-DUE TAX LIABIL-
24 ITIES OR MAKE PAYMENT ARRANGEMENTS SATISFACTORY TO THE COMMISSIONER, THE
25 DEPARTMENT SHALL NOTIFY THE DEPARTMENT OF MOTOR VEHICLES, IN THE MANNER
26 AGREED UPON BY THE TWO AGENCIES, THAT THE TAXPAYER'S DRIVER'S LICENSE
27 SHALL BE SUSPENDED PURSUANT TO SUBDIVISION FOUR-F OF SECTION FIVE
28 HUNDRED TEN OF THE VEHICLE AND TRAFFIC LAW; PROVIDED, HOWEVER, IN ANY
29 CASE WHERE A TAXPAYER FAILS TO COMPLY WITH THE TERMS OF A CURRENT
30 PAYMENT ARRANGEMENT MORE THAN ONCE WITHIN A TWELVE MONTH PERIOD, THE
31 COMMISSIONER SHALL IMMEDIATELY NOTIFY THE DEPARTMENT OF MOTOR VEHICLES
32 THAT THE TAXPAYER'S DRIVER'S LICENSE SHALL BE SUSPENDED.

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

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

8 (6) NOTWITHSTANDING ANY PROVISION OF THIS CHAPTER TO THE CONTRARY, THE
9 DEPARTMENT MAY DISCLOSE TO THE DEPARTMENT OF MOTOR VEHICLES THE INFORMA-
10 TION DESCRIBED IN THIS SECTION THAT, IN THE DISCRETION OF THE COMMIS-
11 SIONER, IS NECESSARY FOR THE PROPER IDENTIFICATION OF A TAXPAYER
12 REFERRED TO THE DEPARTMENT OF MOTOR VEHICLES FOR THE PURPOSE OF SUSPEND-
13 ING THE TAXPAYER'S DRIVER'S LICENSE PURSUANT TO THIS SECTION AND SUBDI-
14 VISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE VEHICLE AND TRAFFIC
15 LAW. THE DEPARTMENT OF MOTOR VEHICLES MAY NOT REDISCLOSE THIS INFORMA-
16 TION TO ANY OTHER ENTITY OR PERSON, OTHER THAN FOR THE PURPOSE OF
17 INFORMING THE TAXPAYER THAT HIS OR HER DRIVER'S LICENSE HAS BEEN
18 SUSPENDED.

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

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

26 4-F. SUSPENSION FOR FAILURE TO PAY PAST-DUE TAX LIABILITIES. (1) THE
27 COMMISSIONER SHALL ENTER INTO A WRITTEN AGREEMENT WITH THE COMMISSIONER
28 OF TAXATION AND FINANCE, AS PROVIDED IN SECTION ONE HUNDRED
29 SEVENTY-ONE-V OF THE TAX LAW, WHICH SHALL SET FORTH THE PROCEDURES FOR
30 SUSPENDING THE DRIVERS' LICENSES OF INDIVIDUALS WHO HAVE FAILED TO
31 SATISFY PAST-DUE TAX LIABILITIES AS SUCH TERMS ARE DEFINED IN SUCH
32 SECTION.

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

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

TER WITH RESPECT TO A SUSPENSION OF DRIVING PRIVILEGES AS AUTHORIZED BY THIS SECTION.

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

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

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

7. Exceptions. When a person is convicted of a violation of subdivision one [of] OR two of this section, and the suspension was issued pursuant to (A) subdivision four-e of section five hundred ten of this article due to a support arrears, OR (B) SUBDIVISION FOUR-F OF SECTION FIVE HUNDRED TEN OF THE ARTICLE DUE TO PAST-DUE TAX LIABILITIES, the mandatory penalties set forth in subdivision one or two of this section shall not be applicable if, on or before the return date or subsequent adjourned date, such person presents proof that such support arrears OR PAST-DUE TAX LIABILITIES have been satisfied as shown by certified check, notice issued by the court ordering the suspension, or notice from a support collection unit OR DEPARTMENT OF TAXATION AND FINANCE AS APPLICABLE. The sentencing court shall take the satisfaction of arrears OR THE PAYMENT OF THE PAST-DUE TAX LIABILITIES into account when imposing a sentence for any such conviction. FOR LICENSES SUSPENDED FOR NON-PAYMENT OF PAST-DUE TAX LIABILITIES, THE COURT SHALL ALSO TAKE INTO CONSIDERATION PROOF, IN THE FORM OF A NOTICE FROM THE DEPARTMENT OF TAXATION AND FINANCE, THAT SUCH PERSON HAS MADE PAYMENT ARRANGEMENTS THAT ARE SATISFACTORY TO THE COMMISSIONER OF TAXATION AND FINANCE.

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

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

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

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

(A) No insurer authorized to transact or transacting business in this state, or controlling or controlled by or under common control by or with an insurer authorized to transact or transacting business in this state, [which] THAT sells a policy providing motor vehicle liability

1 insurance coverage in this state, shall increase the policy premium in
2 connection with the insurance permitted or required by this chapter
3 solely because the insured or any other person who customarily operates
4 an automobile covered by the policy has had an accident while operating
5 a motor vehicle in response to an emergency, where the insured was
6 either responding to a call to duty as a paid or volunteer member of any
7 police or fire department or first aid squad[;], or was performing any
8 other function on behalf of the state, any political subdivision there-
9 of, a public authority, public benefit corporation, or any other govern-
10 mental agency or instrumentality in a public emergency.

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

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

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

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

41

PART Q

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

44 S 174-C. SERVICE OF INCOME EXECUTION WITHOUT FILING A WARRANT. 1.
45 NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, IF ANY INDIVIDUAL
46 LIABLE FOR THE PAYMENT OF ANY TAX OR OTHER IMPOSITION ADMINISTERED BY
47 THE COMMISSIONER, INCLUDING ANY ADDITIONS TO TAX, PENALTIES AND INTEREST
48 IN CONNECTION THEREWITH, FAILS TO PAY OR TO COLLECT OR PAY OVER THE SAME
49 WITHIN TWENTY-ONE CALENDAR DAYS AFTER NOTICE AND DEMAND THEREFOR IS
50 GIVEN TO SUCH INDIVIDUAL (TEN BUSINESS DAYS IF THE AMOUNT FOR WHICH SUCH
51 NOTICE AND DEMAND IS MADE EQUALS OR EXCEEDS ONE HUNDRED THOUSAND
52 DOLLARS), THE COMMISSIONER IS AUTHORIZED TO SERVE AN INCOME EXECUTION ON
53 THE INDIVIDUAL OR ON THE PERSON FROM WHOM THE INDIVIDUAL IS RECEIVING,
54 OR WILL RECEIVE, MONEY, WITHOUT FILING A WARRANT IN THE OFFICE OF THE

