

# STATE OF NEW YORK

5199

2017-2018 Regular Sessions

## IN ASSEMBLY

February 6, 2017

Introduced by M. of A. ROSENTHAL -- read once and referred to the Committee on Ways and Means

AN ACT to amend the general city law and the tax law, in relation to imposing the earnings tax on nonresidents and to repeal chapter 5 of the laws of 1999, amending the tax law and the general city law relating to the definition of nonresident for the purpose of imposing the earnings tax on nonresidents and to repeal such tax in the event of certain judicial determinations relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Chapter 5 of the laws of 1999, amending the tax law and the general city law relating to the definition of nonresident for the purpose of imposing the earnings tax on nonresidents and to repeal such tax in the event of certain judicial determinations, is REPEALED.

§ 2. The general city law is amended by adding a new article 2-E to read as follows:

### ARTICLE 2-E

#### CITY EARNINGS TAX ON NONRESIDENTS

##### Section 25-m. Authorization to impose tax.

##### 25-n. Administrative provisions.

##### 25-o. Deposit and disposition of revenues.

§ 25-m. Authorization to impose tax. In addition to any other taxes, now authorized by law, any city having a population of one million or more is hereby authorized and empowered to adopt and amend local laws imposing a tax on the earnings of nonresidents of such city to be administered in the manner provided for in this article by the administrator as defined in section one of the model local law hereinafter set forth.

The tax authorized by this article may be imposed only if the city imposing the tax authorized by this article also imposes a tax on the personal income of its residents. The rates of such tax shall be the rates contained in either section two or two-A of the model local law

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

LBD05091-01-7

1 and such rates may be reduced and increased, provided that the rates  
2 shall not be fixed higher than those contained in section two-A of such  
3 model local law.

4 The terms of such local law shall be substantially the same as the  
5 following model local law except that the appendix and the supplement to  
6 the appendix in such local law may be amended for the purpose of  
7 conforming it with the United States internal revenue code or other  
8 federal laws relating to taxation as presently in effect or as they may  
9 be amended.

10 EARNINGS TAX ON NONRESIDENTS

11 Sec. 1. Meaning of terms.--As used in this local law, the following  
12 terms shall mean and include: (a) "Administrator" means the finance  
13 administrator or other fiscal officer of the city charged with adminis-  
14 tration of the tax on earnings of nonresidents imposed by this local  
15 law, except with respect to taxes imposed for any taxable year beginning  
16 on or after January first, nineteen hundred seventy-six, such term shall  
17 mean state tax commission.

18 (b) "City" means the city imposing the tax.

19 (c) "Payroll period" and "employer" shall mean the same as payroll  
20 period and employer as defined in subsections (b) and (d) of section  
21 thirty-four hundred one of the internal revenue code, and "employee"  
22 shall also include all those included as employees in subsection (c) of  
23 such section of such code.

24 (d) "Wages" shall mean wages as defined in subsection (a) of section  
25 thirty-four hundred one of the internal revenue code, except that (1)  
26 wages shall not include payments for active service as a member of the  
27 armed forces of the United States and shall not include, in the case of  
28 a nonresident individual or partner of a partnership doing an insurance  
29 business as a member of the New York insurance exchange described in  
30 section six thousand two hundred one of the insurance law, any item of  
31 income, gain, loss or deduction of such business which is such individ-  
32 ual's distributive or pro rata share for federal income tax purposes or  
33 which such individual is required to take into account separately for  
34 federal income tax purposes and (2) wages shall include (i) the amount  
35 of member or employee contributions to a retirement system or pension  
36 fund picked up by the employer pursuant to subdivision f of section five  
37 hundred seventeen or subdivision d of section six hundred thirteen of  
38 the retirement and social security law or section 13-225.1, 13-327.1,  
39 13-125.1, 13-125.2 or 13-521.1 of title thirteen of the administrative  
40 code of the city of New York or subdivision nineteen of section twenty-  
41 five hundred seventy-five of the education law, (ii) the amount deducted  
42 or deferred from an employee's salary under a flexible benefits program  
43 established pursuant to section twenty-three of the general municipal  
44 law or section twelve hundred ten-a of the public authorities law, (iii)  
45 the amount by which an employee's salary is reduced pursuant to the  
46 provisions of subdivision b of section 12-126.1 and subdivision b of  
47 section 12-126.2 of the administrative code of the city of New York, and  
48 (iv) the amount of member or employee contributions to a retirement  
49 system or pension fund picked up or paid by the employer for members of  
50 the Manhattan and Bronx surface transportation authority pension plan  
51 and treated as employer contributions in determining income tax treat-  
52 ment under section 414(h) of the Internal Revenue Code.

