# STATE OF NEW YORK

6885

2017-2018 Regular Sessions

# IN SENATE

September 25, 2017

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

AN ACT to amend the tax law, in relation to franchise tax on banking corporations

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

Section 1. The tax law is amended by adding a new article 32 to read as follows:

ARTICLE 32

FRANCHISE TAX ON BANKING CORPORATIONS



§ 1450. General definitions. As used in this article:

(a) The word "taxpayer" means a corporation or association subject to a tax imposed by this article.

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

(b) The phrase "taxable year" means the taxpayer's taxable year for federal income tax purposes, or the part thereof during which the taxpayer is subject to the tax imposed by this article.

(c) The term "international banking facility" shall mean an international banking facility located in New York state and shall have the same meaning as is set forth in the New York state banking law or regulations of the New York state department of financial services or as is set forth in the laws of the United States or regulations of the board of governors of the federal reserve system.

(d) The term "subsidiary" means a corporation or association of which 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 by the taxpayer.

(e) The term "subsidiary capital" means investments in the stock of subsidiaries and any indebtedness from subsidiaries, exclusive of accounts receivable acquired in the ordinary course of trade or business for services rendered or for sales of property held primarily for sale to customers, whether or not evidenced by written instrument, on which interest is not claimed and deducted by the subsidiary for purposes of taxation under this article, article nine-A or thirty-three of this chapter, provided, however, there shall be deducted from subsidiary capital any liabilities payable by their terms on demand or within one year from the date incurred, other than loans or advances outstanding for more than a year as of any date during the year covered by the return, which are attributable to subsidiary capital.

(f) The terms "New York S corporation", "New York S year", "New York S election", "New York C corporation", "New York C year", "termination year", "S short year", "C short year", and "New York S termination year" shall have the same meaning as those terms have under subdivision one-A of section two hundred eight of this chapter, except that references in such subdivision to article nine-A of this chapter shall be read as references to this article.

(g) The term "QSSS" means a corporation which is a qualified subchapter S subsidiary as defined in subparagraph (B) of paragraph three of subsection (b) of section thirteen hundred sixty-one of the internal revenue code. The term "exempt QSSS" means a QSSS exempt from tax under this article as provided in subsection (o) of section fourteen hundred fifty-three of this article, or a QSSS described in clause (i) of subparagraph (B) of paragraph two of subsection (o) of section fourteen hundred fifty-three, wherein the parent corporation of the QSSS is subject to tax under this article, and the assets, liabilities, income and deductions of the QSSS are treated as the assets, liabilities, income and deductions of the parent corporation. Where a QSSS is an exempt QSSS, then for all purposes under this article:

(1) the assets, liabilities, income, deductions, property, payroll, receipts, capital, credits, and all other tax attributes and elements of economic activity of the QSSS shall be deemed to be those of the parent corporation,

(2) the stocks, bonds and other securities issued by, and any indebtedness from, the QSSS shall not be subsidiary capital of the parent corporation,

(3) transactions between the parent corporation and the QSSS, including the payment of interest and dividends, shall not be taken into account, and

(4) general executive officers of the QSSS shall be deemed to be general executive officers of the parent corporation.

(h) The term "financial holding company" means a corporation that, pursuant to subsection (l) of section 4 of the federal bank holding company act of nineteen hundred fifty-six, as amended, has filed with the federal reserve board a written declaration that the corporation elects to be a financial holding company and whose election has not been found to be ineffective by the federal reserve board.

§ 1451. Imposition of tax. (a) For the privilege of exercising its franchise or doing business in this state in a corporate or organized capacity, a tax, computed under section fourteen hundred fifty-five of this article, is hereby annually imposed on every banking corporation for each of its taxable years, or any part thereof, beginning on or after January first, nineteen hundred seventy-three.

(b) In the case of a taxpayer whose taxable year is other than a calendar year, there is hereby imposed a tax for the privilege of exercising its franchise or doing business in this state in a corporate or organized capacity for the period beginning January first, nineteen hundred seventy-three and extending through the subsequent part of its first such taxable year ending after such date. Such tax shall be computed under section fourteen hundred fifty-five of this article on the basis of such taxpayer's entire net income, or other applicable basis as the case may be, for such period and shall be paid with a return which shall be separately filed with the tax commission not later than the fifteenth day of the third month succeeding the close of such period. The requirements of sections fourteen hundred sixty and fourteen hundred sixty-one, relating to declarations and payments of estimated tax, except subsection (a) of section fourteen hundred sixty-one, shall not be applicable to the tax imposed by this subsection.

(c)(1) A banking corporation is doing business in this state in a corporate or organized capacity if (i) it has issued credit cards to one thousand or more customers who have a mailing address within this state as of the last day of its taxable year, (ii) it has merchant customer contracts with merchants and the total number of locations covered by those contracts equals one thousand or more locations in this state to whom the banking corporation remitted payments for credit card transactions during the taxable year, (iii) it has receipts of one million dollars or more in the taxable year from its customers who have been issued credit cards by the banking corporation and have a mailing address within this state, (iv) it has receipts of one million dollars or more arising from merchant customer contracts with merchants relating to locations in this state, or (v) the sum of the number of customers described in subparagraph (i) of this paragraph plus the number of locations covered by its contracts described in subparagraph (ii) of this paragraph equals one thousand or more, or the amount of its receipts described in subparagraphs (iii) and (iv) of this paragraph equals one million dollars or more. For purposes of this paragraph, receipts from processing credit card transactions for merchants include merchant discount fees received by the banking corporation.

(2) As used in this subsection, the term "credit card" includes bank, credit, travel and entertainment cards.

§ 1452. Banking corporation defined; exempt corporations. (a) For the purpose of this article, a banking corporation means:

(1) Every corporation or association organized under the laws of this state which is authorized to do a banking business, or which is doing a banking business;

(2) every corporation or association organized under the laws of any other state or country which is doing a banking business;

(3) every national banking association organized under the authority of the United States which is doing a banking business;

(4) every federal savings bank which is doing a banking business;

(5) every federal savings and loan association which is doing a banking business;

(6) a production credit association organized under the federal farm credit act of nineteen hundred thirty-three, which is doing a banking business and all of whose stock held by the federal production credit corporation has been retired;

(7) every other corporation or association organized under the authority of the United States which is doing a banking business;

(8) the mortgage facilities corporation created by chapter five hundred sixty-four of the laws of nineteen hundred fifty-six;

(9) any corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by a corporation or corporations subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended, or by a corporation or corporations described in any of the foregoing paragraphs of this subsection, provided the corporation whose voting stock is so owned or controlled is principally engaged in a business, regardless of where conducted, which (i) might be lawfully conducted by a corporation subject to article three of the banking law or by a national banking association, or (ii) is so closely related to banking or managing or controlling banks as to be a proper incident thereto, as set forth in paragraph eight of subsection (c) or subparagraph (F) of paragraph four of subsection (k) of section four of the federal bank holding company act of nineteen hundred fifty-six, as amended, or (iii) holds and manages investment assets, including but not limited to bonds, notes, debentures and other obligations for the payment of money, stocks, partnership interests or other equity interests, and other investment securities and which is not a business described in subparagraph (i) or (ii) of this paragraph; and provided, further, that in no event shall a corporation principally engaged in a business described in section one hundred eighty-three or one hundred eighty-four, or section one hundred eighty-six as it was in effect on December thirty-first, nineteen hundred ninety-nine, of this chapter be subject to the tax imposed under this article if any of its business receipts from such principally engaged in business are from other than a corporation (A) which owns or controls, directly or indirectly, sixty-five percent or more of its voting stock, or (B) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by the corporation engaged in such business, or (C) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by the same interest.

(b) Banking business defined. The words "banking business" as used in this section mean such business as a corporation or association may be created to do under article three, three-B, five, five-A, five-C, six or ten of the banking law or any business which a corporation or association is authorized by such article to do. However, with respect to a national banking association organized under the authority of the United States, a federal savings bank, a federal savings and loan association or a production credit association, the words "banking business" as used in this section mean such business as a national banking association, federal savings bank, federal savings and loan association or production credit association, respectively, may be created to do or is authorized to do under the laws of the United States or this state. The words "banking business" as used in this section shall also mean such business as any corporation or association organized under the authority of the United States or organized under the laws of any other state or country has authority to do which is substantially similar to the business which a corporation or association may be created to do under article three, three-B, five, five-A, five-C, six or ten of the banking law or any business which a corporation or association is authorized by such article to do.

(c) Exempt corporations. A trust company all of whose capital stock is owned by twenty or more savings banks organized under New York law shall be exempt from the tax under this article.

(d) Corporations taxable under article nine-A. Notwithstanding the provisions of this article, all corporations of classes now or heretofore taxable under article nine-A of this chapter shall continue to be taxable under such article nine-A, except: (1) corporations organized under article five-A of the banking law; (2) corporations subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended, which make a combined return under the provisions of subsection (f) of section fourteen hundred sixty-two of this article; (3) banking corporations described in paragraph nine of subsection (a) of this section; (4) any captive REIT or captive RIC that is required to be included in a combined return under the provisions of subsection (f) of section fourteen hundred sixty-two of this article; and (5) any overcapitalized captive insurance company required to be included in a combined return under subsection (f) of section fourteen hundred sixty-two of this article. Provided, however, that a corporation described in paragraph three of this subsection which was subject to the tax imposed by article nine-A of this chapter for its taxable year ending during nineteen hundred eighty-four may, on or before the due date for filing its return (determined with regard to extensions) for its taxable year ending during nineteen hundred eighty-five, make a one time election to continue to be taxable under such article nine-A. Such election shall continue to be in effect until revoked by the taxpayer. In no event shall such election or revocation be for a part of a taxable year.

(e) Corporations taxable under article thirty-three. Except for corporations described in subsection (l) of section fourteen hundred fifty-three of this article, corporations liable to tax under article thirty-three of this chapter shall not be subject to tax under this article.

(f) For exemption from tax of a qualified subchapter S subsidiary, see subsection (o) of section fourteen hundred fifty-three of this article.

(g) A banking corporation organized under the laws of a country, or any political subdivision thereof, other than the United States shall not be deemed to be doing business in this state under this article if its activities in this state are limited solely to (1) investing or trading in stocks and securities for its own account within the meaning of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or (2) investing or trading in commodities for its own account within the meaning of clause (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section eight hundred sixty-four of the internal revenue code or

(3) any combination of activities described in paragraphs one and two of this subsection.

(h) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand and was subject to tax under such article nine-A of this chapter for its last taxable year beginning before January first, two thousand, shall continue to be taxable under such article nine-A for all taxable years beginning on or after January first, two thousand and before January first, two thousand one. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation that was in existence before January first, two thousand and was subject to tax under this article for its last taxable year beginning before January first, two thousand, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand and before January first, two thousand one. Provided, however, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand and before January first, two thousand one, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand and before January first, two thousand one, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand and before January first, two thousand one may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand and before January first, two thousand one in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding

company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand and before January first, two thousand one, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subsection (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this article, the term "banking corporation" shall include a corporation electing to be taxed under this article pursuant to paragraph two of this subsection for so long as such election shall be in effect.

(i) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand one and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand one, shall continue to be taxable under article nine-A for all taxable years beginning on or after January first, two thousand one and before January first, two thousand three. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation that was in existence before January first, two thousand one and was subject to tax under this article for its last taxable year beginning before January first, two thousand one, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand one and before January first, two thousand three. Provided, however, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand one but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand one and before January first, two thousand three, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand one if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand one but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand one and before January first, two thousand three, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand one if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand one and before January first, two thousand three may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand one and before January first, two thousand three in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary.

An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization. An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand one and before January first, two thousand three, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subsection (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this article, the term "banking corporation" shall include a corporation electing to be taxed under this article pursuant to paragraph two of this subsection for so long as such election shall be in effect.

(j) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand three and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand three, shall continue to be taxable under such article nine-A for all taxable years beginning on or after January first, two thousand three and before January first, two thousand four. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation that was in existence before January first, two thousand three and was subject to tax under this article for its last taxable year beginning before January first, two thousand three, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand three and before January first, two thousand four. Provided, however, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand three but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand three and before January first, two thousand four, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand three if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand three but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand three and before January first, two thousand four, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand three if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand three and before January first, two thousand four may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand three and before January first, two thousand four in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary.

An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization. An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand three and before January first, two thousand four, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subsection (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this article, the term "banking corporation" shall

include a corporation electing to be taxed under this article pursuant to paragraph two of this subsection for so long as such election shall be in effect.

(k) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand four and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand four, shall continue to be taxable under such article nine-A for all taxable years beginning on or after January first, two thousand four and before January first, two thousand six. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation that was in existence before January first, two thousand four and was subject to tax under this article for its last taxable year beginning before January first, two thousand four, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand four and before January first, two thousand six. Provided, however, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand four but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand four and before January first, two thousand six, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand four, if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand four, but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand four and before January first, two thousand six, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand four if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand four and before January first, two thousand six may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on

or after January first, two thousand four and before January first, two thousand six in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary.

An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section three hundred sixty-eight of the internal revenue code of nineteen eighty-six, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization. An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand four and before January first, two thousand six, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subsection (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section forty-six of the federal deposit insurance act. For purposes of this article, the term "banking corporation" shall include a corporation electing to be taxed under this article pursuant to paragraph two of this subsection for so long as such election shall be in effect.

(l) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand six and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand six, shall continue to be taxable under article nine-A for all taxable years beginning on or after January first, two thousand six and before January first, two thousand eight. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation that was in existence before January first, two thousand six and was subject to tax under this article for its last taxable year beginning before January first, two thousand six, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand six and before January first, two thousand eight. Provided, however, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand six but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand six if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand six but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand six if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand six and before January first, two thousand eight may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand six and before January first, two thousand eight in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand six and before January first, two thousand eight, provided that the stock ownership requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subsection (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this article, the term "banking corporation" shall include a corporation electing to be taxed under this article pursuant to paragraph two of this subsection for so long as such election shall be in effect.

(m) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand twelve and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand twelve, shall continue to be taxable under such article for all taxable years beginning on or after January first, two thousand twelve and before January first, two thousand seventeen. The preceding sentence shall not apply to any taxable year during which such corporation is a banking corporation described in paragraphs one through eight of subsection (a) of this section. Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a banking corporation or corporation that was in existence before January first, two thousand twelve and was subject to tax under this article for its last taxable year beginning before January first, two thousand twelve, shall continue to be taxable under this article for all taxable years beginning on or after January first, two thousand twelve and before January first, two thousand seventeen only if the corporation is a banking corporation as defined in subsection (a) of this section or the corporation satisfies the requirements for a corporation to elect to be taxable under this article. Provided further, that nothing in this subsection shall prohibit a corporation that elected pursuant to subsection (d) of this section to be taxable under article nine-A of this chapter from revoking that election in accordance with such subsection (d).

For purposes of this paragraph, a corporation shall be considered to be subject to tax under article nine-A of this chapter for a taxable year if such corporation was not a taxpayer but was properly included in a combined report filed pursuant to section two hundred eleven of this chapter for such taxable year and a corporation shall be considered to be subject to tax under this article for a taxable year if such corporation was not a taxpayer but was properly included in a combined return filed pursuant to subsection (f) or (g) of section fourteen hundred sixty-two of this article for such taxable year. A corporation that was in existence before January first, two thousand twelve but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand twelve and before January first, two thousand seventeen, shall be considered for purposes of this paragraph to have been subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand twelve if such corporation would have been subject to tax under such article for such taxable year if it had been a taxpayer during such taxable year. A corporation that was in existence before January first, two thousand twelve but first becomes a taxpayer in a taxable year beginning on or after January first, two thousand twelve and before January first, two thousand seventeen, shall be considered for purposes of this paragraph to have been subject to tax under this article for its last taxable year beginning before January first, two thousand twelve if such corporation would have been subject to tax under this article for such taxable year if it had been a taxpayer during such taxable year.