1 CLERK OF THE APPROPRIATE COUNTY OR IN THE DEPARTMENT OF STATE AS
2 PROVIDED FOR IN THIS CHAPTER. FOR PURPOSES OF SERVING AN INCOME
3 EXECUTION PURSUANT TO THIS SECTION, THE COMMISSIONER SHALL, IN THE RIGHT
4 OF THE PEOPLE OF THE STATE OF NEW YORK, BE DEEMED TO HAVE OBTAINED JUDG-
5 MENT AGAINST THE INDIVIDUAL FOR THE TAX OR OTHER IMPOSITION, AND THE
6 ADDITIONS TO TAX, PENALTIES AND INTEREST IN CONNECTION THEREOF, AND
7 THERE SHALL BE A LIEN ON THE AMOUNT OF THE INDIVIDUAL'S INCOME THAT MAY
8 BE GARNISHED. IF THE COMMISSIONER CHOOSES TO SERVE AN INCOME EXECUTION
9 WITHOUT FILING A WARRANT PURSUANT TO THIS SECTION, THE COMMISSIONER MUST
10 SERVE THE INCOME EXECUTION WITHIN SIX YEARS AFTER THE FIRST DATE A
11 WARRANT COULD BE FILED PURSUANT TO SECTION ONE HUNDRED SEVENTY-FOUR-B OF
12 THIS ARTICLE. WHEN SERVING AN INCOME EXECUTION WITHOUT THE FILING OF A
13 WARRANT, THE COMMISSIONER SHALL FOLLOW THE PROCEDURES SET FORTH IN
14 SECTION FIVE THOUSAND TWO HUNDRED THIRTY-ONE OF THE CIVIL PRACTICE LAW
15 AND RULES, WITH THE REFERENCES IN SUCH SECTION TO "SHERIFF" TO BE READ
16 AS REFERRING TO THE COMMISSIONER OR THE DEPARTMENT. SUCH INCOME
17 EXECUTION SHALL CONTINUE TO BE IN EFFECT UNTIL SUCH LIABILITY IS SATIS-
18 FIED OR UNTIL TWENTY YEARS FROM THE FIRST DATE A WARRANT COULD BE FILED
19 BY THE COMMISSIONER PURSUANT TO SECTION ONE HUNDRED SEVENTY-FOUR-B OF
20 THIS ARTICLE, WHETHER OR NOT A WARRANT IS FILED FOR THAT LIABILITY.

21 2. THE PROVISIONS OF THIS SECTION SHALL BE IN ADDITION TO THE PROCE-
22 DURES RELATING TO COLLECTION OR ADMINISTRATION PROVIDED WITH RESPECT TO
23 ANY TAX OR OTHER IMPOSITION ADMINISTERED BY THE COMMISSIONER. WHERE A
24 PROVISION OF THIS SECTION IS INCONSISTENT WITH ANY SUCH PROVISION WITH
25 RESPECT TO SUCH TAX OR OTHER IMPOSITION, THE PROVISIONS OF THIS SECTION
26 WILL APPLY. NOTHING IN THIS SECTION SHALL PREVENT THE COMMISSIONER FROM
27 TIMELY FILING A WARRANT IN ORDER TO PURSUE ANY OF THE COLLECTION METHODS
28 AUTHORIZED UNDER ARTICLE FIFTY-TWO OF THE CIVIL PRACTICE LAW AND RULES.

29 S 2. This act shall take effect immediately.

30

PART R

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

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

39 (2) THE FOLLOWING COUNTIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION
40 (A) OF THIS SECTION AT THE RATE OF THREE PERCENT AS AUTHORIZED ABOVE IN
41 THIS PARAGRAPH FOR SUCH COUNTIES ARE HEREBY FURTHER AUTHORIZED AND
42 EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR RESOLUTIONS
43 IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS SECTION AT THE
44 FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCREMENTS, WHICH RATES
45 ARE ADDITIONAL TO THE THREE PERCENT RATE AUTHORIZED ABOVE IN THIS PARA-
46 GRAPH, AND, IN THE CASE OF A COUNTY AUTHORIZED TO IMPOSE MORE THAN ONE
47 ADDITIONAL RATE, ALSO IN ADDITION TO EACH OTHER, FOR EACH SUCH COUNTY,
48 PROVIDED THAT (A) THE COUNTY OF ROCKLAND MAY IMPOSE ADDITIONAL RATES OF
49 FIVE-EIGHTHS PERCENT AND THREE-EIGHTHS PERCENT, IN LIEU OF IMPOSING SUCH
50 ADDITIONAL RATE IN QUARTER PERCENT INCREMENTS; (B) THE COUNTY OF ONTARIO
51 MAY IMPOSE ADDITIONAL RATES OF ONE-EIGHTH PERCENT AND THREE-EIGHTHS
52 PERCENT, IN LIEU OF IMPOSING SUCH ADDITIONAL RATE IN QUARTER PERCENT
53 INCREMENTS; (C) THREE-QUARTERS PERCENT OF THE ADDITIONAL RATE AUTHORIZED

1 TO BE IMPOSED BY THE COUNTY OF NASSAU SHALL BE SUBJECT TO THE LIMITATION
2 SET FORTH IN SECTION TWELVE HUNDRED SIXTY-TWO-E OF THIS ARTICLE:

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

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

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

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

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

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

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

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

19 (II) THE FOLLOWING CITIES THAT IMPOSE TAXES DESCRIBED IN SUBDIVISION

20 (A) OF THIS SECTION AT THE RATE OF ONE AND ONE-HALF PERCENT OR HIGHER AS
21 AUTHORIZED ABOVE IN THIS PARAGRAPH FOR SUCH CITIES ARE HEREBY FURTHER
22 AUTHORIZED AND EMPOWERED TO ADOPT AND AMEND LOCAL LAWS, ORDINANCES, OR
23 RESOLUTIONS IMPOSING SUCH TAXES DESCRIBED IN SUBDIVISION (A) OF THIS
24 SECTION AT THE FOLLOWING ADDITIONAL RATES, IN QUARTER PERCENT INCRE-
25 MENTS, WHICH RATES ARE ADDITIONAL TO THE ONE AND ONE-HALF PERCENT OR
26 HIGHER RATES AUTHORIZED ABOVE IN THIS PARAGRAPH AND, IN THE CASE OF A
27 CITY AUTHORIZED TO IMPOSE MORE THAN ONE ADDITIONAL RATE, ALSO IN ADDI-
28 TION TO EACH OTHER, FOR EACH SUCH CITY:

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

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

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

32 (4) ONE PERCENT - MOUNT VERNON; YONKERS; OSWEGO, FOR THE PERIOD BEGIN-
33 NING DECEMBER FIRST, TWO THOUSAND ELEVEN, AND ENDING NOVEMBER THIRTIETH,
34 TWO THOUSAND THIRTEEN; NEW ROCHELLE, FOR THE PERIOD BEGINNING JANUARY
35 FIRST, TWO THOUSAND TWELVE, AND ENDING DECEMBER THIRTY-FIRST, TWO THOU-
36 SAND THIRTEEN; WHITE PLAINS, FOR THE PERIOD BEGINNING SEPTEMBER FIRST,
37 TWO THOUSAND ELEVEN, AND ENDING AUGUST THIRTY-FIRST, TWO THOUSAND THIR-
38 TEEN.

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

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

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

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

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

50 S 4. Section 1210 of the tax law is amended by adding a new subdivi-
51 sion (q) to read as follows:

52 (Q) NOTWITHSTANDING ANY PROVISION OF THIS SECTION OR ANY OTHER LAW, A
53 COUNTY MAY, BY A MAJORITY VOTE OF ITS GOVERNING BODY, PASS A LOCAL LAW,
54 ORDINANCE OR RESOLUTION TO IMPOSE THE ADDITIONAL RATE OR RATES OF SUCH
55 SALES AND COMPENSATING USE TAXES AUTHORIZED BY CLAUSE TWO OF SUBPARA-
56 GRAPH (I) OF THE OPENING PARAGRAPH OF THIS SECTION FOR A PERIOD NOT TO

1 EXCEED TWO YEARS. ANY SUCH LOCAL LAW, ORDINANCE, OR RESOLUTION SHALL
2 ALSO BE SUBJECT TO THE PROVISIONS OF SUBDIVISIONS (D) AND (E) OF THIS
3 SECTION.