53 (e) "Net earnings from self-employment" shall mean the same as net  
54 earnings from self-employment as defined in subsection (a) of section  
55 fourteen hundred two of the internal revenue code, except that the  
56 deduction for wages and salaries paid or incurred for the taxable year

1 which is not allowed pursuant to section two hundred eighty-C of such  
2 code shall be allowed, and except that an estate or trust shall be  
3 deemed to have net earnings from self-employment determined in the same  
4 manner as if it were an individual subject to the tax on self-employment  
5 income imposed by section fourteen hundred one of the internal revenue  
6 code diminished by (1) the amount of any deduction allowed by subsection  
7 (c) of section six hundred forty-two of the internal revenue code and  
8 (2) the deductions allowed by sections six hundred fifty-one and six  
9 hundred sixty-one of said code to the extent that they represent  
10 distributions or payments to a resident of the city. However, "trade or  
11 business" as used in subsection (a) of section fourteen hundred two of  
12 such code shall mean the same as trade or business as defined in  
13 subsection (c) of section fourteen hundred two of such code, except that  
14 paragraphs (4), (5) and (6) of such subsection shall not apply in deter-  
15 mining net earnings from self-employment taxable under this local law.  
16 Provided however, in the case of a nonresident individual or partner of  
17 a partnership doing an insurance business described in section six thou-  
18 sand two hundred one of the insurance law, any item of income, gain,  
19 loss or deduction of such business which is the individual's distribu-  
20 tive or pro rata share for federal income tax purposes or which the  
21 individual is required to take into account separately for federal  
22 income tax purposes shall not be considered to be "net earnings from  
23 self-employment".

24 (f) "Taxable year" shall mean the taxpayer's taxable year for federal  
25 income tax purposes.

26 (g) Resident individual.--A resident individual means an individual:

27 (1) who is domiciled in the city, unless (A) he or she maintains no  
28 permanent place of abode in the city, maintains a permanent place of  
29 abode elsewhere, and spends in the aggregate not more than thirty days  
30 of the taxable year in the city, or (B) (i) within any period of five  
31 hundred forty-eight consecutive days he or she is present in a foreign  
32 country or countries for at least four hundred fifty days, and (ii)  
33 during such period of five hundred forty-eight consecutive days he or  
34 she is not present in the city for more than ninety days and does not  
35 maintain a permanent place of abode in the city at which his spouse  
36 (unless such spouse is legally separated) or minor children are present  
37 for more than ninety days, and (iii) during any period of less than  
38 twelve months, which would be treated as a separate taxable period based  
39 on a change of resident status, and which period is contained within  
40 such period of five hundred forty-eight consecutive days, he or she is  
41 present in the city for a number of days which does not exceed an amount  
42 which bears the same ratio to ninety as the number of days contained in  
43 such period of less than twelve months bears to five hundred forty-  
44 eight, or

45 (2) who is not domiciled in the city but maintains a permanent place  
46 of abode in the city and spends in the aggregate more than one hundred  
47 eighty-three days of the taxable year in the city, unless such individ-  
48 ual is in active service in the armed forces of the United States.

49 (h) Nonresident individual.--A nonresident individual means an indi-  
50 vidual who is not a resident.

51 (i) Resident estate or trust.--A resident estate or trust means: (1)  
52 the estate of a decedent who at his or her death was domiciled in the  
53 city,

54 (2) a trust, or a portion of a trust, consisting of property trans-  
55 ferred by will of a decedent who at his or her death was domiciled in  
56 the city, or

1     (3) a trust, or portion of a trust, consisting of the property of:

2     (A) a person domiciled in the city at the time such property was  
3 transferred to the trust, if such trust or portion of a trust was then  
4 irrevocable, or if it was then revocable and has not subsequently become  
5 irrevocable; or

6     (B) a person domiciled in the city at the time such trust, or portion  
7 of a trust, became irrevocable, if it was revocable when such property  
8 was transferred to the trust but has subsequently become irrevocable.  
9 For the purposes of the foregoing, a trust or portion of a trust is  
10 revocable if it is subject to a power, exercisable immediately or at any  
11 future time, to revest title in the person whose property constitutes  
12 such trust or portion of a trust, and a trust or portion of a trust  
13 becomes irrevocable when the possibility that such power may be exer-  
14 cised has been terminated.

15     (j) Nonresident estate or trust.--A nonresident estate or trust means  
16 an estate or trust which is not a resident.

17     (k) Unless a different meaning is clearly required, any term used in  
18 this local law shall have the same meaning as when used in a comparable  
19 context in the laws of the United States relating to federal taxes but  
20 such meaning shall be subject to the exceptions or modifications  
21 prescribed in or pursuant to the laws of this state. Any reference in  
22 this local law to the internal revenue code, the internal revenue code  
23 of nineteen hundred eighty-six or to the laws of the United States shall  
24 mean the provisions of the internal revenue code of nineteen hundred  
25 eighty-six (unless a reference to the internal revenue code of nineteen  
26 hundred fifty-four is clearly intended), and amendments thereto, and  
27 other provisions of the laws of the United States relating to federal  
28 taxes, as the same are included in this local law as an appendix and  
29 supplement to the appendix or as included by reference to an appendix  
30 and supplement to the appendix of a title enacted by the same local law  
31 as enacts this local law. (The quotation of the aforesaid laws of the  
32 United States is intended to make them a part of this local law and to  
33 avoid constitutional uncertainties which might result if such laws were  
34 merely incorporated by reference. The quotation of a provision of the  
35 federal internal revenue code or of any other law of the United States  
36 shall not necessarily mean that it is applicable to or has relevance to  
37 this local law.)

38     (l) The term "partnership" shall include, unless a different meaning  
39 is clearly required, a subchapter K limited liability company. The term  
40 "subchapter K limited liability company" shall mean a limited liability  
41 company classified as a partnership for federal income tax purposes.