(2) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation formed on or after January first, two thousand twelve and before January first, two thousand seventeen may elect to be subject to tax under this article or under article nine-A of this chapter for its first taxable year beginning on or after January first, two thousand twelve and before January first, two thousand seventeen in which either (i) sixty-five percent or more of its voting stock is owned or controlled, directly or indirectly by a financial holding company, provided the corporation whose voting stock is so owned or controlled is principally engaged in activities that are described in section 4(k)(4) or 4(k)(5) of the federal bank holding company act of nineteen hundred fifty-six, as amended and the regulations promulgated pursuant to the authority of such section, or (ii) it is a financial subsidiary. An election under this paragraph may not be made by a corporation described in paragraphs one through eight of subsection (a) of this section or in subsection (e) of this section. In addition, an election under this paragraph may not be made by a corporation that is a party to a reorganization, as defined in subsection (a) of section 368 of the internal revenue code of 1986, as amended, of a corporation described in paragraph one of this subsection if both corporations were sixty-five percent or more owned or controlled, directly or indirectly, by the same interests at the time of the reorganization.

An election under this paragraph must be made by the taxpayer on or before the due date for filing its return (determined with regard to extensions of time for filing) for the applicable taxable year. The election to be taxed under article nine-A of this chapter shall be made by the taxpayer by filing the report required pursuant to section two hundred eleven of this chapter and the election to be taxed under this article shall be made by the taxpayer by filing the return required pursuant to section fourteen hundred sixty-two of this article. Any election made pursuant to this paragraph shall be irrevocable and shall apply to each subsequent taxable year beginning on or after January first, two thousand twelve and before January first, two thousand seventeen, provided that the stock ownership and activities requirements described in subparagraph (i) of this paragraph are met or such corporation described in subparagraph (ii) of this paragraph continues as a financial subsidiary.

(3) For purposes of this section, a financial subsidiary means a corporation (i) sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly by a banking corporation described in paragraph one, two or three of subsection (a) of this section and (ii) is described in section 5136A(g) of the revised statutes of the United States or section 46 of the federal deposit insurance act. For purposes of this article, the term "banking corporation" shall include a corporation electing to be taxed under this article pursuant to paragraph two of this subsection for so long as such election shall be in effect.

(4) The provisions of this subsection shall not apply to a captive REIT, a captive RIC or an overcapitalized captive insurance company.

(n)(1) Notwithstanding anything in this article to the contrary, if any of the conditions described in paragraph three of this subsection apply to a corporation that has made either the election to be taxable under article nine-A of this chapter pursuant to the Gramm-Leach-Bliley transitional provisions in this section, or the election pursuant to subsection (d) of this section to continue to be taxable under article nine-A of this chapter (hereinafter the "electing corporation"), then such corporation shall be deemed to have revoked the election as of the first day of the taxable year in which such condition applied.

(2) Notwithstanding anything in this article to the contrary, if any of the conditions described in paragraph three of this subsection apply to a corporation required to be taxable under article nine-A of this chapter pursuant to the Gramm-Leach-Bliley transitional provisions in this section (hereinafter the "grandfathered corporation"), such corporation, if it is otherwise described in subsection (a) of this section, shall be taxable under this article as of the first day of the taxable year in which such condition applied.

(3) The provisions of paragraph one and paragraph two of this subsection shall apply if any of the following conditions exist or occur with respect to the electing corporation or the grandfathered corporation in a taxable year (including any short taxable year) beginning on or after January first, two thousand seven:

(A) the corporation ceases to be a taxpayer under article nine-A of this chapter;

(B) the corporation becomes subject to the fixed dollar minimum tax under paragraph (d) of subdivision one of section two hundred ten of this chapter;

(C) the corporation has no wages or receipts allocable to New York state pursuant to subdivision three of section two hundred ten of this chapter, or is otherwise inactive; provided that this subparagraph shall not apply to a corporation which is engaged in the active conduct of a trade or business, or substantially all of the assets of which are stock and securities of corporations which are directly or indirectly controlled by it and are engaged in the active conduct of a trade or business;

(D) sixty-five percent or more of the voting stock of the corporation becomes owned or controlled directly by a corporation that acquired the stock in a transaction (or series of related transactions) that qualifies as a purchase within the meaning of paragraph three of subsection (h) of section three hundred thirty-eight of the internal revenue code unless the corporation whose stock was acquired and the corporation acquiring the stock were, immediately prior to such purchase, members of the same affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section); provided that any acquisition that was completed on or before January third, two thousand seven shall be treated for purposes of this subparagraph as an acquisition made before January first, two thousand seven; or

(E) the corporation, in a transaction or series of related transactions, acquires assets, whether by contribution, purchase, or otherwise, having an average value (determined in accordance with subdivision two of section two hundred ten of this chapter), or, if greater, a total tax basis, in excess of forty percent of the average value, or, if greater, the total tax basis, of all the assets of the corporation immediately prior to such acquisition and as a result of such acquisition the corporation is principally engaged in a business that is different from the business immediately prior to such acquisition, provided that such different business is described in subparagraph (i), (ii) or (iii) of paragraph nine of subsection (a) of this section.

§ 1453. Computations of entire net income. (a) Entire net income means total net income from all sources which shall be the same as the entire taxable income (but not alternative minimum taxable income).

(1) which the taxpayer is required to report to the United States treasury department, or

(2) which the taxpayer, in the case of a corporation which is exempt from federal income tax (other than the tax on unrelated business taxable income imposed under section 511 of the internal revenue code) but is subject to tax under this article, would have been required to report to the United States treasury department but for such exemption, or

(3) which, in the case of a corporation organized under the laws of a country other than the United States, is effectively connected with the conduct of a trade or business within the United States as determined under section 882 of the internal revenue code subject to the modifications and adjustments hereinafter provided, or

(4) which the taxpayer would have been required to report to the United States treasury department if it had not made the election under subchapter s of chapter one of the internal revenue code.

(b) Entire net income shall be computed without the deduction or exclusion of:

(1) (A) in the case of a corporation organized under the laws of a country other than the United States, (i) any part of any income from dividends or interest on any kind of stock, securities or indebtedness, but only if such income is treated as effectively connected with the conduct of a trade or business in the United States pursuant to section eight hundred sixty-four of the internal revenue code, (ii) any income exempt from federal taxable income under any treaty obligation of the United States, but only if such income would be treated as effectively connected in absence of such exemption, provided that such treaty obligation does not preclude the taxation of such income by a state, or (iii) any income which would be treated as effectively connected if such income were not excluded from gross income pursuant to subsection (a) of section one hundred three of the internal revenue code; (B) in the case of any other corporation, any part of any income from dividends or interest on any kind of stock, securities or indebtedness; (C) except that for purposes of subparagraphs (A) and (B) of this paragraph there shall be excluded any amounts treated as dividends pursuant to section seventy-eight of the internal revenue code and any amounts described in paragraphs eleven and twelve of subsection (e) of this section;

(2) taxes on or measured by income or profits paid or accrued within the taxable year to the United States, or any of its possessions or to any foreign country;

(3) premiums paid for environmental remediation insurance, as defined in section twenty-three of this chapter, and deducted in determining federal taxable income, to the extent of the amount of the environmental remediation insurance credit allowed under such section twenty-three and subsection (s) of section fourteen hundred fifty-six of this article;

(4) taxes imposed under this article, sections one hundred eighty-three and one hundred eighty-four and article nine-A of this chapter;

(5) in those instances where a credit for the special additional mortgage recording tax is allowed under paragraph one of subsection (c) of section fourteen hundred fifty-six of this article, the amount allowed as an exclusion or deduction for the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter in determining the entire taxable income which the taxpayer is required to report to the United States treasury department for such taxable year; and

(6) Unless the credit allowed pursuant to subsection (c) of section fourteen hundred fifty-six of this article is reflected in the computation of the gain or loss so as to result in an increase in such gain or decrease of such loss, for federal income tax purposes, from the sale or other disposition of the property with respect to which the special additional mortgage recording tax imposed pursuant to subdivision one-a of section two hundred fifty-three of this chapter was paid, the amount of the special additional mortgage recording tax imposed by subdivision one-a of section two hundred fifty-three of this chapter which was paid and which is reflected in the computation of the basis of the property so as to result in a decrease in such gain or increase in such loss for federal income tax purposes from the sale or other disposition of the property with respect to which such tax was paid.

(7) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer claimed as a deduction in computing its federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(8) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer would have been required to include in the computation of its federal taxable income had it not made the election permitted pursuant to such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four;

(9) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning

after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code;

(10) upon the disposition of property to which paragraph seven of subsection (e) of this section applies, the amount, if any, by which the aggregate of the amounts described in such paragraph seven attributable to such property exceeds the aggregate of the amounts described in paragraph nine of this subsection attributable to such property,

(11) for taxable years beginning before January first, two thousand ten, in the case of a taxpayer subject to the provisions of section 585(c) of the internal revenue code, the amount allowed as a deduction pursuant to section 166 of such code, and

(12) for taxable years beginning before January first, two thousand ten, for taxpayers subject to the provisions of subsection (i) of this section, twenty percent of the excess of (A) the amount determined pursuant to such subsection (i) over (B) the amount which would have been allowable had such institution maintained its bad debt reserve for all taxable years on the basis of actual experience.

(13) for taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in subsection (u) of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, the amount allowable as a deduction under section 167 of the internal revenue code.

(14) The amount of any deduction allowed pursuant to section one hundred ninety-nine of the internal revenue code.

(15) The amount of any federal deduction for taxes imposed under article twenty-three of this chapter.

(c) (1) Except as otherwise provided in paragraphs two, three and four of this subsection, in the case of the sale or exchange of property by a taxpayer which has been subject to article nine-B or nine-C of this chapter (as such articles were in effect on or before December thirty-first, nineteen hundred seventy-two) where the property has a higher adjusted basis for New York tax purposes than for federal tax purposes, there shall be allowed as a deduction from entire net income, the portion of any gain or loss on such sale which equals the difference in such basis.

(2) In case of property of a taxpayer, other than a savings bank or a savings and loan association, acquired prior to January first, nineteen hundred twenty-six, and disposed of thereafter, the computation of entire net income shall be modified as follows:

(i) no gain shall be deemed to have been derived if either the cost or the fair market price or value on January first, nineteen hundred twenty-six, exceeds the value realized;

(ii) no loss shall be deemed to have been sustained if either the cost or the fair market price or value on January first, nineteen hundred twenty-six, is less than the value realized;

(iii) where both the cost and the fair market price or value on January first, nineteen hundred twenty-six, are less than the value realized, the basis for computing gain shall be the cost or the fair market price or value on such date, whichever is higher;

(iv) where both the cost and the fair market price or value on January first, nineteen hundred twenty-six, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on such date, whichever is lower.

(3) In case of property of a savings bank acquired prior to January first, nineteen hundred forty-four, and disposed of thereafter, in computing entire net income the basis of such property shall be the value as of December thirty-first, nineteen hundred forty-three, as set forth in such bank's report of surplus and undivided earnings filed with the tax commission as of that date.

(4) In case of property of a savings and loan association, acquired prior to January first, nineteen hundred fifty-three, and disposed of thereafter, the computation of entire net income shall be modified as follows:

(i) no gain shall be deemed to have been derived if either the cost or the fair market price or value on January first, nineteen hundred fifty-three, exceeds the value realized;

(ii) no loss shall be deemed to have been sustained if either the cost or the fair market price or value on January first, nineteen hundred fifty-three, is less than the value realized;

(iii) where both the cost and the fair market price or value on January first, nineteen hundred fifty-three, are less than the value realized, the basis for computing gain shall be the cost or the fair market price or value on such date, whichever is higher;

(iv) where both the cost and the fair market price or value on January first, nineteen hundred fifty-three, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on such date, whichever is lower.

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

(e) There shall be allowed as a deduction in determining entire net income, to the extent not deductible in determining federal taxable income:

(1) interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is subject to tax under this article but exempt from federal income tax,

(2) ordinary and necessary expenses paid or incurred during the taxable year attributable to income which is subject to tax under this article but exempt from federal income tax,

(3) the amortizable bond premium for the taxable year on any bond the interest on which is subject to tax under this article but exempt from federal income tax,

(4) that portion of wages or salaries paid or incurred for the taxable year for which a deduction is not allowed pursuant to the provisions of section two hundred eighty-C of the internal revenue code,

(5) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which is included in the taxpayer's federal taxable income solely as a result of an election made pursuant to the provisions of such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

(6) for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property which is a qualified mass commuting vehicle described in subparagraph (D) of paragraph eight of subsection (f) of section one hundred sixty-eight of the internal revenue code (relating to qualified mass commuting vehicles), any amount which the taxpayer could have excluded from federal taxable income had it not made the election provided for in such paragraph eight as it was in effect for agreements entered into prior to January first, nineteen hundred eighty-four,

(7) in the case of property placed in service in taxable years beginning before nineteen hundred ninety-four, for taxable years beginning after December thirty-first, nineteen hundred eighty-one, except with respect to property subject to the provisions of section two hundred eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, and provided a deduction has not been excluded from entire net income pursuant to paragraph seven of subsection (b) of this section, an amount with respect to property which is subject to the provisions of section one hundred sixty-eight of the internal revenue code equal to the amount allowable as the depreciation deduction under section one hundred sixty-seven of the internal revenue code as such section would have applied to property placed in service on December thirty-first, nineteen hundred eighty,

(8) upon the disposition of property to which paragraph seven of this subsection applies, the amount, if any, by which the aggregate of the amounts described in paragraph nine of subsection (b) of this section attributable to such property exceeds the aggregate of the amounts described in paragraph seven of this subsection attributable to such property,

(9) any amount of money or other property received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, regardless of whether any note or other instrument is issued in exchange therefor,

(10) any amount of money or other property received from the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended, regardless of whether any note or other instrument is issued in exchange therefor,

(11) (i) seventeen percent of interest income from subsidiary capital, and

(ii) sixty percent of dividend income from subsidiary capital except as provided in paragraph eighteen of this subsection, and

(iii) sixty percent of the amount by which gains from subsidiary capital exceed losses from subsidiary capital, to the extent such gains and losses were taken into account in determining the entire taxable income referred to in subsection (a) of this section,

(12) twenty-two and one-half percent of interest income on obligations of New York state, or of any political subdivision thereof, or of the United States, other than obligations held for resale in connection with regular trading activities,

(13) for taxable years beginning before January first, two thousand ten, in the case of a taxpayer which recaptures its balance of the reserve for losses on loans for federal income tax purposes pursuant to section 585(c) of the internal revenue code, any amount which is

included in federal taxable income pursuant to section 585(c) of such code,

(14) for taxable years beginning before January first, two thousand ten, in the case of a taxpayer subject to the provisions of section 585(c) of the internal revenue code, any amount which is included in federal taxable income as a result of a recovery of a loan.

(15) for taxable years beginning before January first, two thousand ten, in the case of a taxpayer which is currently or has previously been subject to subsection (h) of this section, any amount which is included in federal taxable income pursuant to section 593(e)(2) of the internal revenue code, and any other amount so included as a result of a recovery of or termination from the use of a bad debt reserve as defined in section 593 of such code as in existence on December thirty-first, nineteen hundred ninety-five as a result of federal legislation enacted after December thirty-first, nineteen hundred ninety-five.

(16) the amount deductible pursuant to subsection (p) of this section.