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

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

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

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

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

25 (1) COUNTIES:

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

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

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

30 (D) ONE PERCENT - ALBANY, BROOME, CATTARAUGUS, CHEMUNG, CHENANGO,
31 CLINTON, COLUMBIA, DELAWARE, FRANKLIN, GENESEE, GREENE, LIVINGSTON,
32 MONROE, MONTGOMERY, NIAGARA, ONONDAGA, ORLEANS, OTSEGO, PUTNAM, RENSSE-
33 LAER, ROCKLAND, SCHOHARIE, SCHUYLER, SENECA, STEUBEN, SUFFOLK, SULLIVAN,
34 TIOGA, TOMPKINS, ULSTER, WAYNE, WYOMING, YATES.

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

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

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

38 (2) CITIES:

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

40 (B) ONE-HALF OF ONE PERCENT - NONE.

41 (C) THREE-QUARTERS OF ONE PERCENT - NONE.

42 (D) ONE PERCENT - MOUNT VERNON, NEW ROCHELLE, WHITE PLAINS, YONKERS.

43 (F) EACH OF THE FOLLOWING CITIES IS AUTHORIZED TO PREEMPT THE TAXES
44 IMPOSED BY THE COUNTY IN WHICH IT IS LOCATED PURSUANT TO THE AUTHORITY
45 OF SUBDIVISION (A) OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, TO THE
46 EXTENT OF ONE-HALF THE MAXIMUM AGGREGATE RATE AUTHORIZED UNDER SECTION
47 TWELVE HUNDRED TEN OF THIS ARTICLE, INCLUDING THE ADDITIONAL RATE THAT
48 THE COUNTY IN WHICH SUCH CITY IS LOCATED IS AUTHORIZED TO IMPOSE:
49 AUBURN, IN CAYUGA COUNTY; CORTLAND, IN CORTLAND COUNTY; GLOVERSVILLE AND
50 JOHNSTOWN, IN FULTON COUNTY; ONEIDA, IN MADISON COUNTY; ONEONTA, IN
51 OTSEGO COUNTY. AS OF THE DATE THIS SUBDIVISION TAKES EFFECT, ANY SUCH
52 PREEMPTION BY SUCH A CITY IN EFFECT ON SUCH DATE SHALL CONTINUE IN FULL
53 FORCE AND EFFECT UNTIL THE EFFECTIVE DATE OF A LOCAL LAW, ORDINANCE, OR
54 RESOLUTION ADOPTED OR AMENDED BY THE CITY TO CHANGE SUCH PREEMPTION,
55 PROVIDED SUCH A CITY'S RATE OF TAX IN EXCESS OF ONE AND ONE-HALF PERCENT
56 SHALL NOT CONTINUE IN EFFECT IF THE COUNTY IN WHICH IT IS LOCATED DOES

1 NOT EXTEND ITS ADDITIONAL RATE IN EXCESS OF THREE PERCENT. ANY
2 PREEMPTION BY SUCH A CITY TO TAKE EFFECT UNDER THIS SUBDIVISION AFTER
3 THE DATE THIS SUBDIVISION TAKES EFFECT SHALL BE SUBJECT TO THE NOTICE
4 REQUIREMENTS IN SECTION TWELVE HUNDRED TWENTY-THREE OF THIS SUBPART AND
5 TO THE OTHER REQUIREMENTS OF THIS ARTICLE.

6 (G) NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION OR OTHER
7 LAW, IF THE COUNTY OF DUTCHESS WITHDRAWS FROM THE METROPOLITAN COMMUTER
8 TRANSPORTATION DISTRICT AND IMPOSES THE ADDITIONAL THREE-EIGHTHS PERCENT
9 RATE OF TAX, THE NET COLLECTIONS FROM WHICH THE COUNTY HAS SET ASIDE FOR
10 MASS TRANSPORTATION PURPOSES, AS AUTHORIZED BY SUBPARAGRAPH (IV) OF THE
11 OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE, SUCH
12 ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX SHALL BE IN ADDITION TO ANY
13 OTHER ADDITIONAL RATE OF TAX SUCH COUNTY IS AUTHORIZED TO IMPOSE AND
14 SHALL NOT BE SUBJECT TO PREEMPTION AND SUCH COUNTY SHALL NOT INCLUDE
15 SUCH ADDITIONAL THREE-EIGHTHS PERCENT RATE OF TAX IN DETERMINING ITS
16 ADDITIONAL RATE OF TAX ON THE AREA OF THE COUNTY OUTSIDE ANY CITY IN THE
17 COUNTY IMPOSING TAX FOR PURPOSES OF SUBDIVISION (D) OF SECTION TWELVE
18 HUNDRED SIXTY-TWO OF THIS ARTICLE.

19 S 8. The tax law is amended by adding three new sections 1262-t,
20 1262-u, and 1262-v to read as follows:

21 S 1262-T. ONEIDA COUNTY NET COLLECTIONS FROM ADDITIONAL RATE OF TAX.
22 NET COLLECTIONS FROM AN ADDITIONAL THREE-QUARTERS PERCENT RATE OF ONEIDA
23 COUNTY'S SALES AND COMPENSATING USE TAXES IMPOSED PURSUANT TO THE
24 AUTHORITY OF CLAUSE TWO OF SUBPARAGRAPH (I) OF THE OPENING PARAGRAPH OF
25 SECTION TWELVE HUNDRED TEN OF THIS ARTICLE SHALL NOT BE SUBJECT TO ANY
26 REVENUE DISTRIBUTION AGREEMENT ENTERED INTO BY THE COUNTY AND THE CITIES
27 IN THE COUNTY UNDER SUBDIVISION (C) OF SECTION TWELVE HUNDRED SIXTY-TWO
28 OF THIS PART.

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

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

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

52 S 1262-s. Disposition of net collections from the additional one-quar-
53 ter of one percent rate of sales and compensating use taxes in the coun-
54 ty of Herkimer. Notwithstanding any contrary provision of law, if the
55 county of Herkimer imposes the additional one-quarter of one percent
56 rate of sales and compensating use taxes IN EXCESS OF FOUR PERCENT

1 authorized by [section twelve hundred ten-E] THE OPENING PARAGRAPH OF
2 SECTION TWELVE HUNDRED TEN of this article [for all or any portion of
3 the period beginning December first, two thousand seven and ending
4 November thirtieth, two thousand thirteen], the county shall use all net
5 collections from such additional one-quarter of one percent rate to pay
6 the county's expenses for the construction of additional correctional
7 facilities. The net collections from [the] SUCH additional rate imposed
8 [pursuant to section twelve hundred ten-E] shall be deposited in a
9 special fund to be created by such county separate and apart from any
10 other funds and accounts of the county. Any and all remaining net
11 collections from such additional tax, after the expenses of such
12 construction are paid, shall be deposited by the county of Herkimer in
13 the general fund of such county for any county purpose.