42     The term "limited liability company" means a domestic limited liabil-  
43 ity company or a foreign limited liability company, as defined in  
44 section one hundred two of the limited liability company law, a limited  
45 liability investment company formed pursuant to section five hundred  
46 seven of the banking law, or a limited liability trust company formed  
47 pursuant to section one hundred two-a of the banking law.

48     Sec. 2. Persons subject to tax.--(a) Imposition of tax.--A tax is  
49 hereby imposed for each taxable year ending on or after July first,  
50 nineteen hundred sixty-six on the wages earned, and net earnings from  
51 self-employment, within the city, of every nonresident individual,  
52 estate and trust which shall comprise:

53     (1) A tax at the rate of one-fourth of one percent on all wages.

54     (2) A tax at the rate of three-eighths of one percent on all net  
55 earnings from self-employment.

(b) Exclusion.--(1) In computing the amount of wages and net earnings from self-employment taxable under subsection (a), there shall be allowed an exclusion against the total of wages and net earnings from self-employment in accordance with the following table:

Total of Wages and Net Earnings

| <u>From Self-Employment</u>                | <u>Exclusion Allowable</u> |
|--|----------------------------|
| <u>Not Over \$10,000</u>                   | <u>\$3,000</u>             |
| <u>Over \$10,000 But Not Over \$20,000</u> | <u>\$2,000</u>             |
| <u>Over \$20,000 But Not Over \$30,000</u> | <u>\$1,000</u>             |
| <u>Over \$30,000</u>                       | <u>NONE</u>                |

(2) The exclusion allowable shall be applied pro rata against wages and net earnings from self-employment.

(3) For taxable periods of less than one year, the exclusion allowable shall be prorated pursuant to regulations of the administrator.

(c) Limitation.--In no event shall a taxpayer be subject to the tax under this local law in an amount greater than he or she would be required to pay if he or she were a resident of the city and subject to a tax on personal income of residents of the city adopted by the city pursuant to authority granted by the general city law.

Sec. 2-A. Persons subject to tax.--(a) Imposition of tax.--(1) A tax is hereby imposed for each taxable year ending on or after July first, nineteen hundred sixty-six and on or before December thirty-first, nineteen hundred seventy and for each taxable year beginning after December thirty-first, nineteen hundred ninety-nine, on the wages earned, and net earnings from self-employment, within the city, of every nonresident individual, estate and trust which shall comprise:

(i) A tax at the rate of one-fourth of one percent on all wages.

(ii) A tax at the rate of three-eighths of one percent on all net earnings from self-employment.

(2) For each taxable year beginning on or after January first, nineteen hundred seventy-one and ending on or before December thirty-first, nineteen hundred ninety-nine, a tax is hereby imposed on the wages earned, and net earnings from self-employment, within the city, of every nonresident individual, estate and trust which shall comprise:

(i) A tax at the rate of forty-five hundredths of one percent on all wages.

(ii) A tax at the rate of sixty-five hundredths of one percent on all net earnings from self-employment.

(3) For each taxable year beginning in nineteen hundred seventy and ending in nineteen hundred seventy-one, two tentative taxes shall be computed, the first as provided in paragraph (1) and the second as provided in paragraph (2), and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred seventy and the number of days in nineteen hundred seventy-one, respectively, bears to the number of days in the entire taxable year.

(4) For each taxable year beginning in nineteen hundred ninety-nine and ending in two thousand, two tentative taxes shall be computed, the first as provided in paragraph (2) and the second as provided in paragraph (1), and the tax for each such year shall be the sum of that proportion of each tentative tax which the number of days in nineteen hundred ninety-nine and the number of days in two thousand, respectively, bears to the number of days in the entire taxable year.

(b) Exclusion.--(1) In computing the amount of wages and net earnings from self-employment taxable under subsection (a), there shall be



1 allowed an exclusion against the total of wages and net earnings from  
 2 self-employment in accordance with the following table:

| <u>Total of Wages and Net Earnings</u> |                            |
|--|----------------------------|
| <u>From Self-Employment</u>            | <u>Exclusion Allowable</u> |
| Not Over \$10,000                      | \$3,000                    |
| Over \$10,000 But Not Over \$20,000    | \$2,000                    |
| Over \$20,000 But Not Over \$30,000    | \$1,000                    |
| Over \$30,000                          | NONE                       |

9 (2) The exclusion allowable shall be applied pro rata against wages  
 10 and net earnings from self-employment.

11 (3) For taxable periods of less than one year, the exclusion allowable  
 12 shall be prorated pursuant to regulations of the administrator.

13 (c) Limitation.--In no event shall a taxpayer be subject to the tax  
 14 under this local law in an amount greater than he or she would be  
 15 required to pay if he or she were a resident of the city and subject to  
 16 a tax on personal income of residents of the city adopted by the city  
 17 pursuant to authority granted by the general city law or the tax law.

18 Sec. 3. Taxable years to which tax imposed by this local law applies;  
 19 tax for taxable years beginning prior to and ending after July first,  
 20 nineteen hundred sixty-six.--(a) General.-- The tax imposed by this  
 21 local law is imposed for each taxable year beginning with taxable years  
 22 ending on or after July first, nineteen hundred sixty-six.