(17) one hundred percent of dividend income from subsidiary capital received during the taxable year if that dividend income is directly attributable to a dividend from a captive REIT or captive RIC for which the captive REIT or captive RIC claimed a federal dividends paid deduction and that captive REIT or captive RIC is included in a combined report or return under article nine-A, this article or article thirty-three of this chapter.

(f) Provided the taxpayer has not made an election pursuant to paragraph two of subsection (b) of section fourteen hundred fifty-four of this article, there shall be allowed as a deduction in determining entire net income, to the extent not deductible in determining federal taxable income, the adjusted eligible net income of an international banking facility determined as follows:

(1) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses.

(2) Eligible gross income shall be the gross income derived by an international banking facility from:

(A) making, arranging for, placing or servicing loans to foreign persons, provided, however, that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is eighty per centum or more owned or controlled, either directly or indirectly, by one or more domestic corporations (other than banks), domestic partnerships or resident individuals, substantially all the proceeds of the loan are for use outside of the United States;

(B) making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or

(C) entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.

(3) Applicable expenses shall be any expenses or other deductions attributable, directly or indirectly, to the eligible gross income described in paragraph two of this subsection.

(4) Adjusted eligible net income shall be determined by subtracting from eligible net income the ineligible funding amount, and by subtracting from the amount then remaining the floor amount.

(5) The ineligible funding amount shall be the amount, if any, determined by multiplying eligible net income by a fraction, the numerator of

which is the average aggregate amount for the taxable year of all liabilities, including deposits, and other sources of funds of the international banking facility which were not owed to or received from foreign persons, and the denominator of which is the average aggregate amount for the taxable year of all liabilities, including deposits and other sources of funds of the international banking facility.

(6) The floor amount shall be the amount, if any, determined by multiplying the amount remaining after subtracting the ineligible funding amount from the eligible net income by a fraction, not greater than one, which is determined as follows:

(A) The numerator shall be

(i) the percentage, as set forth in subparagraph (C) of this paragraph, of the average aggregate amount of the taxpayer's loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer), which loans and deposits were recorded in the financial accounts of the taxpayer for its branches, agencies and offices within the state for taxable years nineteen hundred seventy-five, nineteen hundred seventy-six and nineteen hundred seventy-seven, minus

(ii) the average aggregate amount of such loans and such deposits for the taxable year of the taxpayer (other than such loans and deposits of an international banking facility), provided, however, that in no case shall the amount determined in this clause exceed the amount determined in clause (i) of this subparagraph; and

(B) The denominator shall be the average aggregate amount of the loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer), which loans and deposits were recorded in the financial accounts of the taxpayer's international banking facility for the taxable year.

(C) The percentage shall be one hundred percent for the first taxable year in which the taxpayer establishes an international banking facility and for the next succeeding four taxable years. The percentage shall be eighty percent for the fifth, sixty percent for the sixth, forty percent for the seventh, and twenty percent for the eighth taxable year next succeeding the year such taxpayer establishes such international banking facility, and zero in the ninth succeeding year and thereafter.

(7) In the event adjusted eligible net income is a loss, the amount of such loss shall be added to entire net income.

(8) For the purposes of this subsection the term "foreign person" means

(A) an individual who is not a resident of the United States,

(B) a foreign corporation, a foreign partnership or a foreign trust, as defined in section seventy-seven hundred one of the internal revenue code, other than a domestic branch thereof,

(C) a foreign branch of a domestic corporation (including the taxpayer),

(D) a foreign government or an international organization or an agency of either, or

(E) an international banking facility.

For purposes of this paragraph, the terms "foreign" and "domestic" shall have the same meaning as set forth in section seventy-seven hundred one of the internal revenue code.

(g) Entire net income shall be computed without regard to the reduction in the basis of property that is required by section three hundred sixty-two of the internal revenue code, because of any amount of money or other property received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, or from the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended.

(h) (1) For purposes of this subsection, a "thrift institution" is a banking corporation which satisfies the requirements of subparagraphs (A) and (B) of this paragraph.

(A) Such banking corporation must be (i) a banking corporation as defined in paragraph one of subsection (a) of section fourteen hundred fifty-two of this article created or authorized to do business under article six or ten of the banking law, (ii) a banking corporation as defined in paragraph two or seven of subsection (a) of section fourteen hundred fifty-two of this article which is doing a business substantially similar to the business which a corporation or association may be created to do under article six or ten of the banking law or any business which a corporation or association is authorized by such article to do, or (iii) a banking corporation as defined in paragraph four or five of subsection (a) of section fourteen hundred fifty-two of this article.

(B) At least sixty percent of the amount of the total assets (at the close of the taxable year) of such banking corporation must consist of (i) cash; (ii) obligations of the United States or of a state or political subdivision thereof, and stock or obligations of a corporation which is an instrumentality of the United States or of a state or political subdivision thereof, but not including obligations the interest on which is excludable from gross income under section 103 of the internal revenue code; (iii) loans secured by a deposit or share of a member; (iv) loans secured by an interest in real property which is (or from the proceeds of the loan, will become) residential real property or real property used primarily for church purposes, loans made for the improvement of residential real property or real property used primarily for church purposes, provided that for purposes of this clause, residential real property shall include single or multifamily dwellings, facilities in residential developments dedicated to public use or property used on a nonprofit basis for residents, and mobile homes not used on a transient basis; (v) property acquired through the liquidation of defaulted loans described in clause (iv) of this subparagraph; (vi) any regular or residual interest in a REMIC, as such term is defined in section 860D of the internal revenue code and any regular interest in a FASIT, as such term is defined in section 860L of the internal revenue code, but only in the proportion which the assets of such REMIC or FASIT consist of property described in any of the preceding clauses of this subparagraph, except that if ninety-five percent or more of the assets of such REMIC or FASIT are assets described in clauses (i) through (v) of this subparagraph, the entire interest in the REMIC or FASIT shall qualify; (vii) any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in clause (iv) of this subparagraph and any collateralized mortgage obligation, the security for which consists primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in clause (iv) of this subparagraph; (viii) certificates of deposit in, or obligations of, a corporation organized under a state law which specifically authorizes such corporation to insure the deposits or share accounts of member associations; (ix) loans secured by an interest in real property located within any urban renewal area to be developed for predominantly residential use under an urban renewal plan approved by the Secretary of Housing and Urban Development under part A or part B of title I of the Housing Act of 1949, as amended, or located within any area covered by a program eligible for assistance under section 103 of the Demonstration Cities and Metropolitan Development Act of 1966, as amended, and loans made for the improvement of any such real property; (x) loans secured by an interest in educational, health, or welfare institutions or facilities, including structures designed or used primarily for residential purposes for students, residents, and persons under care, employees, or members of the staff of such institutions or facilities; (xi) loans made for the payment of expenses of college or university education or vocational training; (xii) property used by the taxpayer in the conduct of business which consists principally of acquiring the savings of the public and investing in loans; (xiii) loans for which the taxpayer is the creditor and which are wholly secured by loans described in clause (iv) of this subparagraph, but excluding loans for which the taxpayer is the creditor to any banking corporation described in paragraphs one through seven of subsection (a) of section fourteen hundred fifty-two of this article or a real estate investment trust, as such term is defined in section 856 of the internal revenue code, and excluding loans which are treated by the taxpayer as subsidiary capital for purposes of the deductions provided by paragraph eleven of subsection (e) of this section; (xiv) small business loans or small farm loans located in low-income or moderate-income census tracts or block numbering areas delineated by the United States bureau of the census in the most recent decennial census; and (xv) community development loans or community development investments. For purposes of clause (xv) of this subparagraph, a "community development loan" is a loan that (I) has as its primary purpose community development, (II) has not been reported or collected by the taxpayer for consideration in the taxpayer's community reinvestment act evaluation pursuant to the federal community reinvestment act of 1977, as amended, or section twenty-eight-b of the banking law as a mortgage loan described in clause (iv) of this subparagraph or a small business loan, small farm loan, or consumer loan, (III) benefits the taxpayer's assessment area or areas for purposes of the federal community reinvestment act of 1977, as amended or section twenty-eight-b of the banking law or a broader statewide or regional area that includes the taxpayer's assessment area, and (IV) is identified in the taxpayer's books and records as a community development loan for purposes of its community reinvestment act evaluation pursuant to the federal community reinvestment act of 1977, as amended or section twenty-eight-b of the banking law. For purposes of clause (xv) of this subparagraph, a "community development investment" is an investment in a security which has as its primary purpose community development and which is identified in the taxpayer's books and records as a qualified investment for purposes of its community reinvestment act evaluation pursuant to the federal community reinvestment act of 1977, as amended or section twenty-eight-b of the banking law. For purposes of the two preceding sentences, "community development" means (I) affordable housing (including multifamily rental housing for low-income or moderate-income individuals); (II) community services targeted to low-income or moderate-income individuals; (III) activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the small business administration's development company or small business investment company programs or have gross annual revenues of one million dollars or less; (IV) activities that revitalize or stabilize low-income or moderate-income census tracts or block numbering areas delineated by the United States bureau of the census in the most recent decennial census; or (V) activities that seek to prevent defaults and/or foreclosures in loans included in items (I) and (III) of this sentence.

(C) At the election of the taxpayer, the percentage specified in subparagraph (B) of this paragraph shall be applied on the basis of the average assets outstanding during the taxable year, in lieu of the close of the taxable year. For purposes of clause (iv) of subparagraph (B) of this paragraph, if a multifamily structure securing a loan is used in part for nonresidential use purposes, the entire loan is deemed a residential real property loan if the planned residential use exceeds eighty percent of the property's planned use (determined as of the time the loan is made). Also, for purposes of clause (iv) of subparagraph (B) of this paragraph, loans made to finance the acquisition or development of land shall be deemed to be loans secured by an interest in residential real property if there is a reasonable assurance that the property will become residential real property within a period of three years from the date of acquisition of such land; but this sentence shall not apply for any taxable year unless, within such three year period, such land becomes residential real property. For purposes of determining whether any interest in a REMIC qualifies under clause (vi) of subparagraph (B) of this paragraph, any regular interest in another REMIC held by such REMIC shall be treated as a loan described in a preceding clause under principles similar to the principle of such clause (vi); except that if such REMICS are part of a tiered structure, they shall be treated as one REMIC for purposes of such clause (vi).

(2) For taxable years beginning before January first, two thousand ten, a thrift institution must exclude from the computation of its entire net income any amount allowed as a deduction for federal income tax purposes pursuant to sections 166, 585 or 593 of the internal revenue code.

(3) For taxable years beginning before January first, two thousand ten, a thrift institution shall be allowed as a deduction in computing entire net income the amount of a reasonable addition to its reserve for bad debts. This amount shall be equal to the sum of

(A) the amount determined to be a reasonable addition to the reserve for losses on nonqualifying loans, computed in the same manner as is provided with respect to additions to the reserves for losses on loans of banks under paragraph one of subsection (i) of this section, plus

(B) the amount determined by the taxpayer to be a reasonable addition to the reserve for losses on qualifying real property loans, but such amount shall not exceed the amount determined under paragraph four or five of this subsection, whichever is the larger, but the amount determined under this subparagraph shall in no case be greater than the larger of

(i) the amount determined under such paragraph five, or

(ii) the amount which, when added to the amount determined under subparagraph (A) of this paragraph, equals the amount by which twelve percent of the total deposits or withdrawable accounts of depositors of the taxpayer at the close of such year exceeds the sum of its surplus, undivided profits and reserves at the beginning of such year (taking into account any portion thereof attributable to the period before the first taxable year beginning after December thirty-first, nineteen hundred fifty-one).

The taxpayer must include in its tax return for each year a computation of the amount of the addition to the bad debt reserve determined under this subsection. The use of a particular method in the return for a taxable year is not a binding election by the taxpayer.

(4) (A) Subject to subparagraphs (B) and (C) of this paragraph, the amount determined under this paragraph for the taxable year shall be an amount equal to thirty-two percent of the entire net income for such year.

(B) The amount determined under subparagraph (A) of this paragraph shall be reduced (but not below 0) by the amount determined under subparagraph (A) of paragraph three of this subsection.

(C) The amount determined under this paragraph shall not exceed the amount necessary to increase the balance at the close of the taxable year of the reserve for losses on qualifying real property loans to six percent of such loans outstanding at such time.

(D) For purposes of this paragraph, entire net income shall be computed

(i) by excluding from income any amount included therein by reason of subparagraph (B) of paragraph eight of this subsection,

(ii) without regard to any deduction allowable for any addition to the reserve for bad debts, and

(iii) by excluding from income an amount equal to the net gain for the taxable year arising from the sale or exchange of stock of a corporation or of obligations the interest on which is excludable from gross income under section 103 of the internal revenue code.

(iv) Whenever a thrift institution is properly includable in a combined return, entire net income, for purposes of this paragraph, shall not exceed the lesser of the thrift institution's separately computed entire net income as adjusted pursuant to clauses (i) through (iii) of this subparagraph or the combined group's entire net income as adjusted pursuant to clauses (i) through (iii) of this subparagraph.

(5) The amount determined under this paragraph for the taxable year shall be computed in the same manner as is provided under paragraph one of subsection (i) of this section with respect to additions to reserves for losses on loans of banks. Provided, however, that for any taxable year beginning after nineteen hundred ninety-five, for purposes of such computation, the base year shall be the later of (A) the last taxable year beginning in nineteen hundred ninety-five or (B) the last taxable year before the current year in which the amount determined under the provisions of subparagraph (B) of paragraph three of this subsection exceeded the amount allowable under this subparagraph.

(6) (A) (i) Each taxpayer described in paragraph one of this subsection shall establish and maintain a New York reserve for losses on qualifying real property loans, a New York reserve for losses on nonqualifying loans and a supplemental reserve for losses on loans. Such reserves shall be maintained for all subsequent taxable years that this subsection applies to the taxpayer. (ii) For purposes of this subsection, such reserves shall be treated as reserves for bad debts, but no deduction shall be allowed for any addition to the supplemental reserve for losses on loans. (iii) Except as noted below, the balances of each such reserve at the beginning of the first day of the first taxable year beginning after December thirty-first, nineteen hundred ninety-five shall be the same as the balances maintained for federal

income tax purposes in accordance with section 593(c)(1) of the internal revenue code as in existence on December thirty-first, nineteen hundred ninety-five for the last day of the last tax year beginning before January first, nineteen hundred ninety-six. A taxpayer which maintained a New York reserve for loan losses on qualifying real property loans in the last tax year beginning before January first, nineteen hundred ninety-six shall have a continuation of such New York reserve balance in lieu of the amount determined under the preceding sentence. (iv) Notwithstanding clause (ii) of this subparagraph, any amount allocated to the reserve for losses on qualifying real property loans pursuant to section 593 (c) (5) of the internal revenue code as in effect immediately prior to the enactment of the Tax Reform Act of 1976 shall not be treated as a reserve for bad debts for any purpose other than determining the amount referred to in subparagraph (B) of paragraph three of this subsection, and for such purpose such amount shall be treated as remaining in such reserve.

(B) Any debt becoming worthless or partially worthless in respect of a qualifying real property loan shall be charged to the reserve for losses on such loans and any debt becoming worthless or partially worthless in respect of a nonqualifying loan shall be charged to the reserve for losses on nonqualifying loans, except that any such debt may, at the election of the taxpayer, be charged in whole or in part to the supplemental reserve for losses on loans.

(C) The New York reserve for losses on qualifying real property loans shall be increased by the amount determined under subparagraph (B) of paragraph three of this subsection and the New York reserve for losses on nonqualifying loans shall be increased by the amount determined under subparagraph (A) of paragraph three of this subsection.