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

16 S 1265. REFERENCES TO CERTAIN PROVISIONS AUTHORIZING ADDITIONAL RATES
17 OR TO EXPIRATIONS OF A PERIOD. NOTWITHSTANDING ANY PROVISION OF LAW TO
18 THE CONTRARY: ANY REFERENCE IN ANY SECTION OF THIS CHAPTER OR OTHER LAW,
19 OR IN ANY LOCAL LAW, ORDINANCE, OR RESOLUTION ADOPTED PURSUANT TO THE
20 AUTHORITY OF THIS ARTICLE, OR IN ANY AGREEMENT ENTERED INTO BY A COUNTY
21 AND ALL THE CITIES IN THAT COUNTY UNDER SUBDIVISION (C) OF SECTION
22 TWELVE HUNDRED SIXTY-TWO OF THIS PART, TO NET COLLECTIONS OR REVENUES
23 FROM A TAX IMPOSED BY A COUNTY OR CITY PURSUANT TO THE AUTHORITY OF A
24 CLAUSE, OR TO A SUBCLAUSE OF A CLAUSE, OF SUBPARAGRAPH (I) OR (II) OF
25 THE OPENING PARAGRAPH OF SECTION TWELVE HUNDRED TEN OF THIS ARTICLE
26 REPEALED BY SECTION ONE OR TWO OF THE CHAPTER OF THE LAWS OF TWO THOU-
27 SAND THIRTEEN THAT ADDED THIS SECTION OR TO SECTION TWELVE HUNDRED TEN-E
28 OF THIS ARTICLE REPEALED BY SECTION FIVE OF SUCH CHAPTER OF THE LAWS OF
29 TWO THOUSAND THIRTEEN SHALL BE DEEMED TO BE A REFERENCE TO NET
30 COLLECTIONS OR REVENUES FROM A TAX IMPOSED BY THAT COUNTY OR CITY PURSU-
31 ANT TO THE AUTHORITY OF THE EQUIVALENT PROVISION OF CLAUSE TWO OF
32 SUBPARAGRAPH (I) OR TO SUBPARAGRAPH (II) OF THE OPENING PARAGRAPH OF
33 SUCH SECTION TWELVE HUNDRED TEN AS ADDED BY SUCH SECTION ONE OR TWO OF
34 SUCH CHAPTER OF THE LAWS OF TWO THOUSAND THIRTEEN.

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

43 S 12. This act shall take effect immediately.

44 PART S

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

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

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

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

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

(I) a commercial bowling establishment, or

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

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

S 2. This act shall take effect immediately.

PART T

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

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

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

PART U

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

(a) Any racing association or corporation or regional off-track betting corporation, authorized to conduct pari-mutuel wagering under this chapter, desiring to display the simulcast of horse races on which pari-mutuel betting shall be permitted in the manner and subject to the conditions provided for in this article may apply to the board for a license so to do. Applications for licenses shall be in such form as may be prescribed by the board and shall contain such information or other material or evidence as the board may require. No license shall be issued by the board authorizing the simulcast transmission of thoroughbred races from a track located in Suffolk county. The fee for such licenses shall be five hundred dollars per simulcast facility per year payable by the licensee to the board for deposit into the general fund.

1 Except as provided herein, the board shall not approve any application
2 to conduct simulcasting into individual or group residences, homes or
3 other areas for the purposes of or in connection with pari-mutuel wager-
4 ing. The board may approve simulcasting into residences, homes or other
5 areas to be conducted jointly by one or more regional off-track betting
6 corporations and one or more of the following: a franchised corporation,
7 thoroughbred racing corporation or a harness racing corporation or asso-
8 ciation; provided (i) the simulcasting consists only of those races on
9 which pari-mutuel betting is authorized by this chapter at one or more
10 simulcast facilities for each of the contracting off-track betting
11 corporations which shall include wagers made in accordance with section
12 one thousand fifteen, one thousand sixteen and one thousand seventeen of
13 this article; provided further that the contract provisions or other
14 simulcast arrangements for such simulcast facility shall be no less
15 favorable than those in effect on January first, two thousand five; (ii)
16 that each off-track betting corporation having within its geographic
17 boundaries such residences, homes or other areas technically capable of
18 receiving the simulcast signal shall be a contracting party; (iii) the
19 distribution of revenues shall be subject to contractual agreement of
20 the parties except that statutory payments to non-contracting parties,
21 if any, may not be reduced; provided, however, that nothing herein to
22 the contrary shall prevent a track from televising its races on an
23 irregular basis primarily for promotional or marketing purposes as found
24 by the board. For purposes of this paragraph, the provisions of section
25 one thousand thirteen of this article shall not apply. Any agreement
26 authorizing an in-home simulcasting experiment commencing prior to May
27 fifteenth, nineteen hundred ninety-five, may, and all its terms, be
28 extended [until June thirtieth, two thousand thirteen]; provided, howev-
29 er, that any party to such agreement may elect to terminate such agree-
30 ment upon conveying written notice to all other parties of such agree-
31 ment at least forty-five days prior to the effective date of the
32 termination, via registered mail. Any party to an agreement receiving
33 such notice of an intent to terminate, may request the board to mediate
34 between the parties new terms and conditions in a replacement agreement
35 between the parties as will permit continuation of an in-home experiment
36 [until June thirtieth, two thousand thirteen]; and (iv) no in-home
37 simulcasting in the thoroughbred special betting district shall occur
38 without the approval of the regional thoroughbred track.

39 S 2. Subparagraph (iii) of paragraph d of subdivision 3 of section
40 1007 of the racing, pari-mutuel wagering and breeding law, as amended by
41 section 2 of part 0 of chapter 59 of the laws of 2012, is amended to
42 read as follows:

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

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

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

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

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

13 The provisions of this section shall govern the simulcasting of races
14 conducted at thoroughbred tracks located in another state or country on
15 any day during which a franchised corporation is not conducting a race
16 meeting in Saratoga county at Saratoga thoroughbred racetrack [until
17 June thirtieth, two thousand thirteen]. Every off-track betting corpo-
18 ration branch office and every simulcasting facility licensed in accord-
19 ance with section one thousand seven that have entered into a written
20 agreement with such facility's representative horsemen's organization as
21 approved by the board, one thousand eight or one thousand nine of this
22 article shall be authorized to accept wagers and display the live full-
23 card simulcast signal of thoroughbred tracks (which may include quarter
24 horse or mixed meetings provided that all such wagering on such races
25 shall be construed to be thoroughbred races) located in another state or
26 foreign country, subject to the following provisions; provided, however,
27 no such written agreement shall be required of a franchised corporation
28 licensed in accordance with section one thousand seven of this article:

29 S 6. The opening paragraph of section 1018 of the racing, pari-mutuel
30 wagering and breeding law, as amended by section 6 of part 0 of chapter
31 59 of the laws of 2012, is amended to read as follows:

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

47 S 7. Section 32 of chapter 281 of the laws of 1994, amending the
48 racing, pari-mutuel wagering and breeding law and other laws relating
49 to simulcasting, as amended by section 7 of part 0 of chapter 59 of the
50 laws of 2012, is amended to read as follows:

51 S 32. This act shall take effect immediately [and the pari-mutuel tax
52 reductions in section six of this act shall expire and be deemed
53 repealed on July 1, 2013]; provided, however, that nothing contained
54 herein shall be deemed to affect the application, qualification, expira-
55 tion, or repeal of any provision of law amended by any section of this
56 act, and such provisions shall be applied or qualified or shall expire

1 or be deemed repealed in the same manner, to the same extent and on the
2 same date as the case may be as otherwise provided by law; provided
3 further, however, that sections twenty-three and twenty-five of this act
4 shall remain in full force and effect only until May 1, 1997 and at such
5 time shall be deemed to be repealed.