23 (b) Alternate methods for determining tax for taxable years ending on  
 24 or after July first, nineteen hundred sixty-six.-- (1) The tax for any  
 25 taxable year ending on or after July first, nineteen hundred sixty-six  
 26 and on or before June thirtieth, nineteen hundred sixty-seven, shall be  
 27 the same part of the tax which would have been imposed had this local  
 28 law been in effect for the entire taxable year as the number of months  
 29 (or major portions thereof) of the taxable year occurring after July  
 30 first, nineteen hundred sixty-six is of the number of months (or major  
 31 portions thereof) in the taxable year.

32 (2) (i) In lieu of the method of computation of tax prescribed in  
 33 paragraph (1), if the taxpayer maintains adequate records for any taxa-  
 34 ble year ending on or after July first, nineteen hundred sixty-six and  
 35 on or before June thirtieth, nineteen hundred sixty-seven, the tax for  
 36 such taxable year, at the election of the taxpayer, may be computed on  
 37 the basis of the wages which the taxpayer would have reported had he or  
 38 she filed a federal income tax return for a taxable year beginning July  
 39 first, nineteen hundred sixty-six and ending with the close of such  
 40 taxable year ending on or before June thirtieth, nineteen hundred  
 41 sixty-seven, and the net earnings from self-employment which the taxpay-  
 42 er would have reported for federal income tax purposes had he or she  
 43 filed a self-employment tax return for a taxable year beginning July  
 44 first, nineteen hundred sixty-six and ending with the close of such  
 45 taxable year ending on or before June thirtieth, nineteen hundred  
 46 sixty-seven.

47 (ii) For purposes of this paragraph, the exclusions allowable under  
 48 section two shall be reduced by a fraction the numerator of which is the  
 49 number of months (or major portions thereof) of the taxable year occur-  
 50 ring before July first, nineteen hundred sixty-six and the denominator  
 51 of which is the number of months (or major portions thereof) in the  
 52 taxable year. Except as provided in this paragraph, the tax for such  
 53 period ending on or before June thirtieth, nineteen hundred sixty-seven,  
 54 shall be computed in accordance with the other provisions of this local  
 55 law.

1     Sec. 4. Allocation to the city.--(a) General.-- If net earnings from  
2     self-employment are derived from services performed, or from sources,  
3     within and without the city, there shall be allocated to the city a fair  
4     and equitable portion of such earnings.

5     (b) Allocation of net earnings from self-employment.--(1) Place of  
6     business.-- If a taxpayer has no regular place of business outside the  
7     city all of his net earnings from self-employment shall be allocated to  
8     the city.

9     (2) Allocation by taxpayer's books.-- The portion of net earnings  
10    from self-employment allocable to the city may be determined from the  
11    books and records of a taxpayer's trade or business, if the methods used  
12    in keeping such books and the accuracy thereof are approved by the  
13    administrator as fairly and equitably reflecting net earnings from self-  
14    employment within the city.

15    (3) Allocation by formula.-- If paragraph (2) does not apply to the  
16    taxpayer, the portion of net earnings from self-employment allocable to  
17    the city shall be determined by multiplying (A) net earnings from self-  
18    employment within and without the city, by (B) the average of the  
19    following three percentages:

20    (i) Property percentage. The percentage computed by dividing (A) the  
21    average of the value, at the beginning and end of the taxable year, of  
22    real and tangible personal property connected with the net earnings from  
23    self-employment and located within the city, by (B) the average of the  
24    value, at the beginning and end of the taxable year, of all real and  
25    tangible personal property connected with the net earnings from self-em-  
26    ployment and located both within and without the city. For this  
27    purpose, real property shall include real property, whether owned or  
28    rented.

29    (ii) Payroll percentage. The percentage computed by dividing (A) the  
30    total wages, salaries and other personal service compensation paid or  
31    incurred during the taxable year to employees in connection with the net  
32    earnings from self-employment derived from a trade or business carried  
33    on within the city, by (B) the total of all wages, salaries and other  
34    personal service compensation paid or incurred during the taxable year  
35    to employees in connection with the net earnings from self-employment  
36    derived from a trade or business carried on both within and without the  
37    city.

38    (iii) Gross income percentage. The percentage computed by dividing  
39    (A) the gross sales or charges for services performed by or through an  
40    agency located within the city, by (B) the total of all gross sales or  
41    charges for services performed within and without the city. The sales  
42    or charges to be allocated to the city shall include all sales negoti-  
43    ated or consummated, and charges for services performed, by an employee,  
44    agent, agency or independent contractor chiefly situated at, connected  
45    by contract or otherwise with, or sent out from, offices or other agen-  
46    cies of the trade or business from which a taxpayer is deriving net  
47    earnings from self-employment, situated within the city.

48    (c) Other allocation methods.-- The portion of net earnings from self-  
49    employment allocable to the city shall be determined in accordance with  
50    rules and regulations of the administrator if it shall appear to the  
51    administrator that the net earnings from self-employment are not fairly  
52    and equitably reflected under the provisions of subsection (b).

53    (d) Special rules for real estate.-- Income and deductions from the  
54    rental of real property and gain and loss from the sale, exchange or  
55    other disposition of real property, shall not be subject to allocation

1 under subsection (b) or (c), but shall be considered as entirely derived  
2 from or connected with the place in which such property is located.

3 Sec. 5. Accounting periods and methods.--(a) Accounting periods.-- A  
4 taxpayer's taxable year under this local law shall be the same as his  
5 taxable year for federal income tax purposes.