(7) (A) For purposes of this subsection, the term "qualifying real property loan" shall mean any loan secured by an interest in improved real property or secured by an interest in real property which is to be improved out of the proceeds of the loan. Such term shall include any mortgage-backed security which represents ownership of a fractional undivided interest in a trust, the assets of which consist primarily of mortgage loans, provided that the real property which serves as security for the loans is (or from the proceeds of the loan, will become) the type of property described in clauses (i) through (v) of subparagraph (B) of paragraph one of this subdivision. However, such term shall not include: (i) any loan evidenced by a security (as defined in section 165(g) (2) (C) of the internal revenue code); (ii) any loan, whether or not evidenced by a security (as defined in such section 165(g) (2) (C)), the primary obligor of which is (I) a government or political subdivision or instrumentality thereof, (II) a banking corporation, or (III) any corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by the taxpayer or by a banking corporation or bank holding company that owns or controls, directly or indirectly, sixty-five percent or more of the voting stock of the taxpayer; (iii) any loan, to the extent secured by a deposit in or share of the taxpayer; or (iv) any loan which, within a sixty-day period beginning in one taxable year of the creditor and ending in its next taxable year, is made or acquired and then repaid or disposed of, unless the transactions by which such loan was made or acquired and then repaid or disposed of are established to be for bona fide business purposes.

(B) For purposes of this subsection, the term "nonqualifying loan" shall mean any loan which is not a qualifying real property loan.

(C) For purposes of this subsection, the term "loan" shall mean debt, as the term "debt" is used in section 166 of the internal revenue code.

(D) A regular or residual interest in a REMIC, as such term is defined in section 860D of the internal revenue code, shall be treated as a qualifying real property loan, except that, if less than ninety-five percent of the assets of such REMIC are qualifying real property loans (determined as if the taxpayer held the assets of the REMIC), such interest shall be so treated only in the proportion which the assets of such REMIC consist of such loans. For purposes of determining whether any interest in a REMIC qualifies under the preceding sentence, any interest in another REMIC held by such REMIC shall be treated as a qualifying real property loan under principles similar to the principles of the preceding sentence, except that if such REMICS are part of a tiered structure, they shall be treated as one REMIC for purposes of this paragraph.

(8)(A) Any distribution of property (as defined in section 317(a) of the internal revenue code) by a thrift institution to a shareholder with respect to its stock, if such distribution is not allowable as a deduction under section 591 of such code, shall be treated as made

(i) first out of its New York earnings and profits accumulated in taxable years beginning after December thirty-first, nineteen hundred fifty-one, to the extent thereof,

(ii) then out of the New York reserve for losses on qualifying real property loans, to the extent additions to such reserve exceed the additions which would have been allowed under paragraph five of this subsection,

(iii) then out of the supplemental reserve for losses on loans, to the extent thereof,

(iv) then out of such other accounts as may be proper.

This subparagraph shall apply in the case of any distribution in redemption of stock or in partial or complete liquidation of a thrift institution, except that any such distribution shall be treated as made first out of the amount referred to in clause (ii) of this subparagraph, second out of the amount referred to in clause (iii) of this subparagraph, third out of the amount referred to in clause (i) of this subparagraph and then out of such other accounts as may be proper. This subparagraph shall not apply to any transaction to which section 381 of such code (relating to carryovers and certain corporate acquisitions) applies, or to any distribution to the federal savings and loan insurance corporation or the federal deposit insurance corporation in redemption of an interest in an association or institution, if such interest was originally received by the federal savings and loan insurance corporation or the federal deposit insurance corporation in exchange for financial assistance pursuant to section 406(f) of the federal national housing act or pursuant to subsection (c) of section thirteen of the federal deposit insurance act.

(B) If any distribution is treated under subparagraph (A) of this paragraph as having been made out of the reserves described in clauses (ii) and (iii) of such subparagraph, the amount charged against such reserve shall be the amount which, when reduced by the amount of tax imposed under the internal revenue code and attributable to the inclusion of such amount in gross income, is equal to the amount of such distribution; and the amount so charged against such reserve shall be included in the entire net income of the taxpayer.

(C) (i) For purposes of clause (ii) of subparagraph (A) of this paragraph, additions to the New York reserve for losses on qualifying real property loans for the taxable year in which the distribution occurs shall be taken into account.

(ii) For purposes of computing under this subsection the amount of a reasonable addition to the New York reserve for losses on qualifying real property loans for any taxable year, the amount charged during any year to such reserve pursuant to the provisions of subparagraph (B) of this paragraph shall not be taken into account.

(9) A taxpayer which maintains a New York reserve for losses on qualifying real property loans and which ceases to meet the definition of a thrift institution as defined in paragraph one of this subsection, must include in its entire net income for the last taxable year such paragraph applied the excess of its New York reserve for losses on qualifying real property loans over the greater of (A) its reserve for losses on qualifying real property loans as of the last day of the last taxable year such reserve is maintained for federal income tax purposes or (B) the balance of the New York reserve for losses on qualifying real property loans which would be allowable to the taxpayer for the last taxable year such taxpayer met such definition of a thrift institution if the taxpayer had computed its reserve balance pursuant to the method described in subparagraph (A) of paragraph one of subsection (i) of this section.

(i) (1) For taxable years beginning before January first, two thousand ten, a taxpayer subject to the provisions of section 585(c) of the internal revenue code and not subject to subsection (h) of this section may, in computing entire net income, deduct an amount equal to or less than the amount determined pursuant to subparagraph (A) of this paragraph or subparagraph (B) of this paragraph, whichever is greater. Provided, however, in no event shall the deduction be less than the amount determined pursuant to such subparagraph (A).

(A) The amount determined pursuant to this subparagraph shall be the amount necessary to increase the balance of its New York reserve for losses on loans (at the close of the taxable year) to the amount which bears the same ratio to loans outstanding at the close of the taxable year as (i) the total bad debts sustained during the taxable year and the five preceding taxable years (or, with the approval of the commissioner of taxation and finance, a shorter period), adjusted for recoveries of bad debts during such period, bears to (ii) the sum of the loans outstanding at the close of such six or fewer taxable years.

(B) (i) The amount determined pursuant to this subparagraph shall be the amount necessary to increase the balance of its New York reserve for losses on loans (at the close of the taxable year) to the lower of --

(I) the balance of the reserve at the close of the base year, or

(II) if the amount of loans outstanding at the close of the taxable year is less than the amount of loans outstanding at the close of the base year, the amount which bears the same ratio to loans outstanding at the close of the taxable year as the balance of the reserve at the close of the base year bears to the amount of loans outstanding at the close of the base year.

(ii) For purposes of this paragraph, the base year shall be (I) for taxable years beginning in nineteen hundred eighty-seven, the last taxable year before the most recent adoption of the experience method for federal income tax purposes or for purposes of this article, whichever is earlier, and (II) for taxable years beginning after nineteen hundred eighty-seven, the last taxable year beginning before nineteen hundred eighty-eight.

(2) (A) For taxable years beginning before January first, two thousand ten, each taxpayer described in paragraph one of this subsection shall establish and maintain a New York reserve for losses on loans. Such reserve shall be maintained for all subsequent taxable years. The balance of the New York reserve for losses on loans at the beginning of the first day of the first taxable year the taxpayer becomes subject to this subsection shall be the same as the balance at the beginning of such day of the reserve for losses on loans maintained for federal income tax purposes. The New York reserve for losses on loans shall be reduced by an amount equal to the deduction allowed, but not more than the amount allowable, for worthless debts for federal income tax purposes pursuant to section 166 of the internal revenue code plus the amount, if any, charged against its reserve for losses on loans pursuant to section 585(c)(4) of such code.

(B) For purposes of subparagraph (A) of this paragraph, a taxpayer which had previously been subject to the provisions of subsection (h) of this section shall establish a New York reserve for losses on loans equal to the sum of (i) the greater of (I) the balance of its federal reserve for losses on qualifying real property loans as of the first day of the first taxable year the taxpayer becomes subject to the provisions of this subsection or (II) the greater of the amounts determined under subparagraphs (A) and (B) of paragraph nine of subsection (h) of this section in the year such paragraph applied to the taxpayer, (ii) the greater of (I) the balance in its federal reserve for losses on nonqualifying loans as of the first day of the first taxable year the taxpayer becomes subject to this subsection or (II) the balance in its New York reserve for losses on nonqualifying loans as of the last date the taxpayer was subject to the provisions of subsection (h) of this section and (iii) the balance in its supplemental reserve for losses on loans as of the last date the taxpayer was subject to the provisions of subsection (h) of this section.

(3) The determination and treatment of the New York reserve balance, including any additions thereto, subtractions therefrom, or recapture thereof, for

(A) any banking corporation which was subject to tax for federal income tax purposes but not subject to tax under this article for prior taxable years,

(B) any taxpayer which ceases to be subject to tax under this article, or

(C) any other unusual circumstances

shall be determined by the commissioner of taxation and finance. Provided, however, any banking corporation which was subject to tax for federal income tax purposes but not subject to tax under this article for prior taxable years shall have as its opening New York reserve for losses on loans the amount determined by applying the provisions of subparagraph (A) of paragraph one of this subsection to loans outstanding at the close of its last taxable year for federal income tax purposes ending prior to the first taxable year for which the taxpayer is subject to tax under this article and provided, further, that the provisions of subparagraph (B) of paragraph one of this subsection shall not apply.

(j) (1) In the case of property placed in service prior to January first, nineteen hundred seventy-three, for which the taxpayer properly adopted a different method of computing depreciation under section two hundred nineteen-z or section two hundred nineteen-xx of this chapter (as such sections were in effect on or before December thirty-first, nineteen hundred seventy-two) than was adopted for federal income tax purposes with respect to such property, entire net income under this article shall be computed without regard to the amount allowable as a deduction for depreciation of such property in computing federal taxable income for the taxable year but, in lieu thereof, shall be computed as if such deduction were determined by the method of depreciation adopted with respect to such property under sections two hundred nineteen-z or two hundred nineteen-xx of this chapter (as such sections were in effect on or before December thirty-first, nineteen hundred seventy-two).

(2) In computing entire net income, the amount allowable as a deduction for charitable contributions for federal income tax purposes shall be decreased by any amount allowed as a deduction for federal income tax purposes for the taxable year under section one hundred seventy of the internal revenue code as a carryover of excess contributions which are not made in such taxable year and which were deductible in computing the tax due under article nine-B or nine-C of this chapter (as such articles were in effect on or before December thirty-first, nineteen hundred seventy-two).

(3) There shall be excluded from the computation of entire net income any amount allowed as a deduction for federal income tax purposes for the taxable year under section twelve hundred twelve of the internal revenue code as a capital loss carryforward to the taxable year, which was deductible as a loss in computing the tax due under article nine-B or nine-C of this chapter (as such articles were in effect on December thirty-first, nineteen hundred seventy-two).

(4) There shall be excluded from the computation of entire net income the amount of any income or gain from the sale of real or personal property which is includible in determining federal taxable income for the taxable year pursuant to the installment method under section four hundred fifty-three of the internal revenue code, to the extent that such income or gain was includible in the computation of the tax due under article nine-B or nine-C of this chapter (as such articles were in effect on December thirty-first, nineteen hundred seventy-two).

(5) To the extent not otherwise provided in this article, there shall be excluded from entire net income the amount necessary to prevent the taxation under this article of any other amount of income or gain which was properly included in income or gain and was taxable under article nine-B or nine-C of this chapter (as such articles were in effect on or before December thirty-first, nineteen hundred seventy-two) and there shall be disallowed as a deduction in computing entire net income any amount which was allowable as a deduction in computing the tax due under such articles (as they were in effect on or before December thirty-first, nineteen hundred seventy-two).

(k) (1) At the election of the taxpayer, there shall be deducted from the portion of its entire net income allocated within the state, depreciation with respect to any property such as described in paragraph two of this subsection, not exceeding twice the depreciation allowed with respect to the same property for federal income tax purposes. Such deduction shall be allowed only upon condition that entire net income be computed without any deduction for depreciation or amortization of the same property, and the total of all deductions allowed under article nine-B or nine-C of this chapter (as such articles were in effect on or before December thirty-first, nineteen hundred seventy-two) and this article in any taxable year or years with respect to the depreciation of any such property shall not exceed its cost or other basis.

(2) Such deduction shall be allowed only with respect to tangible property which is depreciable pursuant to section one hundred sixty-seven of the internal revenue code, having a situs in this state and used in the taxpayer's business, (i) constructed, reconstructed or erected after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or, property, the physical construction, reconstruction or erection of which began on or before December thirty-first, nineteen hundred sixty-seven or which began after such date pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, and then only with respect to that portion of the basis thereof which is properly attributable to such construction, reconstruction or erection after December thirty-first, nineteen hundred sixty-three, or (ii) acquired after December thirty-first, nineteen hundred sixty-three, pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer or pursuant to an order placed on or before December thirty-first, nineteen hundred sixty-seven, by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code, if the original use of such property commenced with the taxpayer, commenced in this state and commenced after December thirty-first, nineteen hundred sixty-three, or (iii) acquired, constructed, reconstructed, or erected subsequent to December thirty-first nineteen hundred sixty-seven, if such acquisition, construction, reconstruction or erection is pursuant to a plan of the taxpayer which was in existence December thirty-first, nineteen hundred sixty-seven and not thereafter substantially modified, and such acquisition, construction, reconstruction or erection would qualify under the rules in paragraphs four, five or six of subsection (h) of section forty-eight of the internal revenue code provided all references in such paragraphs four, five and six to the dates October nine, nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be read as December thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction under clauses (i), (ii) or (iii) of this paragraph only if the tangible property shall be delivered or the construction, reconstruction or erection shall be completed on or before December thirty-first, nineteen hundred sixty-nine, except in the case of tangible property which is acquired, constructed, reconstructed or erected pursuant to a contract which was, on or before December thirty-first, nineteen hundred sixty-seven, and at all times thereafter, binding on the taxpayer. Provided, however, for any taxable year beginning on or after January first, nineteen hundred sixty-eight, a taxpayer shall not be allowed a deduction under paragraph one of this subsection with respect to tangible personal property leased by it to any other person or corporation. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease. With respect to property which the taxpayer uses itself for purposes other than leasing for part of a taxable year and leases for a part of a taxable year, the taxpayer shall be allowed a deduction under paragraph one of this subsection in proportion to the part of the year it uses such property.

(3) If the deduction allowable for any taxable year pursuant to this subsection exceeds the portion of the taxpayer's entire net income allocated to this state for such year, the excess may be carried over to the following taxable year or years and may be deducted from the portion of

the taxpayer's entire net income allocated to this state for such year or years.

(4) In any taxable year when property is sold or otherwise disposed of, with respect to which a deduction has been allowed pursuant to this subsection, subdivision twelve of section two hundred nineteen-z or subdivision ten of section two hundred nineteen-xx of this chapter (as such subdivisions were in effect on or before December thirty-first, nineteen hundred seventy-two), the gain or loss entering into the computation of federal taxable income shall be disregarded in computing entire net income, and there shall be added or subtracted from the portion of entire net income allocated within the state the gain or loss upon such sale or other disposition. In computing such gain or loss the basis of the property sold or disposed of shall be adjusted to reflect the deduction allowed with respect to such property pursuant to paragraph one of this subsection. Provided however, that no loss shall be recognized for the purposes of this paragraph with respect to a sale or other disposition of property to a person whose acquisition thereof is not a purchase as defined in section one hundred seventy-nine (d) of the internal revenue code.