6 S 8. Section 54 of chapter 346 of the laws of 1990, amending the
7 racing, pari-mutuel wagering and breeding law and other laws relating to
8 simulcasting and the imposition of certain taxes, as amended by section
9 8 of part 0 of chapter 59 of the laws of 2012, is amended to read as
10 follows:

11 S 54. This act shall take effect immediately; provided, however,
12 sections three through twelve of this act shall take effect on January
13 1, 1991, and [section 1013 of the racing, pari-mutuel wagering and
14 breeding law, as added by section thirty-eight of this act, shall expire
15 and be deemed repealed on July 1, 2013; and] section eighteen of this
16 act shall take effect on July 1, 2008 and sections fifty-one and fifty-
17 two of this act shall take effect as of the same date as chapter 772 of
18 the laws of 1989 took effect.

19 S 9. Paragraph (a) of subdivision 1 of section 238 of the racing,
20 pari-mutuel wagering and breeding law, as amended by section 9 of part 0
21 of chapter 59 of the laws of 2012, is amended to read as follows:

22 (a) The franchised corporation authorized under this chapter to
23 conduct pari-mutuel betting at a race meeting or races run thereat shall
24 distribute all sums deposited in any pari-mutuel pool to the holders of
25 winning tickets therein, provided such tickets be presented for payment
26 before April first of the year following the year of their purchase,
27 less an amount which shall be established and retained by such fran-
28 chised corporation of between twelve to seventeen per centum of the
29 total deposits in pools resulting from on-track regular bets, and four-
30 teen to twenty-one per centum of the total deposits in pools resulting
31 from on-track multiple bets and fifteen to twenty-five per centum of the
32 total deposits in pools resulting from on-track exotic bets and fifteen
33 to thirty-six per centum of the total deposits in pools resulting from
34 on-track super exotic bets, plus the breaks. The retention rate to be
35 established is subject to the prior approval of the racing and wagering
36 board. Such rate may not be changed more than once per calendar quarter
37 to be effective on the first day of the calendar quarter. "Exotic bets"
38 and "multiple bets" shall have the meanings set forth in section five
39 hundred nineteen of this chapter. "Super exotic bets" shall have the
40 meaning set forth in section three hundred one of this chapter. For
41 purposes of this section, a "pick six bet" shall mean a single bet or
42 wager on the outcomes of six races. The breaks are hereby defined as the
43 odd cents over any multiple of five for payoffs greater than one dollar
44 five cents but less than five dollars, over any multiple of ten for
45 payoffs greater than five dollars but less than twenty-five dollars,
46 over any multiple of twenty-five for payoffs greater than twenty-five
47 dollars but less than two hundred fifty dollars, or over any multiple of
48 fifty for payoffs over two hundred fifty dollars. Out of the amount so
49 retained there shall be paid by such franchised corporation to the
50 commissioner of taxation and finance, as a reasonable tax by the state
51 for the privilege of conducting pari-mutuel betting on the races run at
52 the race meetings held by such franchised corporation, the following
53 percentages of the total pool for regular and multiple bets five per
54 centum of regular bets and four per centum of multiple bets plus twenty
55 per centum of the breaks; for exotic wagers seven and one-half per
56 centum plus twenty per centum of the breaks, and for super exotic bets

1 seven and one-half per centum plus fifty per centum of the breaks. For
2 the period June first, nineteen hundred ninety-five through September
3 ninth, nineteen hundred ninety-nine, such tax on regular wagers shall be
4 three per centum and such tax on multiple wagers shall be two and one-
5 half per centum, plus twenty per centum of the breaks. For the period
6 September tenth, nineteen hundred ninety-nine through March thirty-
7 first, two thousand one, such tax on all wagers shall be two and six-
8 tenths per centum and for the period COMMENCING April first, two thou-
9 sand one [through December thirty-first, two thousand thirteen], such
10 tax on all wagers shall be one and six-tenths per centum, plus, in each
11 such period, twenty per centum of the breaks. Payment to the New York
12 state thoroughbred breeding and development fund by such franchised
13 corporation shall be one-half of one per centum of total daily on-track
14 pari-mutuel pools resulting from regular, multiple and exotic bets and
15 three per centum of super exotic bets provided, however, that for the
16 period September tenth, nineteen hundred ninety-nine through March thir-
17 ty-first, two thousand one, such payment shall be six-tenths of one per
18 centum of regular, multiple and exotic pools and for the period COMMENC-
19 ING April first, two thousand one [through December thirty-first, two
20 thousand thirteen], such payment shall be seven-tenths of one per centum
21 of such pools.

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

24 S 11. This act shall take effect immediately.

25

PART V

26 Section 1. Subparagraphs (A) and (B) of paragraph 2 of subsection (pp)
27 of section 606 of the tax law, as amended by chapter 472 of the laws of
28 2010, are amended to read as follows:

29 (A) With respect to any particular residence of a taxpayer, the credit
30 allowed under paragraph one of this subsection shall not exceed fifty
31 thousand dollars for taxable years beginning on or after January first,
32 two thousand ten and before January first, two thousand [fifteen] TWENTY
33 and twenty-five thousand dollars for taxable years beginning on or after
34 January first, two thousand [fifteen] TWENTY. In the case of a husband
35 and wife, the amount of the credit shall be divided between them equally
36 or in such other manner as they may both elect. If a taxpayer incurs
37 qualified rehabilitation expenditures in relation to more than one resi-
38 dence in the same year, the total amount of credit allowed under para-
39 graph one of this subsection for all such expenditures shall not exceed
40 fifty thousand dollars for taxable years beginning on or after January
41 first, two thousand ten and before January first, two thousand [fifteen]
42 TWENTY and twenty-five thousand dollars for taxable years beginning on
43 or after January first, two thousand [fifteen] TWENTY.

44 (B) For taxable years beginning on or after January first, two thou-
45 sand ten and before January first, two thousand [fifteen] TWENTY, if the
46 amount of credit allowable under this subsection shall exceed the
47 taxpayer's tax for such year, and the taxpayer's New York adjusted gross
48 income for such year does not exceed sixty thousand dollars, the excess
49 shall be treated as an overpayment of tax to be credited or refunded in
50 accordance with the provisions of section six hundred eighty-six of this
51 article, provided, however, that no interest shall be paid thereon. If
52 the taxpayer's New York adjusted gross income for such year exceeds
53 sixty thousand dollars, the excess credit that may be carried over to
54 the following year or years and may be deducted from the taxpayer's tax

for such year or years. For taxable years beginning on or after January first, two thousand [fifteen] TWENTY, 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.

S 2. This act shall take effect immediately.

PART W

Section 1. Subdivision 13 of section 282 of the tax law, as added by chapter 276 of the laws of 1986, is amended to read as follows:

13. "Terminal" means a motor fuel OR DIESEL MOTOR FUEL storage facility with a storage capacity of fifty thousand gallons or more excluding such facility at which motor fuel OR DIESEL MOTOR FUEL is stored solely for its retail sale at such facility. "Terminal operator" means any person who or which has the use of or control over, or the right to so use or control, a terminal.

S 2. Subdivision 1 of section 282-a of the tax law, as amended by chapter 2 of the laws of 1995, is amended to read as follows:

1. There is hereby levied and imposed with respect to Diesel motor fuel an excise tax of four cents per gallon upon the sale or use of Diesel motor fuel in this state.