6 (b) Change of accounting periods.--If a taxpayer's taxable year is  
7 changed for federal income tax purposes, his or her taxable year for  
8 purposes of this local law shall be similarly changed. If a taxable  
9 period of less than twelve months results from a change of taxable year,  
10 the exclusion allowable under section two or two-A of this local law  
11 shall be prorated under regulations of the administrator.

12 (c) Accounting methods.--A taxpayer's method of accounting under this  
13 section shall be the same as his or her method of accounting for federal  
14 income tax purposes. In the absence of any method of accounting for  
15 federal income tax purposes, net earnings from self-employment within  
16 the city shall be computed under such method as in the opinion of the  
17 administrator clearly reflects net earnings from self-employment within  
18 the city.

19 (d) Change of accounting methods.--(1) If a taxpayer's method of  
20 accounting is changed for federal income tax purposes, his method of  
21 accounting for purposes of this local law shall be similarly changed.

22 (2) If a taxpayer's method of accounting is changed, other than from  
23 an accrual to an installment method, any additional tax which results  
24 from adjustments determined to be necessary solely by reason of the  
25 change shall not be greater than if such adjustments were ratably allo-  
26 cated and included for the taxable year of the change and the preceding  
27 taxable years, beginning after July first, nineteen hundred sixty-six,  
28 not in excess of two, during which the taxpayer used the method of  
29 accounting from which the change is made.

30 (3) If a taxpayer's method of accounting is changed from an accrual  
31 to an installment method, any additional tax for the year of such change  
32 of method and for any subsequent year which is attributable to the  
33 receipt of installment payments properly accrued in a prior year, shall  
34 be reduced by the portion of tax for any prior taxable year attributable  
35 to the accrual of such installment payments, in accordance with regu-  
36 lations of the administrator.

37 Sec. 8. Withholding of tax on wages.--General.--On or after the first  
38 payroll period beginning forty-five days after the date this local law  
39 becomes effective every employer maintaining an office or transacting  
40 business within this state and making payment of any wages taxable under  
41 this local law shall deduct and withhold from such wages for each  
42 payroll period a tax computed in such manner as to result, so far as  
43 practicable, in withholding from the employee's wages during each calen-  
44 dar year an amount substantially equivalent to the tax reasonably esti-  
45 mated to be due from the employee under this local law. The method of  
46 determining the amount to be withheld shall be prescribed by regulations  
47 of the administrator.

48 Sec. 8-A. Withholding of tax on wages for taxable periods commencing  
49 on or after January first, nineteen hundred seventy-six.--The provisions  
50 contained in sections eight, nine, ten, eleven, twelve and thirteen of  
51 this local law shall not be applicable to taxes imposed for taxable  
52 periods commencing on or after January first, nineteen hundred seventy-  
53 six provided however, with respect to such periods, the provisions  
54 contained in part five of article twenty-two of the tax law shall be  
55 applicable with the same force and effect as if those provisions had  
56 been incorporated in full in this section except where inconsistent with



1 the provisions of this article, except that the term "aggregate amount"  
2 contained in paragraphs one, two and three of subsection (a) of section  
3 six hundred seventy-four of the tax law shall mean the aggregate of the  
4 aggregate amounts of New York state personal income tax, city earnings  
5 tax on nonresidents and city personal income tax on residents authorized  
6 pursuant to article thirty of the tax law required to be deducted and  
7 withheld and provided, however, that the provisions of such paragraphs  
8 shall not be applicable to employer's returns required to be filed with  
9 respect to taxes required to be deducted and withheld during the calen-  
10 dar year nineteen hundred seventy-six, but such returns shall be  
11 required to be filed with the commissioner of taxation and finance at  
12 the times and in the manner provided for in subsection (a) of section  
13 eleven of this local law, except the term "administrator" in such  
14 subsection shall be read as "commissioner of taxation and finance."

15 Sec. 9. Information statement for employee.--Every employer required  
16 to deduct and withhold tax under this local law from the wages of an  
17 employee, shall furnish to each such employee in respect of the wages  
18 paid by such employer to such employee during the calendar year on or  
19 before February fifteenth of the succeeding year, or, if his or her  
20 employment is terminated before the close of such calendar year, within  
21 thirty days from the date on which the last payment of the wages is  
22 made, a written statement as prescribed by the administrator showing the  
23 total amount of wages paid by the employer to the employee, the amount  
24 of wages paid for services performed within the city, the amount  
25 deducted and withheld as tax, and such other information as the adminis-  
26 trator may prescribe.

27 Sec. 10. Credit for tax withheld.--Wages upon which tax is required  
28 to be withheld shall be taxable under this local law as if no withhold-  
29 ing were required, but any amount of tax actually deducted and withheld  
30 under this local law in any calendar year shall be deemed to have been  
31 paid on behalf of the employee from whom withheld, and such employee  
32 shall be credited with having paid that amount of tax in such calendar  
33 year. For a taxable year of less than twelve months, the credit shall  
34 be made under regulations of the administrator.