(k-1) A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code, except that in every instance where such deduction is allowed under this article:

(1) any net operating loss included in determining such deduction shall be adjusted to reflect the inclusions and exclusions from entire net income required by the other provisions of this section,

(2) such deduction shall not include any net operating loss sustained during any taxable year beginning prior to January first, two thousand one, or during any taxable year in which the taxpayer was not subject to the tax imposed by this article,

(3) such deduction shall not exceed the deduction for the taxable year allowed under section one hundred seventy-two of the internal revenue code augmented by the excess of the amount allowed as a deduction pursuant to subsection (h) or (i) of this section, whichever is applicable, over the amount allowed as a deduction pursuant to section 166 or 585 of the internal revenue code, for each taxable year in which the taxpayer had a net operating loss which is carried to the taxable year of the deduction under this provision, in the aggregate, (except to the extent such excess was previously deducted in computing entire net income), and

(4) the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code shall for purposes of this subsection be determined as if the taxpayer had elected under such section to relinquish the entire carryback period with respect to net operating losses.

(l) In the case of a savings and insurance bank which conducts a life insurance business through a life insurance department under the authority of former article six-a of the banking law, entire net income means the federal taxable income which such bank is required to report to the United States treasury department under paragraph one of subsection (a) of section five hundred ninety-four of the internal revenue code and the modifications required by this section in computing entire net income shall only be made with respect to such federal taxable income.

(m) If the period covered by a return under this article is other than the period covered by the return to the United States treasury department,

(1) except as provided in paragraph two of this subsection, entire net income and alternative entire net income shall be determined by multiplying the taxable income reported to such department (as adjusted pursuant to the provisions of this article) by the number of calendar months or major parts thereof covered by the return under this article and dividing by the number of calendar months or major parts thereof covered by the return to such department. If it shall appear that such method of determining entire net income or alternative entire net income does not properly reflect the taxpayer's income during the period covered by the return under this article, the commissioner shall be authorized in his or her discretion to determine such entire net income or alternative entire net income solely on the basis of the taxpayer's income during the period covered by its return under this article.

(2) in the case of a New York S termination year, an equal portion of entire net income shall be assigned to each day of such year. The portion of such entire net income thereby assigned to the S short year and the C short year shall be included in the respective returns for the S short year and the C short year under this article. However, where paragraph three of subsection (s) of section six hundred twelve of this chapter applies, the portion of such entire net income assigned to the S short year and the C short year shall be determined under normal accounting rules.

(n) The tax commission may, whenever necessary in order properly to reflect the entire net income of any taxpayer, determine the year or period in which any item of income or deduction shall be included, without regard to the method of accounting employed by the taxpayer.

(o) QSSS. (1) New York S corporation. In the case of a New York S corporation which is the parent of a qualified subchapter S subsidiary (QSSS) with respect to a taxable year:

(A) where the QSSS is not an excluded corporation,

(i) in determining the entire net income of such parent corporation, all assets, liabilities, income and deductions of the QSSS shall be treated as assets, liabilities, income and deductions of the parent corporation, and

(ii) the QSSS shall be exempt from all taxes imposed by this article, and

(B) where the QSSS is an excluded corporation, the entire net income of the parent corporation shall be determined as if the federal QSSS election had not been made.

(2) New York C corporation. In the case of a New York C corporation which is the parent of a QSSS with respect to a taxable year:

(A) where the QSSS is a taxpayer,

(i) in determining the entire net income of such parent corporation, all assets, liabilities, income and deductions of the QSSS shall be treated as assets, liabilities, income and deductions of the parent corporation, and

(ii) the QSSS shall be exempt from all taxes imposed by this article, and

(B) where the QSSS is not a taxpayer,

(i) if the QSSS is not an excluded corporation, the parent corporation may make a QSSS inclusion election to include all assets, liabilities, income and deductions of the QSSS as assets, liabilities, income and deductions of the parent corporation, and

(ii) in the absence of such election, or where the QSSS is an excluded corporation, the entire net income of the parent corporation shall be determined as if the federal QSSS election had not been made.

(3) Non-New York S corporation not excluded. In the case of an S corporation which is not a taxpayer and not an excluded corporation, and which is the parent of a QSSS which is a taxpayer, the shareholders of the parent corporation shall be entitled to make the New York S election under subsection (a) of section six hundred sixty of this chapter.

(A) For any taxable year for which such election is in effect, the parent corporation shall be subject to tax under this article as a New York S corporation, and the provisions of subparagraph (A) of paragraph one of this subsection shall apply.

(B) For any taxable year for which such election is not in effect, the QSSS shall be a New York C corporation, and the entire net income of the QSSS shall be determined as if the federal QSSS election had not been made. For purposes of such determination, the taxable year of the parent corporation shall constitute the taxable year of the QSSS, excluding, however, any portion of such year during which the QSSS is not a taxpayer.

(4) S corporation excluded. In the case of an S corporation which is an excluded corporation and which is the parent of a QSSS which is a taxpayer, the QSSS shall be a New York C corporation and the provisions of subparagraph (B) of paragraph three of this subsection shall apply.

(5) Excluded corporation. The term "excluded corporation" means a corporation subject to tax under sections one hundred eighty-three through one hundred eighty-five of this chapter, inclusive, or article nine-A or thirty-three of this chapter, or a foreign corporation not taxable by this state which, if it were taxable, would be subject to tax under any of such sections or articles.

(6) Taxpayer. For purposes of this paragraph, the term "taxpayer" means a parent corporation or QSSS subject to tax under this article, determined without regard to the provisions of this paragraph.

(7) QSSS inclusion election. The election under clause (i) of subparagraph (B) of paragraph two of this subsection shall be effective for the taxable year for which made and for all succeeding taxable years of the corporation until such election is terminated. An election or termination shall be made on such form and in such manner as the commissioner may prescribe by regulation or instruction.

(p) Emerging technology investment deferral. In the case of any sale of a qualified emerging technologies investment held for more than thirty-six months and with respect to which the taxpayer elects the application of this subsection, gain from such sale shall be recognized only to the extent that the amount realized on such sale exceeds the cost of any qualified emerging technologies investment purchased by the taxpayer during the three hundred sixty-five-day period beginning on the date of such sale, reduced by any portion of such cost previously taken into account under this subsection. For purposes of this subsection the following shall apply:

(1) A qualified investment is stock of a corporation or an interest, other than as a creditor, in a partnership or limited liability company that was acquired by the taxpayer as provided in Internal Revenue Code § 1202(c)(1)(B), except that the reference to the term "stock" in such section shall be read as "investment," or by the taxpayer from a person who had acquired such stock or interest in such a manner.

(2) A qualified emerging technology investment is a qualified investment, that was held by the taxpayer for at least thirty-six months, in a company defined in paragraph (c) of subdivision one of section thirty-one hundred two-e of the public authorities law or an investment in a partnership or limited liability company that is taxed as a partnership

to the extent that such partnership or limited liability company invests in qualified emerging technology companies.

(3) For purposes of determining whether the nonrecognition of gain under this subsection applies to a qualified emerging technologies investment that is sold, the taxpayer's holding period for such investment and the qualified emerging technologies investment that is purchased shall be determined without regard to Internal Revenue Code § 1223.

(q) Amounts deferred. The amount deferred under subsection (p) of this section shall be added to entire net income when the reinvestment in the New York qualified emerging technology company which qualified a taxpayer for such deferral is sold.

(r) For taxable years beginning after December thirty-first, two thousand two, in the case of qualified property described in paragraph two of subsection k of section 168 of the internal revenue code, other than qualified resurgence zone property described in subsection (u) of this section, and other than qualified New York Liberty Zone property described in paragraph two of subsection b of section 1400L of the internal revenue code (without regard to clause (i) of subparagraph (C) of such paragraph), which was placed in service on or after June first, two thousand three, a taxpayer shall be allowed with respect to such property the depreciation deduction allowable under section 167 of the internal revenue code as such section would have applied to such property had it been acquired by the taxpayer on September tenth, two thousand one.

(s) Related members expense add back. (1) Definitions. (A) Related member. "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) Effective rate of tax. "Effective rate of tax" means, as to any state or U.S. possession, the maximum statutory rate of tax imposed by the state or possession on or measured by a related member's net income multiplied by the apportionment percentage, if any, applicable to the related member under the laws of said jurisdiction. For purposes of this definition, the effective rate of tax as to any state or U.S. possession is zero where the related member's net income tax liability in said jurisdiction is reported on a combined or consolidated return including both the taxpayer and the related member where the reported transactions between the taxpayer and the related member are eliminated or offset. Also, for purposes of this definition, when computing the effective rate of tax for a jurisdiction in which a related member's net income is eliminated or offset by a credit or similar adjustment that is dependent upon the related member either maintaining or managing intangible property or collecting interest income in that jurisdiction, the maximum statutory rate of tax imposed by said jurisdiction shall be decreased to reflect the statutory rate of tax that applies to the related member as effectively reduced by such credit or similar adjustment.

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

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

(2) Royalty expense add backs. (A) Except where a taxpayer is included in a combined return with a related member pursuant to subsection (f) of section fourteen hundred sixty-two of this article, for the purpose of computing entire net income, a taxpayer must add back royalty payments directly or indirectly paid, accrued, or incurred in connection with one or more direct or indirect transactions with one or more related members during the taxable year to the extent deductible in calculating federal taxable income.

(B) Exceptions. (i) The adjustment required in this subsection shall not apply to the portion of the royalty payment that the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, meets all of the following requirements: (I) the related member was subject to tax in this state or another state or possession of the United States or a foreign nation or some combination thereof on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (II) the related member during the same taxable year directly or indirectly paid, accrued or incurred such portion to a person that is not a related member; and (III) the transaction giving rise to the royalty payment between the taxpayer and the related member was undertaken for a valid business purpose.

(ii) The adjustment required in this subsection shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the related member was subject to tax on or measured by its net income in this state or another state or possession of the United States or some combination thereof; (II) the tax base for said tax included the royalty payment paid, accrued or incurred by the taxpayer; and (III) the aggregate effective rate of tax applied to the related member in those jurisdictions is no less than eighty percent of the statutory rate of tax that applied to the taxpayer under section fourteen hundred fifty-five of this article for the taxable year.

(iii) The adjustment required in this subsection shall not apply if the taxpayer establishes, by clear and convincing evidence of the type and in the form specified by the commissioner, that: (I) the royalty payment was paid, accrued or incurred to a related member organized under the laws of a country other than the United States; (II) the related member's income from the transaction was subject to a comprehensive income tax treaty between such country and the United States; (III) the related member was subject to tax in a foreign nation on a tax base that included the royalty payment paid, accrued or incurred by the taxpayer; (IV) the related member's income from the transaction was taxed in such country at an effective rate of tax at least equal to that imposed by this state; and (V) the royalty payment was paid, accrued or incurred pursuant to a transaction that was undertaken for a valid business purpose and using terms that reflect an arm's length relationship.

(iv) The adjustment required in this subsection shall not apply if the taxpayer and the commissioner agree in writing to the application or use of alternative adjustments or computations. The commissioner may, in his or her discretion, agree to the application or use of alternative adjustments or computations when he or she concludes that in the absence of such agreement the income of the taxpayer would not be properly reflected.

(t) For taxable years beginning after December thirty-first, two thousand two, upon the disposition of property to which subsection (r) of this section applies, the amount of any gain or loss includible in entire net income shall be adjusted to reflect the inclusions and exclusions from entire net income pursuant to paragraph thirteen of subsection (b) of this section attributable to such property.

(u) For purposes of subsections (r) and (t) of this section, qualified resurgence zone property shall mean qualified property described in paragraph two of subsection k of section 168 of the internal revenue code substantially all of the use of which is in the resurgence zone, as defined below, and is in the active conduct of a trade or business by the taxpayer in such zone, and the original use of which in the resurgence zone commences with the taxpayer after December thirty-first, two thousand two. The resurgence zone shall mean the area of New York county bounded on the south by a line running from the intersection of the Hudson River with the Holland Tunnel, and running thence east to Canal Street, then running along the centerline of Canal Street to the intersection of the Bowery and Canal Street, running thence in a southeasterly direction diagonally across Manhattan Bridge Plaza, to the Manhattan Bridge and thence along the centerline of the Manhattan Bridge to the point where the centerline of the Manhattan Bridge would intersect with the easterly bank of the East River, and bounded on the north by a line running from the intersection of the Hudson River with the Holland Tunnel and running thence north along West Avenue to the intersection of Clarkson Street then running east along the centerline of Clarkson Street to the intersection of Washington Avenue, then running south along the centerline of Washington Avenue to the intersection of West Houston Street, then east along the centerline of West Houston Street, then at the intersection of the Avenue of the Americas continuing east along the centerline of East Houston Street to the easterly bank of the East River.

(v) Disallowed investment proceeds from a REIT or RIC. (1)(A) As used in this subsection, the term "REIT" means a real estate investment trust as defined in section eight hundred fifty-six of the internal revenue code.

(B) As used in this subsection, the term "RIC" means a regulated investment company as defined in section eight hundred fifty-one of the internal revenue code.

(C) As used in this subsection, the term "REIT holding company" means a corporation that (i) owns, directly or indirectly, over fifty percent of the capital stock of a REIT, or (ii) in connection with one or more other corporations in its affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section fifteen hundred four), owns over fifty percent of the capital stock of a REIT.

(D) As used in this subsection, the term "RIC holding company" means a corporation that (i) owns, directly or indirectly, over fifty percent of the capital stock of a RIC, or (ii) in connection with one or more other corporations in its affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section fifteen hundred four), owns over fifty percent of the capital stock of a RIC.

(2) For purposes of computing entire net income or other applicable taxable base, there shall be no deduction for disallowed investment proceeds as defined in paragraphs three and four of this subsection.

(3) For purposes of the deduction of gains in excess of losses under subparagraph (iii) of paragraph eleven of subsection (e) of this section, disallowed investment proceeds means (A) gain or loss from the disposition of an ownership interest in a REIT, (B) gain or loss from the disposition of an ownership interest in a RIC, and (C) gain or loss from the disposition of an ownership interest in a REIT holding company or a RIC holding company to the extent the gain or loss is attributable to such holding company's ownership interest in a REIT or a RIC.

(4) For purposes of the deduction of dividend income from subsidiary capital under subparagraph (ii) of paragraph eleven of subsection (e) of this section, disallowed investment proceeds means (A) dividends from a REIT, and (B) dividends from a RIC, (C) dividends from a REIT holding company or a RIC holding company to the extent the dividends are attributable to such holding company's ownership interest in a REIT or a RIC.

(5) Notwithstanding paragraphs three and four of this subsection,

(A) disallowed investment proceeds shall not include any dividends from, or attributable to, a REIT or a RIC required to be included in a combined report pursuant to subdivisions five or seven of section two hundred nine of this chapter to the extent such dividends were included in the computation of combined entire net income; and

(B) a banking corporation, or a group of banking corporations properly included in a combined return, with taxable assets (or combined taxable assets in the case of a combined return) for the taxable year of eight billion dollars or less shall not have any disallowed investment proceeds.

§ 1453-A. Computation of alternative entire net income.--(a) Alternative entire net income means entire net income as determined pursuant to section fourteen hundred fifty-three of this article, except that the deductions described in paragraphs eleven and twelve of subsection (e) of section fourteen hundred fifty-three of this article shall not be allowed.

(b) Any election made pursuant to paragraph two of subsection (b) of section fourteen hundred fifty-four of this article with respect to the modification provided for in subsection (f) of section fourteen hundred fifty-three of this article shall be deemed to have been made for purposes of computing alternative entire net income.