The excise tax is imposed on the first sale or use of Diesel motor fuel to occur which is not exempt from tax under this article. Provided, however, if the tax has not been imposed prior thereto, it shall be imposed on THE REMOVAL OF HIGHWAY DIESEL MOTOR FUEL FROM A TERMINAL, OTHER THAN BY PIPELINE, BARGE, TANKER OR OTHER VESSEL, OR the delivery of Diesel motor fuel to a filling station or into the fuel tank connecting with the engine of a motor vehicle for use in the operation thereof whichever event shall be first to occur. The tax shall be computed based upon the number of gallons of Diesel motor fuel sold, REMOVED or used or the number of gallons of Diesel fuel delivered into the fuel tank of a motor vehicle, as the case may be. Nothing in this article shall be construed to require the payment of such excise tax more than once upon the same Diesel motor fuel. Nor shall the collection of such tax be made applicable to the sale or use of Diesel motor fuel under circumstances which preclude the collection of such tax by reason of the United States constitution and of laws of the United States enacted pursuant thereto. Provided, further, no Diesel motor fuel shall be included in the measure of the tax unless it shall have previously come to rest within the meaning of federal decisional law interpreting the United States constitution. All tax for the period for which a return is required to be filed shall be due on the date limited for the filing of the return for such period, regardless of whether a return is filed as required by this article or whether the return which is filed correctly shows the amount of tax due.

S 3. Paragraph (b) of subdivision 3 of section 282-a of the tax law, as amended by section 2 of part E of chapter 59 of the laws of 2012, is amended to read as follows:

(b) The tax on the incidence of sale or use imposed by subdivision one of this section shall not apply to: (i) the sale or use of non-highway Diesel motor fuel, but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highway by farmers to reach adjacent farmlands); provided, however, this exemption shall in no event apply to a sale of non-highway Diesel motor fuel which involves a delivery at a filling station or into a repository

1 which is equipped with a hose or other apparatus by which such fuel can
2 be dispensed into the fuel tank of a motor vehicle (except for delivery
3 at a farm site which qualifies for the exemption under subdivision (g)
4 of section three hundred one-b of this chapter); or (ii) a sale to the
5 consumer consisting of not more than twenty gallons of water-white kero-
6 sene to be used and consumed exclusively for heating purposes; or (iii)
7 the sale to or delivery at a filling station or other retail vendor of
8 water-white kerosene provided such filling station or other retail
9 vendor only sells such water-white kerosene exclusively for heating
10 purposes in containers of no more than twenty gallons; or (iv) a sale of
11 kero-jet fuel to an airline for use in its airplanes or a use of kero-
12 jet fuel by an airline in its airplanes; or (v) a sale of kero-jet fuel
13 by a registered distributor of Diesel motor fuel to a fixed base opera-
14 tor registered under this article as a distributor of kero-jet fuel only
15 where such fixed base operator is engaged solely in making or offering
16 to make retail sales not in bulk of kero-jet fuel directly into the fuel
17 tank of an airplane for the purpose of operating such airplane; OR (vi)
18 a retail sale not in bulk of kero-jet fuel by a fixed base operator
19 registered under this article as a distributor of kero-jet fuel only
20 where such fuel is delivered directly into the fuel tank of an airplane
21 for use in the operation of such airplane; or (vii) the sale of previ-
22 ously untaxed qualified biodiesel to a person registered under this
23 article as a distributor of Diesel motor fuel other than (A) a retail
24 sale to such person or (B) a sale to such person which involves a deliv-
25 ery at a filling station or into a repository which is equipped with a
26 hose or other apparatus by which such qualified biodiesel can be
27 dispensed into the fuel tank of a motor vehicle; OR (VIII) THE SALE OF
28 PREVIOUSLY UNTAXED HIGHWAY DIESEL MOTOR FUEL BY A PERSON REGISTERED
29 UNDER THIS ARTICLE AS A DISTRIBUTOR OF DIESEL MOTOR FUEL TO A PERSON
30 REGISTERED UNDER THIS ARTICLE AS A DISTRIBUTOR OF DIESEL MOTOR FUEL
31 WHERE THE HIGHWAY DIESEL MOTOR FUEL IS EITHER: (A) BEING DELIVERED BY
32 PIPELINE, RAILCAR, BARGE, TANKER OR OTHER VESSEL TO A TERMINAL, THE
33 OPERATOR OF WHICH TERMINAL IS REGISTERED UNDER SECTION TWO HUNDRED
34 EIGHTY-THREE-B OF THIS ARTICLE, OR (B) WITHIN SUCH A TERMINAL WHERE IT
35 HAS BEEN SO DELIVERED. PROVIDED, HOWEVER, THAT THE EXEMPTION SET FORTH
36 IN THIS SUBPARAGRAPH SHALL NOT APPLY TO ANY HIGHWAY DIESEL MOTOR FUEL IF
37 IT IS REMOVED FROM A TERMINAL, OTHER THAN BY PIPELINE, BARGE, TANKER OR
38 OTHER VESSEL.

39 S 4. Subdivision 5 of section 282-a of the tax law, as amended by
40 section 5 of part K of chapter 61 of the laws of 2011, is amended to
41 read as follows:

42 5. All the provisions of this article relating to the administration
43 and collection of the taxes on motor fuel, except [sections] SECTION two
44 hundred eighty-three-a [and two hundred eighty-three-b] of this article,
45 shall be applicable to the tax imposed by this section with such limita-
46 tion as specifically provided for in this article with respect to Diesel
47 motor fuel and with such modification as may be necessary to adapt the
48 language of such provisions to the tax imposed by this section. With
49 respect to the bond or other security required by subdivision three of
50 section two hundred eighty-three of this article, the commissioner, in
51 determining the amount of bond or other security required for the
52 purpose of securing tax payments, shall take into account the volume of
53 non-highway Diesel motor fuel and other Diesel motor fuel sold for
54 exempt purposes by a distributor of Diesel motor fuel during prior peri-
55 ods as a factor reducing potential tax liability along with any other
56 relevant factors in determining the amount of security required. With

1 respect to the bond required to be filed prior to registration as a
2 Diesel motor fuel distributor, no bond shall be required of an applicant
3 upon a finding of the applicant's fiscal responsibility, as reflected by
4 such factors as net worth, current assets and liabilities, and tax
5 reporting and payment history, and the department shall not provide for
6 a minimum bond of every applicant.

7 S 5. Section 300 of the tax law is amended by adding a new subdivision
8 (s) to read as follows:

9 (S) THE TERM "TERMINAL" SHALL HAVE THE SAME MEANING AS IN SUBDIVISION
10 THIRTEEN OF SECTION TWO HUNDRED EIGHTY-TWO OF THIS CHAPTER.

11 S 6. Subparagraph (A) of paragraph 1 of subdivision (c) of section
12 301-a of the tax law, as amended by section 19 of part K of chapter 61
13 of the laws of 2011, is amended to read as follows:

14 (A) The highway diesel motor fuel component shall be determined by
15 multiplying the motor fuel and highway diesel motor fuel rate times (1)
16 the number of gallons of highway diesel motor fuel sold or used by a
17 petroleum business in this state during the month covered by the return
18 under this article and (2) with respect to any gallonage which prior
19 thereto has not been included in the measure of the tax imposed by this
20 article, times the number of gallons of highway diesel motor fuel
21 [delivered] (i) REMOVED FROM A TERMINAL, OTHER THAN BY PIPELINE, BARGE,
22 TANKER OR OTHER VESSEL, (II) DELIVERED to a filling station or [(ii)],
23 (III) DELIVERED into the fuel tank connecting with the engine of a motor
24 vehicle for use in the operation thereof, whichever of the latter [two]
25 THREE events shall be the first to occur. Provided, however, that no
26 highway diesel motor fuel shall be included in the measure of the tax
27 unless it shall have previously come to rest within the meaning of
28 federal decisional law interpreting the United States constitution, nor
29 decisional law, nor shall any highway diesel motor fuel be included in
30 the measure of the tax imposed by this article more than once.