35 Sec. 11. Employer's return and payment of withheld taxes.--(a) Gener-  
36 al.--On or after the first payroll period beginning forty-five days  
37 after the effective date of this local law, every employer required to  
38 deduct and withhold tax under this local law shall, for each calendar  
39 month, on or before the fifteenth day of the month following the close  
40 of such calendar month file a withholding return as prescribed by the  
41 administrator and pay over to the administrator or to the depository  
42 designated by the administrator, the taxes so required to be deducted  
43 and withheld, except that for the month of December in any year the  
44 returns shall be filed and the taxes paid on or before January thirty-  
45 first of the succeeding year. Where the aggregate amount required to be  
46 deducted and withheld by any employer under this local law and under any  
47 local law imposing a tax on personal income of residents of the city  
48 adopted by the city pursuant to authority granted by the general city  
49 law is less than twenty-five dollars in a calendar month and the aggre-  
50 gate of such taxes for the semi-annual period ending on June thirtieth  
51 and December thirty-first can reasonably be expected to be less than one  
52 hundred fifty dollars, the administrator may, by regulation, permit an  
53 employer to file a return on or before July thirty-first for the semi-  
54 annual period ending on June thirtieth and on or before January thirty-  
55 first for the semi-annual period ending on December thirty-first. The  
56 administrator may, if he or she believes such action necessary for the

1 protection of the revenues, require any employer to make a return and  
2 pay to him the tax deducted and withheld at any time, or from time to  
3 time. Where the amount of wages paid by an employer is not sufficient  
4 under this local law and under any local law imposing a tax on personal  
5 income of residents of the city adopted by the city pursuant to authori-  
6 ty granted by the general city law to require the withholding of tax  
7 from the wages of any of his or her employees, the administrator may, by  
8 regulation, permit such employer to file an annual return on or before  
9 February twenty-eighth of the following calendar year.

10 (b) Combined returns.--The administrator may by regulation provide  
11 for the filing of one return which shall include the return required to  
12 be filed under this section, together with the employer's return  
13 required to be filed under any local law imposing a tax on personal  
14 income of residents of the city adopted by the city pursuant to authori-  
15 ty granted by the general city law.

16 (c) Deposit in trust for city.--Whenever any employer fails to  
17 collect, truthfully account for, pay over the tax, or make returns of  
18 the tax as required in this section, the administrator may serve a  
19 notice requiring such employer to collect the taxes which become collec-  
20 tible after service of such notice, to deposit such taxes in a bank  
21 approved by the administrator, in a separate account, in trust for the  
22 city and payable to the administrator, and to keep the amount of such  
23 tax in such account until payment over to the administrator. Such  
24 notice shall remain in effect until a notice of cancellation is served  
25 by the administrator.

26 Sec. 12. Employer's liability for withheld taxes.--Every employer  
27 required to deduct and withhold the tax under this local law is hereby  
28 made liable for such tax. For purposes of assessment and collection,  
29 any amount required to be withheld and paid over to the administrator,  
30 and any additions to tax, penalties and interest with respect thereto  
31 shall be considered the tax of the employer. Any amount of tax actually  
32 deducted and withheld under this local law shall be held to be a special  
33 fund in trust for the city.

34 No employee shall have any right of action against his or her employer  
35 in respect to any monies deducted and withheld from his or her wages and  
36 paid over to the administrator in compliance or in intended compliance  
37 with this local law.

38 Sec. 13. Employer's failure to withhold.--If an employer fails to  
39 deduct and withhold the tax, as required, and thereafter the tax against  
40 which such tax may be credited is paid, the tax so required to be  
41 deducted and withheld shall not be collected from the employer, but the  
42 employer shall not be relieved from liability for any penalties, inter-  
43 est or additions to the tax otherwise applicable in respect of such  
44 failure to deduct and withhold.

45 Sec. 14. Returns and payment of tax.--On or before the fifteenth day  
46 of the fourth month following the close of the taxable year, every  
47 person subject to the tax shall make and file a return and any balance  
48 of the tax shown due on the face of such return shall be paid therewith.  
49 The administrator may, by regulation, provide for the filing of returns  
50 and payment of the tax at such other times as he or she deems necessary  
51 for the proper enforcement of this local law. The administrator may  
52 also provide by regulation that any return otherwise required to be made  
53 and filed under this local law by any nonresident individual need not be  
54 made and filed if such nonresident individual had, during the taxable  
55 year to which the return would relate, no net earnings from self-employ-  
56 ment within the city. Any regulation allowing such waiver of return may

1 provide for additional limitations on and conditions and prerequisites  
2 to the privilege of not filing a return.

3 Sec. 14-A. Combined returns, employer's returns and payments.--The  
4 state tax commission may require:

5 (1) The filing of any or all of the following:

6 (A) A combined return which in addition to the return provided for in  
7 a local law authorized by this article may also include returns required  
8 to be filed under a local law authorized by article thirty of the tax  
9 law and under article twenty-two of the tax law.

10 (B) A combined employer's return which in addition to the employer's  
11 return provided for in a local law authorized by this article may also  
12 include employer's returns required to be filed under a local law  
13 authorized by article thirty of the tax law and under article twenty-two  
14 of the tax law.

15 (2) Where a combined return or employer's return is required, and with  
16 respect to the payment of estimated tax, the state tax commission may  
17 also require payment of a single amount which shall be the total of the  
18 amounts (total taxes less any credits or refunds) required to be paid  
19 with the returns or employer's returns or in payment of estimated tax  
20 pursuant to the provisions of local laws imposed under the authority of  
21 this article, article thirty of the tax law and pursuant to the  
22 provisions of article twenty-two of the tax law.