§ 1454. Allocation. (a) In general. If a taxpayer's entire net income, alternative entire net income, or taxable assets are derived from business carried on within and without the state, the taxpayer shall, for purposes of computing allocation percentages, compute payroll, receipts, and deposits percentages in accordance with the following rules:

(1) The taxpayer shall ascertain the percentage which eighty percent of the total wages, salaries and other personal service compensation during the taxable year of employees within the state, except wages, salaries and other personal service compensation of general executive officers, bears to the total wages, salaries and other personal service compensation during the taxable year of all the taxpayer's employees within and without the state, except wages, salaries and other personal service compensation of general executive officers.

(2) (A) The taxpayer shall ascertain the percentage which the receipts of the taxpayer arising during the taxable year from:

(i) loans (including a taxpayer's portion of a participation in a loan) and financing leases within the state, and all other business receipts earned within the state, bear to

(ii) the total amount of the taxpayer's receipts from loans (including a taxpayer's portion of a participation in a loan) and financing leases and all other business receipts within and without the state.

(B) All interest from loans and financing leases is located where the greater portion of income producing activity related to the loan or financing lease occurred; provided, however:

(i) In the case of a taxpayer described in paragraph one, two, three, four, five or seven of subsection (a) of section fourteen hundred fifty-two of this article, a loan or financing lease attributed by such taxpayer to a branch without the state shall be presumed to be properly so attributed provided that such presumption may be rebutted if the tax commission demonstrates that the greater portion of income producing activity related to the loan or financing lease did not occur at such branch. Where such presumption has been rebutted, the loan or financing lease shall be presumed to be within this state if the taxpayer had a branch within this state at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of income producing activity related to the loan or financing lease did not occur within the state. In the case of a loan or financing lease which is recorded on the books of a place without the state which is not a branch, it shall be presumed that the greater portion of income producing activity related to such loan or financing lease occurred within this state if the taxpayer had a branch within this state at the time the loan or financing lease was made. The taxpayer may rebut such presumption by demonstrating that the greater portion of income producing activity related to the loan or financing lease did not occur within this state.

(ii) In the case of a taxpayer described in paragraph six or nine of subsection (a) of section fourteen hundred fifty-two of this article, a loan or financing lease attributed by such taxpayer to a bona fide office without the state shall be presumed to be properly so attributed provided that such presumption may be rebutted if the tax commission demonstrates that the greater portion of income producing activity related to the loan or financing lease did not occur without this state.

(C) Receipts from lease transactions other than financing leases referred to in subparagraph (B) are located where the property subject to the lease is located.

(D) (i) Interest, and fees and penalties in the nature of interest, from bank, credit, travel and entertainment card receivables are earned within the state if the mailing address of the card holder in the records of the taxpayer is in the state;

(ii) Service charges and fees from such cards are earned within the state if the mailing address of the card holder in the records of the taxpayer is in the state; and

(iii) Receipts from merchant discounts are earned within the state if the merchant is located within the state.

(E) The portion of total net gains and other income from trading activities (including but not limited to foreign exchange, options and financial futures), and from investment activities which is attributed within the state shall be ascertained by multiplying such total net gains and other income by a fraction the numerator of which is the average value of trading assets and investment assets attributable to this state and the denominator of which is the average value of all trading and investment assets. A trading asset or investment asset is attributable to this state if the greater portion of income producing activity related to the trading asset or investment asset occurred within the state.

(F) Fees or charges from the issuance of letters of credit, travelers checks and money orders are earned within the state if such letters of credit, travelers checks or money orders are issued within the state.

(G) Rules for receipts from certain services to investment companies. (1) For taxable years beginning on or after January first, two thousand one, the portion of receipts received from an investment company arising from the sale of management, administration or distribution services to such investment company determined in accordance with clause two of this subparagraph shall be deemed to arise from services performed within the state (such portion referred to herein as the New York portion).

(2) The New York portion shall be the product of (i) the total of such receipts from the sale of such services and (ii) a fraction. The numerator of that fraction is the sum of the monthly percentages (as defined hereinafter) determined for each month of the investment company's taxable year for federal income tax purposes which taxable year ends within the taxable year of the taxpayer (but excluding any month during which the investment company had no outstanding shares). The monthly percentage for each such month is determined by dividing (i) the number of shares in the investment company which are owned on the last day of the month by shareholders which are domiciled in the state by (ii) the total number of shares in the investment company outstanding on that date. The denominator of the fraction is the number of such monthly percentages.

(3)(i) For purposes of this subparagraph the term "domicile", in the case of an individual shall have the meaning ascribed to it under article twenty-two of this chapter; an estate or trust is domiciled in the state if it is a resident estate or trust as defined in paragraph three of subsection (b) of section six hundred five of this chapter; a business entity is domiciled in the state if the location of the actual seat of management or control is in the state. It shall be presumed that the domicile of a shareholder, with respect to any month, is his, her or its mailing address on the records of the investment company as of the last day of such month.

(ii) For purposes of this subparagraph, the term "investment company" shall mean a regulated investment company, as defined in section 851 of the internal revenue code, and a partnership to which section 7704(a) of the internal revenue code applies (by virtue of section 7704(c)(3) of such code) and which meets the requirements of section 851(b) of such code. The preceding sentence shall be applied to the taxable year for federal income tax purposes of the business entity which is asserted to constitute an investment company which ends within the taxable year of the taxpayer.

(iii) For purposes of this subparagraph, the term "receipts from an investment company" includes amounts received directly from an investment company as well as amounts received from the shareholders in such investment company, in their capacity as such.

(iv) For purposes of this subparagraph, the term "management services" means the rendering of investment advice to an investment company, making determinations as to when sales and purchases of securities are to be made on behalf of an investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed pursuant to a contract with the investment company entered into pursuant to section 15(a) of the federal investment company act of nineteen hundred forty, as amended.

(v) For purposes of this subparagraph, the term "distribution services" means the services of advertising, servicing investor accounts (including redemptions), marketing shares or selling shares of an investment company, but, in the case of advertising, servicing investor accounts (including redemptions) or marketing shares, only where such service is performed by a person who is (or was, in the case of a closed end company) also engaged in the service of selling such shares. In the case of an open end company, such service of selling shares must be performed pursuant to a contract entered into pursuant to section 15(b) of the federal investment company act of nineteen hundred forty, as amended.

(vi) For purposes of this subparagraph, the term "administration services" includes clerical, accounting, bookkeeping, data processing, internal auditing, legal and tax services performed for an investment company but only if the provider of such service or services during the taxable year in which such service or services are sold also sells management or distribution services, as defined in item (v) of this clause, to such investment company.

(H) All receipts from the performance of services not described in this clause are earned within the state if the services are performed in the state. When a service is performed both within and without the state, the receipts shall be allocated within and without the state in accordance with rules and regulations of the tax commission.

(I) All other receipts not described in subparagraphs (B) through (H) of this paragraph shall be attributable within and without the state in accordance with rules and regulations issued by the commissioner.

(3) The taxpayer shall ascertain the percentage which the average value of deposits maintained at branches within the state during the taxable year, bears to the average value of all the taxpayer's deposits maintained at branches within and without the state during the taxable year.

(4) Each percentage computed pursuant to this subsection shall be computed on a cash or accrual basis according to the method of accounting used for the taxable year. The receipts percentage shall include only receipts which are included in alternative entire net income for the taxable year. The deposits and payroll percentages shall include only deposits and payroll the expenses of which are included in the computation of alternative entire net income for the taxable year.

(5) For purposes of this section:

(A) The term "bona fide office" means an office at which the taxpayer carries on its business in a regular and systematic manner and which is continuously maintained, occupied and used by employees of the taxpayer.

(B) The term "branch" means a bona fide office which is used by the taxpayer on a regular and systematic basis to (i) approve loans (regardless of whether the approval of certain classes of loans requires review or final approval by another office of the taxpayer), (ii) accept loan repayments, (iii) disburse funds, and (iv) conduct one or more other functions of a banking business.

(6) If it shall appear to the tax commission that the allocation percentage determined in subsection (b), (c), or (d) of this section does not properly reflect the activity, business, income or assets of a taxpayer within the state, the tax commission shall be authorized in its

discretion to adjust it by (1) excluding one or more of the factors therein, (2) including one or more other factors, or (3) any other similar or different method calculated to effect a fair and proper allocation of the income or assets reasonably attributable to the state.

(7) The tax commission from time to time shall publish all rulings of general public interest with respect to any application of the provisions of paragraph six of this subsection.

(b) Allocation of entire net income.

(1) If a taxpayer's entire net income is derived from business carried on both within and without the state, the portion thereof which is derived from business carried on within the state shall be determined by multiplying its entire net income by the income allocation percentage determined as follows: add the percentages ascertained under paragraphs one, two and three of subsection (a) of this section, plus, in the case of a taxpayer other than a New York S corporation, an additional percentage equal to the receipts percentage ascertained under paragraph two of such subsection and an additional percentage equal to the deposits percentage ascertained under paragraph three of such subsection, and divide the result by the number of percentages so added together.

(1-a) Notwithstanding the provisions of paragraph one of this subsection, each banking corporation described in paragraph nine of subsection (a) of section fourteen hundred fifty-two of this article subject to the tax imposed by this article that substantially provides management, administrative or distribution services to an investment company, as such terms are defined in subparagraph (G) of paragraph two of subsection (a) of this section, shall determine the portion of its entire net income derived from business carried on within the state by multiplying such income by an income allocation percentage obtained as follows:

(A) For taxable years beginning on or after January first, two thousand six and before the first day of January, two thousand seven, by adding the following percentages:

(i) the product of seventeen percent and the percentage determined under paragraph one of subsection (a) of this section,

(ii) the product of fifty percent and the percentage determined under paragraph two of subsection (a) of this section, and

(iii) the product of thirty-three percent and the percentage determined under paragraph three of subsection (a) of this section.

(B) For taxable years beginning on or after January first, two thousand seven and before the first day of January, two thousand eight, by adding the following percentages:

(i) the product of ten percent and the percentage determined under paragraph one of subsection (a) of this section,

(ii) the product of seventy percent and the percentage determined under paragraph two of subsection (a) of this section, and

(iii) the product of twenty percent and the percentage determined under paragraph three of subsection (a) of this section.

(C) For taxable years beginning on or after January first, two thousand eight, by the percentage ascertained under paragraph two of subsection (a) of this section.

(2) (A) In lieu of the modification provided for in subsection (f) of section fourteen hundred fifty-three of this article, (relating to a modification for the adjusted eligible net income of an international banking facility), a taxpayer may, in the manner prescribed by the tax commission, elect to modify on an annual basis its income allocation

percentage in the manner described in clauses (i), (ii) and (iii) of this subparagraph:

(i) wages, salaries and other personal service compensation properly attributable to the production of eligible gross income of the taxpayer's international banking facility shall not be included in the computation of wages, salaries and other personal service compensation of employees within the state,

(ii) receipts properly attributable to the production of eligible gross income of the taxpayer's international banking facility shall not be included in the computation of receipts within the state, and

(iii) deposits from foreign persons which are properly attributable to the production of eligible gross income of the taxpayer's international banking facility shall not be included in the computation of deposits maintained at branches within the state.

(B) For purposes of this paragraph, the term "eligible gross income" refers to such term as set out in subsection (f) of section fourteen hundred fifty-three of this article except that the term "foreign person" as defined in paragraph eight of such subsection (f) shall not include a foreign branch of the taxpayer and in no event shall transactions between the taxpayer's international banking facility and its foreign branches be considered.

(c) Allocation of alternative entire net income. If a taxpayer's alternative entire net income is derived from business carried on both within and without the state, the portion thereof which is derived from business carried on within the state shall be determined by multiplying its alternative entire net income by the alternative entire net income allocation percentage determined as follows:

(1) Recompute the payroll percentage under paragraph one of subsection (a) of this section without giving consideration to the phrase "eighty percent of," add to the resulting percentage the percentages ascertained under paragraphs two and three of such subsection, and divide the result by the number of percentages so added together.

(2) When an election has been made pursuant to paragraph two of subsection (b) of this section (relating to international banking facilities) the taxpayer shall make the modifications described in such paragraph for purposes of its alternative entire net income allocation percentage.

(3) For taxable years beginning on or after January first, two thousand six, each banking corporation described in paragraph nine of subsection (a) of section fourteen hundred fifty-two of this article subject to the tax imposed by this article that substantially provides management, administrative or distribution services to an investment company, as such terms are defined in subparagraph (G) of paragraph two of subsection (a) of this section, shall determine the portion of its alternative entire net income derived from business carried on within the state by multiplying such income by the percentage ascertained for the taxable year under paragraph one-a of subsection (b) of this section, except that in computing such percentage (A) for taxable years beginning before January first, two thousand eight, no consideration shall be given to the phrase "eighty percent of" in paragraph one of subsection (a) of this section, (B) for taxable years beginning before January first, two thousand eight, when an election has been made pursuant to paragraph two of subsection (b) of this section (relating to an international banking facility) the taxpayer shall make the modifications described in such paragraph, and (C) for taxable years beginning on or after January first, two thousand eight, when an election has been

made pursuant to paragraph two of subsection (b) of this section (relating to an international banking facility) the taxpayer shall make the modifications described in clause (ii) of subparagraph (A) of such paragraph.

(d) Allocation of taxable assets. If the taxpayer's taxable assets are derived from business carried on both within and without the state, the portion thereof which is derived from business carried on within the state shall be determined by multiplying its taxable assets by an asset allocation percentage determined in the same manner as the income allocation percentage under subsection (b) of this section, determined as if the election provided for in paragraph two of such subsection has been made, except that the modifications described in clauses (i), (ii) and (iii) of subparagraph (A) of such paragraph shall not be made.

§ 1455. Computation of tax. The tax imposed by section fourteen hundred fifty-one of this article shall be, in the case of each taxpayer other than a New York S corporation, the greater of the following computations:

(a) Basic tax. For taxable years beginning before July first, two thousand, nine percent of the taxpayer's entire net income, or the portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning after June thirtieth, two thousand and before July first, two thousand one, eight and one-half percent of the taxpayer's entire net income, or portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning after June thirtieth, two thousand one and before July first, two thousand two, eight percent of the taxpayer's entire net income, or portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning after June thirtieth, two thousand two and before January first, two thousand seven, seven and one-half percent of the taxpayer's entire net income, or portion thereof allocated to this state, for the taxable year, or part thereof. For taxable years beginning on or after January first, two thousand seven, seven and one-tenth percent of the taxpayer's entire net income, or the portion thereof allocated to this state, for the taxable year, or part thereof.

(b) Alternative minimum tax. If the tax under subsection (a) of this section is less than any of the following amounts, the tax shall be the larger of the following amounts:

(1) (i) Except in the case of a taxpayer described in clause (ii), (iii), or (iv) of this paragraph, one-tenth of a mill upon each dollar of taxable assets, or the portion thereof allocated to this state.

(ii) In the case of a taxpayer whose net worth ratio is less than five but greater than or equal to four percent and whose total assets are comprised of thirty-three percent or more of mortgages, one-twenty-fifth of a mill upon each dollar of taxable assets, or the portion thereof allocated to this state.

(iii) In the case of a taxpayer whose net worth ratio is less than four percent and whose total assets are comprised of thirty-three percent or more of mortgages, one-fiftieth of a mill upon each dollar of taxable assets, or the portion thereof allocated to this state.

(iv) For taxable years beginning on or after January first, nineteen hundred eighty-five, a taxpayer (whether or not a qualified institution as defined in subparagraph (B) of paragraph five of subsection (f) of section four hundred six of the federal national housing act, as amended, or as defined in paragraph two of subsection (i) of section thirteen of the federal deposit insurance act, as amended) shall not be subject to the provisions of this paragraph for that portion of the taxable year in which it had outstanding net worth certificates issued in accordance with paragraph five of subsection (f) of section four hundred six of the federal national housing act, as amended, or issued in accordance with subsection (i) of section thirteen of the federal deposit insurance act, as amended.