31 S 7. Subdivision (e) of section 301-b of the tax law, as amended by
32 section 4 of part E of chapter 59 of the laws of 2012, is amended to
33 read as follows:

34 (e) Sales of HIGHWAY DIESEL MOTOR FUEL, qualified biodiesel, non-high-
35 way diesel motor fuel and residual petroleum product to registered
36 distributors of diesel motor fuel and registered residual petroleum
37 product businesses.

38 (1) THE SALE OF PREVIOUSLY UNTAXED HIGHWAY DIESEL MOTOR FUEL BY A
39 PERSON REGISTERED UNDER ARTICLE TWELVE-A OF THIS CHAPTER AS A DISTRIBUTOR
40 OF DIESEL MOTOR FUEL TO A PERSON REGISTERED UNDER SUCH ARTICLE
41 TWELVE-A AS A DISTRIBUTOR OF DIESEL MOTOR FUEL WHERE THE HIGHWAY DIESEL
42 MOTOR FUEL IS EITHER: (A) BEING DELIVERED BY PIPELINE, RAILCAR, BARGE,
43 TANKER OR OTHER VESSEL TO A TERMINAL, THE OPERATOR OF WHICH TERMINAL IS
44 REGISTERED UNDER SECTION TWO HUNDRED EIGHTY-THREE-B OF THIS CHAPTER, OR
45 (B) WITHIN SUCH A TERMINAL WHERE IT HAS BEEN SO DELIVERED. PROVIDED,
46 HOWEVER, THAT THE EXEMPTION SET FORTH IN THIS PARAGRAPH SHALL NOT APPLY
47 TO ANY HIGHWAY DIESEL MOTOR FUEL IF IT IS REMOVED FROM A TERMINAL, OTHER
48 THAN BY PIPELINE, BARGE, TANKER OR OTHER VESSEL.

49 (2) Qualified biodiesel and non-highway [Diesel] DIESEL motor fuel
50 sold by a person registered under article twelve-A of this chapter as a
51 distributor of diesel motor fuel to a person registered under such arti-
52 cle twelve-A as a distributor of diesel motor fuel where such sale is
53 not a retail sale or a sale that involves a delivery at a filling
54 station or into a repository equipped with a hose or other apparatus by
55 which such qualified biodiesel or non-highway [Diesel] DIESEL motor fuel
56 can be dispensed into the fuel tank of a motor vehicle.

1 [(2)] (3) Residual petroleum product sold by a person registered under
2 this article as a residual petroleum product business to a person regis-
3 tered under this article as a residual petroleum product business where
4 such sale is not a retail sale. Provided, however, that the commissioner
5 may require such documentary proof to qualify for any exemption provided
6 in this section as the commissioner deems appropriate, including the
7 expansion of any certifications required pursuant to section two hundred
8 eighty-five-a or two hundred eighty-five-b of this chapter to cover the
9 taxes imposed by this article.

10 [(3)] (4) "Qualified biodiesel" means such term as defined in subdivi-
11 sion twenty-three of section two hundred eighty-two of this chapter.

12 S 8. Clause (D) of subparagraph (ii) of paragraph 4 of subdivision (b)
13 of section 1101 of the tax law, as added by chapter 261 of the laws of
14 1988, is amended to read as follows:

15 (D) The terms "filling station", "TERMINAL" and "owner" shall have the
16 same meaning as they have for the purposes of article twelve-A of this
17 chapter.

18 S 9. Paragraph 2 of subdivision (a) of section 1102 of the tax law, as
19 amended by section 5 of part E of chapter 59 of the laws of 2012, is
20 amended to read as follows:

21 (2) Every distributor of diesel motor fuel shall pay, as a prepayment
22 on account of the taxes imposed by this article and pursuant to the
23 authority of article twenty-nine of this chapter, a tax upon the sale or
24 use of diesel motor fuel in this state. The tax shall be computed based
25 upon the number of gallons of diesel motor fuel sold or used. Provided,
26 however, if the tax has not been imposed prior thereto, it shall be
27 imposed on THE REMOVAL OF HIGHWAY DIESEL MOTOR FUEL FROM A TERMINAL,
28 OTHER THAN BY PIPELINE, BARGE, TANKER OR OTHER VESSEL, OR the delivery
29 of diesel motor fuel to a retail service station. The collection of such
30 tax shall not be made applicable to the sale or use of diesel motor fuel
31 under circumstances which preclude the collection of such tax by reason
32 of the United States constitution and of laws of the United States
33 enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not
34 apply to (i) the sale of [previously untaxed] non-highway Diesel motor
35 fuel to a person registered as a distributor of Diesel motor fuel other
36 than a sale to such person which involves a delivery at a filling
37 station or into a repository which is equipped with a hose or other
38 apparatus by which such fuel can be dispensed into the fuel tank of a
39 motor vehicle, (ii) the sale to or delivery at a filling station or
40 other retail vendor of water-white kerosene provided such filling
41 station or other retail vendor only sells such water-white kerosene
42 exclusively for heating purposes in containers of no more than twenty
43 gallons or to the sale of CNG or hydrogen; [or] (iii) the sale of previ-
44 ously untaxed qualified biodiesel to a person registered under article
45 twelve-A of this chapter as a distributor of Diesel motor fuel other
46 than (A) a retail sale to such person or (B) a sale to such person which
47 involves a delivery at a filling station or into a repository which is
48 equipped with a hose or other apparatus by which such qualified biodies-
49 el can be dispensed into the fuel tank of a motor vehicle. "Qualified
50 biodiesel" means such term as defined in subdivision twenty-three of
51 section two hundred eighty-two of this chapter, OR (IV) THE SALE OF
52 PREVIOUSLY UNTAXED HIGHWAY DIESEL MOTOR FUEL BY A PERSON REGISTERED
53 UNDER ARTICLE TWELVE-A OF THIS CHAPTER AS A DISTRIBUTOR OF DIESEL MOTOR
54 FUEL TO A PERSON REGISTERED UNDER SUCH ARTICLE TWELVE-A AS A DISTRIBUTOR
55 OF DIESEL MOTOR FUEL WHERE THE HIGHWAY DIESEL MOTOR FUEL IS EITHER: (A)
56 BEING DELIVERED BY PIPELINE, RAILCAR, BARGE, TANKER OR OTHER VESSEL TO A

1 TERMINAL, THE OPERATOR OF WHICH TERMINAL IS REGISTERED UNDER SECTION TWO
2 HUNDRED EIGHTY-THREE-B OF THIS CHAPTER, OR (B) WITHIN SUCH A TERMINAL
3 WHERE IT HAS BEEN SO DELIVERED. PROVIDED, HOWEVER, THAT THE EXEMPTION
4 SET FORTH IN THIS SUBPARAGRAPH SHALL NOT APPLY TO ANY HIGHWAY DIESEL
5 MOTOR FUEL IF IT IS REMOVED FROM A TERMINAL, OTHER THAN BY PIPELINE,
6 BARGE, TANKER OR OTHER VESSEL.