23 Sec. 15. Effect of invalidity in part; inconsistencies with other  
24 laws.--(a) If any clause, sentence, paragraph, subsection, section,  
25 provision or other portion of this local law or the application thereof  
26 to any person or circumstances shall be held to be invalid, such holding  
27 shall not affect, impair or invalidate the remainder of this local law  
28 or the application of such portion held invalid, to any other person or  
29 circumstances, but shall be confined in its operation to the clause,  
30 sentence, paragraph, subsection, section, provision or other portion  
31 thereof directly involved in such holding or to the person and circum-  
32 stances therein involved.

33 (b) If any provision of this local law is inconsistent with, in  
34 conflict with, or contrary to any other provision of law, such provision  
35 of this local law shall prevail over such other provision and such other  
36 provision shall be deemed to have been amended, superseded or repealed  
37 to the extent of such inconsistency, conflict or contrariety.

38 § 25-n. Administrative provisions. (a) General. Any local law adopted  
39 pursuant to this article shall also contain provisions necessary and  
40 appropriate for the collection and the administration of the tax herein  
41 authorized, except that with respect to any taxable year beginning in  
42 nineteen hundred seventy, until and including the thirty-first day of  
43 December, nineteen hundred seventy-one, any local law adopted pursuant  
44 to this article shall contain the same provisions as are contained in  
45 chapter nineteen of title eleven of the administrative code of the city  
46 of New York, but "administrator" shall be read "state tax commission";  
47 "administrative agencies of the city" shall be read as "administrative  
48 agencies of the state"; "depositories or financial agents of the city"  
49 shall be read as "depositories or financial agents of the state"; "offi-  
50 cers or employees of the department of finance of the city" shall be  
51 read "officers or employees of the state department of taxation and  
52 finance"; in sections 11-1934, 11-1936, 11-1939, and 11-1942 (except for  
53 the last sentence thereof) of chapter nineteen of title eleven of the  
54 administrative code of the city of New York "city" shall be read as  
55 "state"; "corporation counsel or other appropriate officer of the city"  
56 or "corporation counsel of the city" shall be read as "state attorney

1 general"; and the words "it" or "its" shall apply instead of the  
2 pronouns used where the reference is to state tax commission. Provided,  
3 however, with respect to declarations of estimated tax and payments of  
4 such tax and the withholding tax requirements, until and including the  
5 thirty-first day of December, nineteen hundred seventy-one, any such  
6 terms shall be so read with respect to any taxable year or other period  
7 beginning in nineteen hundred seventy-one.

8 (b) Methods of review.--Such local law shall also contain provisions  
9 substantially the same as the following:

10 (i) Any final determination of the amount of any tax payable hereunder  
11 shall be reviewable for error, illegality or unconstitutionality or any  
12 other reason whatsoever by a proceeding under article seventy-eight of  
13 the civil practice law and rules if application therefor is made to the  
14 supreme court within four months after the giving of the notice of such  
15 final determination, provided, however, that any such proceeding under  
16 article seventy-eight of the civil practice law and rules shall not be  
17 instituted unless (A) the amount of any tax sought to be reviewed, with  
18 such interest and penalties thereon as may be provided for by local law  
19 or regulation, shall be first deposited and there is filed an undertak-  
20 ing, issued by a surety company authorized to transact business in this  
21 state and approved by the superintendent of insurance of this state as  
22 to solvency and responsibility, in such amount as a justice of the  
23 supreme court shall approve to the effect that if such proceeding be  
24 dismissed or the tax confirmed the petitioner will pay all costs and  
25 charges which may accrue in the prosecution of such proceeding or (B) at  
26 the option of the petitioner such undertaking may be in a sum sufficient  
27 to cover the taxes, interest and penalties stated in such determination  
28 plus the costs and charges which may accrue against it in the prose-  
29 cution of the proceeding, in which event the petitioner shall not be  
30 required to pay such taxes, interest or penalties as a condition prece-  
31 dent to the application.

32 (ii) Where any tax imposed hereunder shall have been erroneously,  
33 illegally or unconstitutionally collected and application for the refund  
34 thereof duly made to the proper fiscal officer or officers, and such  
35 officer or officers shall have made a determination denying such refund,  
36 such determination shall be reviewable by a proceeding under article  
37 seventy-eight of the civil practice law and rules, provided, however,  
38 that such proceeding is instituted within four months after the giving  
39 of the notice of such denial, that a final determination of tax due was  
40 not previously made, and that an undertaking is filed with the proper  
41 fiscal officer or officers in such amount and with such sureties as a  
42 justice of the supreme court shall approve to the effect that if such  
43 proceeding be dismissed or the tax confirmed, the petitioner will pay  
44 all costs and charges which may accrue in the prosecution of such  
45 proceeding.

46 (iii) No assessment of additional tax shall be made after the expira-  
47 tion of more than three years from the date of the filing of the return  
48 except that where no return has been filed or, in the case of the filing  
49 of a wilfully false or fraudulent return with intent to evade the tax,  
50 the tax may be assessed at any time; provided, however, where a taxpayer  
51 omits from his or her return an amount which should be properly included  
52 therein which is in excess of twenty-five percent of the amount of the  
53 gross income derived by him or her from any trade or business, no  
54 assessment of additional tax shall be made after the expiration of more  
55 than six years from the date of the filing of the return, except as  
56 otherwise provided herein.