(v) For the purposes of this article:

(A) The term "taxable assets" shall mean the average value of total assets reduced by any amount of money or other property received from or attributable to amounts received from the federal deposit insurance corporation pursuant to subsection (c) of section thirteen of the federal deposit insurance act, as amended, or the federal savings and loan insurance corporation pursuant to paragraph one, two, three or four of subsection (f) of section four hundred six of the federal national housing act, as amended. Total assets are those assets which are properly reflected on a balance sheet the income or expenses of which are properly reflected (or would have been properly reflected if not fully depreciated or expensed or depreciated or expensed to a nominal amount) in the computation of alternative entire net income for the taxable year or in the computation of the eligible net income of the taxpayer's international banking facility for the taxable year.

(B) The term "net worth ratio" shall mean the percentage of net worth to assets on the last day of the taxable year. The term "net worth" means the sum of preferred stock, common stock, surplus, capital reserves, undivided profits, mutual capital certificates, reserve for contingencies, reserve for loan losses and reserve for security losses minus assets classified loss. The term "assets" means the sum of mortgage loans, nonmortgage loans, repossessed assets, real estate held for development or investment or resale, cash, deposits, investment securities, fixed assets and other assets (such as financial futures, goodwill and other intangible assets) minus assets classified loss. In no event shall assets be reduced by reserves for losses.

(C) The term "mortgages" shall mean loans secured by real property within or without the state, participations in and securities collateralized by pools of residential mortgages, whether or not issued or guaranteed by a United States government agency, and loans secured by stock in a cooperative housing corporation. The percentage of total assets comprised of mortgages shall be an amount equal to the ratio of the average of the four quarterly balances of such mortgages ending within the taxable year, to the average of the four quarterly balances of all assets ending within the taxable year. Such quarterly balances shall be computed in the same manner as the report of condition required for federal deposit insurance corporation or federal savings and loan insurance corporation purposes, whether or not such report is required. For taxable periods of less than one year, the taxpayer shall compute such ratio using the number of such quarterly balances ending within such taxable period.

(2) Three percent of the taxpayer's alternative entire net income, or portion thereof allocated to this state, for the taxable year, or part thereof.

(3) Two hundred fifty dollars.

(c) New York S corporations. (1) General. In the case of a New York S corporation, the tax imposed by section fourteen hundred fifty-one of this article shall be the higher of (i) the amount prescribed in subsection (a) of this section reduced by the article twenty-two tax equivalent or (ii) the amount prescribed in paragraph three of subsection (b) of this section.

(2) The article twenty-two tax equivalent is the amount computed under subsection (a) of this section by substituting for the rate therein the rate of 7.875 percent.

(3) Termination year. In the case of a termination year, the tax for the S short year shall be computed under paragraph one of this subsection without regard to the amount prescribed in paragraph three of subsection (b) of this section, and the tax for the C short year shall be the larger of the taxes computed under subsection (a) of this section or paragraph one or two of subsection (b) of this section, but in no event shall the sum of the tax for the S short year and the tax for the C short year be less than the tax prescribed in paragraph three of subsection (b) of this section.

§ 1455-A. Tax surcharge. (a) In addition to the tax imposed under section fourteen hundred fifty-one of this article, there is hereby imposed, (1) for taxable years ending after June thirtieth, nineteen hundred eighty-nine and before July first, nineteen hundred ninety, a tax surcharge at the rate of two and one-half percent of the tax imposed under section fourteen hundred fifty-one of this article, before deduction of any credits against tax otherwise allowable under this article for all or any parts of such taxable years, (2) for taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four, and until such rate is superseded, a tax surcharge at the rate of fifteen percent of the tax imposed under section fourteen hundred fifty-one of this article, after deduction of any credits against tax otherwise allowable under this article, (3) for taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five, and until such rate is superseded, a tax surcharge at the rate of ten percent of the tax imposed under section fourteen hundred fifty-one of this article, after deduction of any credits against the tax otherwise allowable under this article, (4) for taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six, and until such rate is superseded, a tax surcharge at the rate of five percent of the tax imposed under section fourteen hundred fifty-one of this article, after deduction of any credits against the tax otherwise allowable under this article and (5) for taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, a tax surcharge at the rate of zero percent of the tax imposed under section fourteen hundred fifty-one of this article, after deduction of any credits against the tax otherwise allowable under this article. However, the tax surcharge imposed by this section at the rate of two and one-half percent shall not be imposed upon any taxpayer for more than twelve months, the tax surcharge imposed by this section at the rate of fifteen percent shall not be imposed upon any taxpayer for more than forty-eight months, and the tax surcharges imposed by this section at the rates of ten percent, five percent and zero percent shall not, respectively, be imposed upon any taxpayer for more than twelve months, and the commissioner shall prescribe by regulation or instructions a method of proration designed to effectuate such result. The credits against tax otherwise allowable under section fourteen hundred fifty-six of this article shall not be allowed as a credit against the tax surcharge imposed by this section.

(b) (1) The provisions concerning returns under section fourteen hundred sixty-two of this article shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a return covering the taxes imposed by this article, such automatic extension shall be allowed, for taxable years to which the tax surcharge imposed by this section apply, only if a taxpayer files with the commissioner an application for extension in such form as the commissioner may prescribe and pays on or before the date of such filing in addition to any other amounts required under this article, two and one-half percent, fifteen percent, ten percent, five percent or zero percent, whichever is the rate applicable to the taxable year pursuant to subsection (a) of this section, of the amount properly estimated as provided in subsection (b) of section fourteen hundred sixty-three of this article as its tax payable under section fourteen hundred fifty-one of this article, before deduction of any credits against tax otherwise allowable under section fourteen hundred fifty-six of this article in the case of the tax surcharge imposed at the rate of two and one-half percent, and after deduction of any credits against tax otherwise allowable under section fourteen hundred fifty-six of this article in the case of the tax surcharge imposed at the rate of fifteen, ten, five or zero percent. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the return is required to be filed.

(2) Except as otherwise provided in this section, all of the provisions of this article, except for section fourteen hundred fifty-five-B of this article, presently applicable are applicable to the tax surcharge imposed by this section with such modifications as may be necessary to adapt such language to the tax surcharge imposed by this section. Such provisions shall apply with the same force and effect as if those provisions had been set forth in full in this section except to the extent that any provision is either inconsistent with a provision of this section or not relevant to the tax surcharge imposed by this section and to that end a reference in this article to the tax imposed by section fourteen hundred fifty-one of this article shall be read as a reference to the tax surcharge imposed by this section, and to the sum of such tax and such tax surcharge in the case of sections fourteen hundred sixty and fourteen hundred sixty-one of this article and such other provisions requiring such reading in order to effectuate the purposes of this provision, unless a different meaning is clearly required.

(c) Coordination with section fourteen hundred fifty-five-B of this article. The amount of tax surcharge imposed pursuant to this section shall not be included in any calculation of a tax surcharge imposed pursuant to section fourteen hundred fifty-five-B of this article.

(d) Insofar as subsection (a) of this section establishes a rate of fifteen percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four and until such rate is superseded, a rate of ten percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five and until such rate is superseded, a rate of five percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six and until such rate is superseded, and a rate of zero percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, the transition from such rate of fifteen percent to such rate of ten percent, from such rate of ten percent to such rate of five percent, and from such rate of five percent to such rate of zero percent, shall be deemed to occur, respectively, on the first day of the seventh month of each of such taxable years, with the result that for purposes of implementation of such changes in rates, and notwithstanding such subsection (a), there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five, including taxable years of fewer than twelve months, a tax surcharge at the rate of twelve and one-half percent; there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six, including taxable years of fewer than twelve months, a tax surcharge at the rate of seven and one-half percent; and there is hereby imposed with respect to all taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, including taxable years of fewer than twelve months, a tax surcharge at the rate of two and one-half percent. In addition, for purposes of implementation of all the provisions of this section references to ten percent shall be read as references to twelve and one-half percent, references to five percent shall be read as references to seven and one-half percent and references to zero percent shall be read as references to two and one-half percent.

§ 1455-B. Temporary metropolitan transportation business tax surcharge on banks. (a) For the privilege of exercising its franchise or doing business in the metropolitan commuter transportation district in a corporate or organized capacity, there is hereby imposed on every taxpayer subject to tax under this article, other than a New York S corporation, for the taxable years commencing on or after January first, nineteen hundred eighty-two but ending before December thirty-first, two thousand nineteen, a tax surcharge, in addition to the tax imposed under section fourteen hundred fifty-one of this article, at the rate of eighteen percent of the tax imposed under such section fourteen hundred fifty-one of this article, for such taxable years or any part of such taxable years ending before December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article, and at the rate of seventeen percent of the tax imposed under such section for such taxable years or any part of such taxable years ending on or after December thirty-first, nineteen hundred eighty-three after the deduction of any credits otherwise allowable under this article; provided however, that such rates of tax surcharge shall be applied only to that portion of the tax imposed under section fourteen hundred fifty-one of this article after the deduction of any credits otherwise allowable under this article which is attributable to the taxpayer's business activity carried on within the metropolitan commuter transportation district; and provided, further, that the tax surcharge imposed by this section shall not be imposed upon any taxpayer for more than four hundred thirty-two months. Provided however, that for taxable years commencing on or after July first, two thousand, such surcharge shall be calculated as if the rate of the basic tax computed under subsection (a) of section fourteen hundred fifty-five of this article was nine percent.

(b) If the tax imposed under section fourteen hundred fifty-one of this article is derived from business activity carried on both within and without the metropolitan commuter transportation district, the portion of the tax attributable to business activity carried on in the metropolitan commuter transportation district shall be determined in accordance with rules and regulations promulgated by the tax commission.

(c) The provisions concerning returns under section fourteen hundred sixty-two of this article shall be applicable to this section, except that for purposes of an automatic extension for six months for filing a return covering the tax surcharge imposed by this section, such automatic extension shall be allowed only if a taxpayer files with the commissioner an application for extension in such form as said commissioner may prescribe by regulation and pays on or before the date of such filing in addition to any other amounts required under this article, either ninety percent of the entire tax surcharge required to be paid under this section for the applicable period, or not less than the tax surcharge shown on the taxpayer's return for the preceding taxable year, if such preceding taxable year was a taxable year of twelve months. The tax surcharge imposed by this section shall be payable to the commissioner in full at the time the return is required to be filed, and such tax surcharge or the balance thereof, imposed on any taxpayer which ceases to exercise its franchise or be subject to the tax surcharge imposed by this section shall be payable to the commissioner at the time the return is required to be filed, provided such tax surcharge of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other tax surcharges of any such taxpayer, which pursuant to the foregoing provisions of this section would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time. All of the provisions of this article presently applicable are applicable to the tax surcharge imposed by this section.

(d) Notwithstanding any contrary provisions of state or local law, the tax surcharge imposed under this section shall not be allowed as a deduction in the computation of any state or local tax imposed under this chapter or any chapter or local law. Furthermore, the credits otherwise allowable under this article shall not be allowed against the tax surcharge imposed by this section.

(e) The term metropolitan commuter transportation district as used in this section shall be defined pursuant to section twelve hundred sixty-two of the public authorities law.

§ 1456. Credits. (a) Credit for servicing certain mortgages. Every bank, as defined in section two thousand four hundred two of the public authorities law, which shall have entered into a contract with the state of New York mortgage agency to service mortgages acquired by such agency pursuant to the state of New York mortgage agency act, shall have credited to it annually to apply upon or in lieu of the payment of any tax to which it may be subject under this article an amount equal to two and ninety-three one hundredths percentum of the total principal and interest collected by the bank during its taxable year on each such mortgage secured by a lien on real estate improved by a one-family to four-family residential structure and an amount equal to the interest collected by the bank during its taxable year on each such mortgage secured by a lien on real property improved by a structure occupied as the residence of five or more families living independently of each other, multiplied by a fraction the denominator of which shall be the interest rate payable on the mortgage (computed to five decimal places) and the numerator of which shall be .00125 in the case of such a mortgage acquired by such agency for less than one million dollars, and .00100 in the case of such a mortgage acquired by such agency for one million dollars or more; provided, however, that there shall in no case be credited to any such bank an amount in excess of the amount due from such bank for taxes payable to the state under this article for the taxable year for which such credit is given. In computing such tax credit for the servicing of mortgages on one-family to four-family residential structures, the bank shall be entitled to no credit for the collection of curtailments or payments in discharge of any such mortgage. For the purposes of this section, (1) a "curtailment" shall mean amounts paid by mortgagors (i) in excess of the monthly constant due during the month of collection and (ii) in reduction of the unpaid principal balance of the mortgage; in the absence of clear evidence to the contrary, amounts paid in excess of the monthly constant due during the month of collection shall be deemed to be in reduction of the unpaid principal balance of the mortgage; and (2) "monthly constant" shall mean the amount of principal and interest which is due and payable according to the mortgage documents on each periodic payment date.

(b) Eligible business facility credit.

(1) On or after April first, nineteen hundred eighty-three, for taxable years beginning before January first, two thousand, a credit against the tax imposed by this article shall be allowed only to a taxpayer owning or operating an eligible business facility, where such taxpayer has received a certificate of eligibility for tax credits, or a renewal or extension thereof, for such facility from the New York state job incentive board prior to April first, nineteen hundred eighty-three, or has received a certificate of eligibility for tax credits, or a renewal or extension thereof, for such facility from the state tax commission subsequent to such date pursuant to paragraph eight of this subsection, and only with respect to such facility, to be computed as hereinafter provided.

(2) The amount of the credit allowable in any taxable year shall be the sum determined by multiplying the tax otherwise due by a percentage to be determined by:

(A) ascertaining the percentage which the total of eligible property values during the period covered by its return, as defined in paragraph four of this subsection, bears to the average value of all the taxpayer's real and tangible personal property except for inventory within the state during such period. For the purposes of this subparagraph only, the taxpayer's real and tangible personal property shall include not only such property owned by the taxpayer but also property rented to it, and the value of rented property shall be deemed to be eight times the net annual rental rate, that is, the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals;

(B) ascertaining the percentage which the total wages, salaries and other personal service compensation during such period, of employees, except general executive officers and that portion of employee's wages, salaries and other personal service compensation attributable, directly or indirectly, to the production of adjusted eligible net income which is allowed as a deduction from entire net income as set forth in subsection (f) of section fourteen hundred fifty-three of this article, serving in jobs created or retained in an eligible area (as the term "eligible area" was defined by section one hundred fifteen of the commerce law as it existed on March thirty-first, nineteen hundred eighty-three) by such business facility, bears to the total wages, salaries and other personal service compensation, during such period, of all the taxpayer's employees within the state, except general executive officers; and

(C) adding together the percentages so determined and dividing the result by two; provided, however, that if no wages, salaries or other personal service compensation were paid or incurred by the taxpayer during such period to employees within the state other than general executive officers, subparagraph (B) of this paragraph shall be disregarded and the amount of credit allowable shall be determined by multiplying the tax otherwise due by the percentage specified in subparagraph (A) of this paragraph.

(3) In no event shall the credit herein provided for be allowed in any amount which will reduce the tax payable to less than the dollar amount fixed as a minimum tax by subsection (b) of section fourteen hundred fifty-five.