7 S 10. Paragraph 2 of subdivision (a) of section 1102 of the tax law,
8 as amended by section 6 of part E of chapter 59 of the laws of 2012, is
9 amended to read as follows:

10 (2) Every distributor of diesel motor fuel shall pay, as a prepayment
11 on account of the taxes imposed by this article and pursuant to the
12 authority of article twenty-nine of this chapter, a tax upon the sale or
13 use of diesel motor fuel in this state. The tax shall be computed based
14 upon the number of gallons of diesel motor fuel sold or used. Provided,
15 however, if the tax has not been imposed prior thereto, it shall be
16 imposed on THE REMOVAL OF HIGHWAY DIESEL MOTOR FUEL FROM A TERMINAL,
17 OTHER THAN BY PIPELINE, BARGE, TANKER OR OTHER VESSEL, OR the delivery
18 of diesel motor fuel to a retail service station. The collection of such
19 tax shall not be made applicable to the sale or use of diesel motor fuel
20 under circumstances which preclude the collection of such tax by reason
21 of the United States constitution and of laws of the United States
22 enacted pursuant thereto. The prepaid tax on diesel motor fuel shall not
23 apply to (i) the sale of non-highway Diesel motor fuel to a person
24 registered as a distributor of Diesel motor fuel other than a sale to
25 such person which involves a delivery at a filling station or into a
26 repository which is equipped with a hose or other apparatus by which
27 such fuel can be dispensed into the fuel tank of a motor vehicle, (ii)
28 the sale to or delivery at a filling station or other retail vendor of
29 water-white kerosene provided such filling station or other retail
30 vendor only sells such water-white kerosene exclusively for heating
31 purposes in containers of no more than twenty gallons; or (iii) the sale
32 of previously untaxed qualified biodiesel to a person registered under
33 article twelve-A of this chapter as a distributor of Diesel motor fuel
34 other than (A) a retail sale to such person or (B) a sale to such person
35 which involves a delivery at a filling station or into a repository
36 which is equipped with a hose or other apparatus by which such qualified
37 biodiesel can be dispensed into the fuel tank of a motor vehicle. "Qual-
38 ified biodiesel" means such term as defined in subdivision twenty-three
39 of section two hundred eighty-two of this chapter, OR (IV) THE SALE OF
40 PREVIOUSLY UNTAXED HIGHWAY DIESEL MOTOR FUEL BY A PERSON REGISTERED
41 UNDER ARTICLE TWELVE-A OF THIS CHAPTER AS A DISTRIBUTOR OF DIESEL MOTOR
42 FUEL TO A PERSON REGISTERED UNDER SUCH ARTICLE TWELVE-A AS A DISTRIBUTOR
43 OF DIESEL MOTOR FUEL WHERE THE HIGHWAY DIESEL MOTOR FUEL IS EITHER: (A)
44 BEING DELIVERED BY PIPELINE, RAILCAR, BARGE, TANKER OR OTHER VESSEL TO A
45 TERMINAL, THE OPERATOR OF WHICH TERMINAL IS REGISTERED UNDER SECTION TWO
46 HUNDRED EIGHTY-THREE-B OF THIS CHAPTER, OR (B) WITHIN SUCH A TERMINAL
47 WHERE IT HAS BEEN SO DELIVERED. PROVIDED, HOWEVER, THAT THE EXEMPTION
48 SET FORTH IN THIS SUBPARAGRAPH SHALL NOT APPLY TO ANY HIGHWAY DIESEL
49 MOTOR FUEL ONCE IT IS REMOVED FROM A TERMINAL, OTHER THAN BY PIPELINE,
50 BARGE, TANKER OR OTHER VESSEL.

51 S 11. Section 1812-c of the tax law, as added by chapter 276 of the
52 laws of 1986, is amended to read as follows:

53 S 1812-c. Person not licensed as terminal operator. Any person who,
54 while not licensed as such pursuant to the provisions of article
55 twelve-A of this chapter, operates as a terminal operator as defined in
56 subdivision thirteen of section two hundred eighty-two of this chapter,

except where all of the motor fuel OR DIESEL MOTOR FUEL stored in the storage facility is solely for such person's own use and consumption, shall be guilty of a class E felony.

S 12. This act shall take effect August 1, 2013; provided, however, that the amendments made to paragraph 2 of subdivision (a) of section 1102 of the tax law made by section nine of this act shall be subject to the expiration and reversion of such paragraph pursuant to section 19 of part W-1 of chapter 109 of the laws of 2006, as amended, when upon such date the provisions of section ten of this act shall take effect.

PART X

Section 1. Subdivision 3 of section 504 of the tax law, as amended by chapter 194 of the laws of 1963, is amended to read as follows:

3. [Owned and operated] (A) OPERATED by a farmer OR BY A PERSON THAT BEARS THE RELATIONSHIP TO SUCH FARMER DESCRIBED IN PARAGRAPH (B) OF THIS SUBDIVISION and used exclusively by such farmer OR SUCH PERSON in transporting [his] SUCH FARMER'S own agricultural commodities and products, pulpwood or livestock, including the packed, processed, or manufactured products thereof, that were originally grown or raised on [his] SUCH FARMER'S farm, lands or orchard, or when used to transport supplies and equipment to [his] SUCH FARMER'S farm or orchard that are consumed and used thereon or when operated by [a] SUCH farmer OR SUCH PERSON in transporting farm products from a farm contiguous to [his own] SUCH FARMER'S FARM.

(B) THE RELATIONSHIP TO SUCH FARMER AS REFERENCED IN PARAGRAPH (A) OF THIS SUBDIVISION, SHALL INCLUDE:

(I) MEMBERS OF A FAMILY, INCLUDING SPOUSES, ANCESTORS, LINEAL DESCENDANTS, BROTHERS AND SISTERS (WHETHER BY THE WHOLE OR HALF BLOOD), AND ENTITIES RELATED TO SUCH A FAMILY MEMBER AS DESCRIBED IN SUBPARAGRAPHS (II) THROUGH (IV) OF THIS PARAGRAPH;

(II) A SHAREHOLDER AND A CORPORATION MORE THAN FIFTY PERCENT OF THE VALUE OF THE OUTSTANDING STOCK OF WHICH IS OWNED OR CONTROLLED DIRECTLY OR INDIRECTLY BY SUCH SHAREHOLDER;

(III) A PARTNER AND A PARTNERSHIP MORE THAN FIFTY PERCENT OF THE CAPITAL OR PROFITS INTEREST IN WHICH IS OWNED OR CONTROLLED DIRECTLY OR INDIRECTLY BY SUCH PARTNER;

(IV) A BENEFICIARY AND A TRUST MORE THAN FIFTY PERCENT OF THE BENEFICIAL INTEREST IN WHICH IS OWNED OR CONTROLLED DIRECTLY OR INDIRECTLY BY SUCH BENEFICIARY;

(V) TWO OR MORE CORPORATIONS, PARTNERSHIPS, ASSOCIATIONS, OR TRUSTS, OR ANY COMBINATION THEREOF, WHICH ARE OWNED OR CONTROLLED, EITHER DIRECTLY OR INDIRECTLY, BY THE SAME PERSON, CORPORATION OR OTHER ENTITY, OR INTERESTS; AND

(VI) A GRANTOR OF A TRUST AND SUCH TRUST.

S 2. This act shall take effect on the first day of the first month next occurring 60 days after this act shall have become a law.

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

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