1 (c) Bulk sales.-- Such local law may contain a provision substantially  
2 the same as the following:

3 Whenever there is made a sale, transfer or assignment in bulk of any  
4 part or the whole of a stock of merchandise or of fixtures, or merchan-  
5 dise and of fixtures pertaining to the conducting of the business of the  
6 seller, transferrer or assignor, otherwise than in the ordinary course  
7 of trade and in the regular prosecution of said business, the purchaser,  
8 transferee or assignee shall at least ten days before taking possession  
9 of such merchandise, fixtures, or merchandise and fixtures, or paying  
10 therefor, notify the administrator by registered mail of the proposed  
11 sale and of the price, terms and conditions thereof, whether or not the  
12 seller, transferrer or assignor, has represented to, or informed the  
13 purchaser, transferee or assignee, that it owes any tax pursuant to this  
14 local law, whether or not the purchaser, transferee or assignee has  
15 knowledge that such taxes are owing, and whether or not any such taxes  
16 are in fact owing.

17 Whenever the purchaser, transferee or assignee shall fail to give the  
18 notice to the administrator required by the preceding paragraph, or  
19 whenever the administrator shall inform the purchaser, transferee or  
20 assignee that a possible claim for such tax or taxes exists, any sums of  
21 money, property or choses in action, or other consideration, which the  
22 purchaser, transferee or assignee is required to transfer over to the  
23 seller, transferrer or assignor shall be subject to a first priority  
24 right and lien for any such taxes theretofore or thereafter determined  
25 to be due from the seller, transferrer or assignor to the city, and the  
26 purchaser, transferee or assignee is forbidden to transfer to the sell-  
27 er, transferrer or assignor any such sums of money, property or choses  
28 in action to the extent of the amount of the city's claim. For failure  
29 to comply with the provisions of this subdivision the purchaser, trans-  
30 feree or assignee, in addition to being subject to liabilities and reme-  
31 dies imposed under any provisions of law, shall be personally liable for  
32 the payment to the city of any such taxes, theretofore or thereafter  
33 determined to be due to the city from the seller, transferrer or assign-  
34 or and such liability may be assessed and enforced in the same manner  
35 as the liability for tax is imposed under this local law.

36 (d) Delegation of functions.--The local law may provide that the  
37 administrator of the tax imposed, as defined in the local law, may dele-  
38 gate his or her powers and functions under the local law to one of his  
39 or her deputies or to any employee or employees of his or her department  
40 and authorize banks or trust companies which are depositories or finan-  
41 cial agents of the city to receive and give a receipt for any tax  
42 imposed under the local law.

43 (e) The provisions contained in subsections (a), (b), (c) and (d)  
44 shall not be applicable with respect to taxes imposed for taxable peri-  
45 ods commencing on or after January first, nineteen hundred seventy-six  
46 but, with respect to the tax imposed for such periods the provisions  
47 contained in part six of article twenty-two of the tax law and sections  
48 six hundred fifty-three, six hundred fifty-eight, six hundred sixty-two  
49 and thirteen hundred eleven of the tax law including the provisions of  
50 judicial review by a proceeding under article seventy-eight of the civil  
51 practice law and rules shall be applicable with the same force and  
52 effect as if those provisions had been incorporated in full in this  
53 section except where inconsistent with the provisions of this local law.

54 § 25-o. Deposit and disposition of revenues. Revenues resulting from  
55 the imposition of the tax authorized by this article shall be paid into  
56 the treasury of the city and shall be credited to and deposited in the



1 general fund of such city and shall be available for any lawful city  
2 purpose. For taxable years beginning on or after January first, nineteen  
3 hundred seventy-six such revenues shall be deposited and disposed of in  
4 the same manner as revenues resulting from the imposition of the taxes  
5 authorized by article thirty of the tax law.

6 § 3. Section 1301 of the tax law is amended by adding a new subsection  
7 (c) to read as follows:

8 (c) The taxes authorized by this article may be imposed only if the  
9 general city law authorizes the adoption of a city tax on the earnings  
10 of nonresidents and the city imposing the tax authorized by this article  
11 also imposes such tax on the earnings of nonresidents.

12 § 4. Separability. If any clause, sentence, paragraph or part of this  
13 act shall be adjudged to be unconstitutional or invalid, such judgment  
14 shall not affect, impair, or invalidate, the remainder thereof, but  
15 shall be confined in its operation to the clause, sentence, paragraph,  
16 section or part thereof directly involved in controversy in which such  
17 judgment shall have been rendered.

18 § 5. This act shall take effect immediately and shall be deemed to  
19 have been in full force and effect on and after July 1, 1999. The tax  
20 authorized, administered, enforced and levied in accordance with article  
21 2-E and subsection (h) of section 1 of section 25-m of the general city  
22 law, and subsection (c) of section 1301 and subsection (b) of section  
23 1305 of the tax law shall be continuously computed and shall be adminis-  
24 tered, enforced, and levied as if chapter 5 of the laws of 1999 had not  
25 been enacted. The commissioner of taxation and finance is authorized to  
26 promulgate immediately and on an emergency basis all necessary and  
27 reasonable rules and regulations for the timely implementation of this  
28 act.