(4) (A) Eligible property values, for the purposes of this subsection, shall include such part of the value of depreciable real and tangible personal property included in an eligible business facility as represents:

(i) expenditures paid or incurred by the taxpayer for capital improvements consisting of the construction, reconstruction, erection or improvement of real property included in an eligible facility, which construction, reconstruction, erection or improvements were commenced on or after July first, nineteen hundred sixty-eight;

(ii) in the case of real property leased by the taxpayer from another party, eight times the portion of the net annual rental rate attributable to such construction, reconstruction, erection or improvement commenced on or after July first, nineteen hundred sixty-eight;

(iii) expenditures paid or incurred by the taxpayer for the purchase of tangible personal property, other than vehicles, included in an eligible business facility, provided such property was purchased on or after July first, nineteen hundred sixty-eight; and

(iv) in the case of tangible personal property, other than vehicles, leased by the taxpayer from another party and included in an eligible business facility, eight times the net annual rental rate, provided the period for which such property was leased by the taxpayer began on or after July first, nineteen hundred sixty-eight.

(B) Provided, however, eligible property values for purposes of this subdivision shall not include expenditures paid or incurred more than one year prior to the filing of an application for a certificate of eligibility pursuant to section one hundred nineteen of the commerce law, as such section existed on March thirty-first, nineteen hundred eighty-three.

(C) Provided further that, for purposes of this subsection, eligible property values shall not include that portion of the value of property which is used in the production of adjusted eligible net income which is allowed as a deduction from entire net income as set forth in subsection (f) of section fourteen hundred fifty-three of this article.

(5) The total of all credits allowed pursuant to this subsection in any taxable year or years with reference to any eligible business facility shall not exceed the total eligible property values included.

(6) If a credit is allowed for any taxable year as herein provided on the basis of a certificate of eligibility, and if such certificate is revoked or modified, the taxpayer shall report such revocation or modification in its return for the taxable year during which it occurs, and the tax commission shall recompute such credit and may assess any additional tax resulting from such recomputation within the time fixed by paragraph nine of subsection (c) of section ten hundred eighty-three of this chapter.

(7) If a business facility owned or operated by a taxpayer shall be an eligible business facility for only part of a taxable year, the credit allowed by this subdivision shall be prorated according to the period such facility was an eligible business facility, and if the total of the

eligible property values shall have changed during any taxable year, a pro-rata adjustment shall be made in computing such credit.

(8) The state tax commission shall be empowered, on or after April first, nineteen hundred eighty-three, to issue a certificate of eligibility for tax credits to a taxpayer for an eligible business facility with regard to which such taxpayer has, prior to July first, nineteen hundred eighty-three, received from the New York state job incentive board initial approval of an application for such certificate by such board as evidenced by the minutes of the meeting of the board at which such application was approved, or a letter of intent authorized by section 102.4 of part one hundred two of title five of the codes, rules and regulations of the state of New York regarding such certificate of eligibility and to renew, extend, revoke or modify a certificate of eligibility for tax credits, pursuant to section one hundred twenty of the commerce law as such section existed on March thirty-first, nineteen hundred eighty-three.

(9) For purposes of the requirement for eligibility for the credit allowed under this subdivision that a business facility create or retain not less than five jobs as provided in subdivision (c) of section one hundred eighteen of the commerce law as such section existed on March thirty-first, nineteen hundred eighty-three, a business facility shall have (i) created not less than five jobs only if the number of jobs for the taxable year exceeds the number of jobs at the time of the commencement of the project as stated on its application for initial approval by five or more; or (ii) retained not less than five jobs only if initial approval was based on the retention of five or more jobs and (A) the number of jobs for the taxable year is at least equal to the number of jobs at the time of the commencement of the project as stated on its application for initial approval or (B) where initial approval was based on the retention of fewer jobs than the number of jobs at the time of the commencement of the project as stated on its application for initial approval, the number of jobs for the taxable year is at least equal to the number approved for retention. For purposes of this paragraph, the phrase "initial approval was based on the retention of five or more jobs" shall mean that such initial approval was given by the job incentive board to an applicant that had not stated in its application for initial approval that it would increase the number of jobs at its facility by at least five.

(c) Mortgage recording tax credit. (1) A taxpayer shall be allowed a credit, to be credited against the tax imposed by this article. The amount of the credit shall be the amount of the special additional mortgage recording tax paid by the taxpayer pursuant to the provisions of subdivision one-a of section two hundred fifty-three of this chapter on mortgages recorded on and after January first, nineteen hundred seventy-nine. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in one or more of the counties comprising the metropolitan commuter transportation district and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven. Provided, however, no credit shall be allowed with respect to a mortgage of real property principally improved or to be improved by one or more structures containing in the aggregate not more than six residential dwelling units, each dwelling unit having its own separate cooking facilities, where the real property is located in the county of Erie and where the mortgage is recorded on or after May first, nineteen hundred eighty-seven.

(2) In no event shall the credit herein provided for, and carryovers of such credit, in the aggregate, be allowed in an amount which will reduce the tax payable to less than the dollar amount fixed as a minimum tax by subsection (b) of section fourteen hundred fifty-five. However, if the amount of credit or carryovers of such credit, or both, allowable under this subdivision for any taxable year reduces the tax to such amount, any amount of credit or carryovers of such credit thus 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.

(d) Empire zone capital credit.

(1) A taxpayer shall be allowed a credit against the tax imposed by this article. The amount of the credit shall be equal to twenty-five percent of the sum of the following investments and contributions made during the taxable year and certified by the commissioner of economic development: (A) for taxable years beginning before January first, two thousand five, qualified investments made in, or contributions in the form of donations made to, one or more empire zone capital corporations established pursuant to section nine hundred sixty-four of the general municipal law prior to January first, two thousand five, (B) qualified investments in certified zone businesses which during the twelve month period immediately preceding the month in which such investment is made employed full-time within the state an average number of individuals, excluding general executive officers, of two hundred fifty or fewer, computed pursuant to the provisions of subparagraph (C) of paragraph two of subsection (e) of this section, except for investments made by or on behalf of an owner of the business, including, but not limited to, a stockholder, partner or sole proprietor, or any related person, as defined in subparagraph (C) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, and (C) contributions of money to community development projects as defined in regulations promulgated by the commissioner of economic development. "Qualified investments" means the contribution of property to a corporation in exchange for original issue capital stock or other ownership interest, the contribution of property to a partnership in exchange for an interest in the partnership, and similar contributions in the case of a business entity not in corporate or partnership form in exchange for an ownership interest in such entity. The total amount of credit allowable to a taxpayer under this provision for all years, taken in the aggregate, shall not exceed three hundred thousand dollars, and shall not exceed one hundred thousand dollars with respect to the investments and contributions described in each of subparagraphs (A), (B) and (C) of this paragraph.

(2) The credit and carryover of such credit allowed under this subsection for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subsection for any taxable year reduces the tax to such amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence of this paragraph, any amount of credit or carryovers of such credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the tax for such

year or years. In addition, the amount of such credit, and carryovers of such credit to the taxable year, deducted from the tax otherwise due may not, in the aggregate, exceed fifty percent of the tax imposed under section fourteen hundred fifty-five of this article computed without regard to any credit provided for under this article.

(2-a) Any carryover of a credit from prior taxable years will not be allowed to an empire zone enterprise which is the basis of the credit, if an empire zone retention certificate is not issued to such entity pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law.

(3) Where the stock, partnership interest or other ownership interest arising from a qualified investment as described in subparagraphs (A) and (B) of paragraph one of this subsection is disposed of, the taxpayer's entire net income shall be computed, pursuant to regulations promulgated by the commissioner, so as to properly reflect the reduced cost thereof arising from the application of the credit provided for herein.

(4)(A) Where a taxpayer sells, transfers or otherwise disposes of corporate stock, a partnership interest or other ownership interest arising from the making of a qualified investment which was the basis, in whole or in part, for the allowance of the credit provided for under this subsection, or where a contribution or investment which was the basis for such allowance is in any manner, in whole or in part, recovered by such taxpayer, and such disposition or recovery occurs during the taxable year or within thirty-six months from the close of the taxable year with respect to which such credit is allowed, subparagraph (B) of this paragraph shall apply.

(B) The taxpayer shall add back with respect to the taxable year in which the disposition or recovery described in subparagraph (A) of this paragraph occurred the required portion of the credit originally allowed.

(C) The required portion of the credit originally allowed shall be the product of (i) the portion of such credit attributable to the property disposed of or the payment or contribution recovered and (ii) the applicable percentage.

(D) The applicable percentage shall be:

(i) one hundred percent, if the disposition or recovery occurs within the taxable year with respect to which the credit is allowed or within twelve months of the end of such taxable year,

(ii) sixty-seven percent, if the disposition or recovery occurs more than twelve but not more than twenty-four months after the end of the taxable year with respect to which the credit is allowed, or

(iii) thirty-three percent, if the disposition or recovery occurs more than twenty-four but not more than thirty-six months after the end of the taxable year with respect to which the credit is allowed.

(5) If the designation of an area as an empire zone is no longer in effect because the designations of all empire zones pursuant to article eighteen-B of the general municipal law have expired, a taxpayer that has made a contribution of money on or before the day immediately preceding the day the empire zones expired to a community development project approved by the commissioner of economic development shall be deemed eligible to claim the empire zone capital credit under subparagraph (C) of paragraph one of this subsection for additional contributions made prior to April first, two thousand fourteen and certified by the commissioner of economic development to that community development

project as payment of a commitment made by the taxpayer to that community development project before the empire zones expired.

(e) Empire zone wage tax credit. (1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article where the taxpayer has been certified pursuant to article eighteen-B of the general municipal law. The amount of such credit shall be as prescribed in paragraph four hereof.

(2) For purposes of this subsection, the following terms shall have the following meanings: (A) "Empire zone wages" means wages paid by the taxpayer for full-time employment, other than to general executive officers, during the taxable year in an area designated or previously designated as an empire zone or zone equivalent area pursuant to article eighteen-B of the general municipal law where such employment is in a job created in the area (i) during the period of its designation as an empire zone, (ii) within four years of the expiration of such designation, or (iii) during the ten year period immediately following the date of designation as a zone equivalent area, provided, however, that if the taxpayer's certification under article eighteen-B of the general municipal law is revoked with respect to an empire zone or zone equivalent area, any wages paid by the taxpayer, on or after the effective date of such decertification, for employment in such zone shall not constitute empire zone wages.

(B) "Targeted employee" means a New York resident who receives empire zone wages and who is (i) an eligible individual under the provisions of the targeted jobs tax credit (section fifty-one of the internal revenue code), (ii) eligible for benefits under the provisions of the workforce investment act as a dislocated worker or low-income individual (P.L. 105-220, as amended), (iii) a recipient of public assistance benefits, (iv) an individual whose income is below the most recently established poverty rate promulgated by the United States department of commerce, or a member of a family whose family income is below the most recently established poverty rate promulgated by the appropriate federal agency or (v) an honorably discharged member of any branch of the armed forces of the United States.

An individual who satisfies the criteria set forth in clause (i), (ii), (iv) or (v) of this subparagraph at the time of initial employment in the job with respect to which the credit is claimed, or who satisfies the criterion set forth in clause (iii) of this subparagraph at such time or at any time within the previous two years, shall be a targeted employee so long as such individual continues to receive empire zone wages.

(C) "Average number of individuals, excluding general executive officers, employed full-time" shall be computed by ascertaining the number of such individuals employed by the taxpayer on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during each taxable year or other applicable period, by adding together the number of such individuals ascertained on each of such dates and dividing the sum so obtained by the number of such dates occurring within such taxable year or other applicable period.

(3) The credit provided for herein shall be allowed only where the average number of individuals, excluding general executive officers, employed full-time by the taxpayer in (A) (i) the state and (ii) the empire zone or area previously constituting such zone or zone equivalent area, during the taxable year exceeds the average number of such individuals employed full-time by the taxpayer in (B) (i) the state and (ii)

such zone or area subsequently or previously constituting such zone or such zone equivalent area, respectively, during the four years immediately preceding the first taxable year in which the credit is claimed with respect to such zone or area. Where the taxpayer provided full-time employment within (C) (i) the state or (ii) such zone or area during only a portion of such four-year period, then for purposes of this paragraph the term "four years" shall be deemed to refer instead to such portion, if any.

The credit shall be allowed only with respect to the first taxable year during which payments of empire zone wages are made and the conditions set forth in this paragraph are satisfied, and with respect to each of the four taxable years next following (but only, with respect to each of such years, if such conditions are satisfied), in accordance with paragraph four of this subsection. Subsequent certifications of the taxpayer pursuant to article eighteen-B of the general municipal law, at the same or a different location in the same empire zone or zone equivalent area or at a location in a different empire zone or zone equivalent area, shall not extend the five taxable year time limitation on the allowance of the credit set forth in the preceding sentence. Provided, further, however, that no credit shall be allowed with respect to any taxable year beginning more than four years following the taxable year in which designation as an empire zone expired or more than ten years after the designation as a zone equivalent area.

(4) The amount of the credit shall equal the sum of (A) the product of three thousand dollars and the average number of individuals (excluding general executive officers) employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subsection, who (i) received empire zone wages for more than half of the taxable year, (ii) received, with respect to more than half of the period of employment by the taxpayer during the taxable year, an hourly wage which was at least one hundred thirty-five percent of the minimum wage specified in section six hundred fifty-two of the labor law, and (iii) are targeted employees; and

(B) the product of fifteen hundred dollars and the average number of individuals (excluding general executive officers and individuals described in subparagraph (A) of this paragraph) employed full-time by the taxpayer, computed pursuant to the provisions of subparagraph (C) of paragraph two of this subsection, who received empire zone wages for more than half of the taxable year.

(C) For purposes of calculating the amount of the credit, individuals employed within an empire zone or zone equivalent area within the immediately preceding sixty months by a related person, as such term is defined in subparagraph (c) of paragraph three of subsection (b) of section four hundred sixty-five of the internal revenue code, shall not be included in the average number of individuals described in subparagraph (A) or subparagraph (B) of this paragraph, unless such related person was never allowed a credit under this subsection with respect to such employees. For the purposes of this subparagraph, a "related person" shall include an entity which would have qualified as a "related person" to the taxpayer if it had not been dissolved, liquidated, merged with another entity or otherwise ceased to exist or operate.

(D) If a taxpayer is certified in an empire zone designated under subdivision (a) or (d) of section nine hundred fifty-eight of the general municipal law, the dollar amounts specified under subparagraph (A) or (B) of this paragraph shall be increased by five hundred dollars for each qualifying individual under such subparagraph who received, during the taxable year, wages in excess of forty thousand dollars.

(E) The requirement in this paragraph that an employee must receive empire zone wages for more than half the taxable year shall not apply in the first taxable year of a taxpayer satisfying the criteria set forth in this subparagraph. In such a case, the credit allowed under this subsection shall be computed by utilizing the number of individuals (excluding general executive officers) employed full time by the taxpayer on the last day of its first taxable year. A taxpayer shall satisfy the following criteria: (i) such taxpayer acquired real or tangible personal property during its first taxable year from an entity which is not a related person (as such term is defined in subdivision (g) of section fourteen of this chapter); (ii) the first taxable year of such taxpayer shall be a short taxable year of not more than seven months in duration; and (iii) the number of individuals employed full-time on the last day of such first taxable year shall be at least one hundred ninety and substantially all of such individuals must have been previously employed by the entity from whom such taxpayer purchased its assets.

Provided, further, however, that the credit provided for herein with respect to the taxable year, and carryovers of such credit to the taxable year, deducted from the tax otherwise due, may not, in the aggregate, exceed fifty percent of the tax imposed under section fourteen hundred fifty-five computed without regard to any credit provided for under this article.

(5) The credit and carryovers of such credit allowed under this subsection for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subsection for any taxable year reduces the tax to such amount, or if any part of the credit or carryovers of such credit may not be deducted from the tax otherwise due by reason of the final sentence in paragraph four hereof, any amount of credit or carryovers of such credit thus 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-a) Any carry over of a credit from prior taxable years will not be allowed if an empire zone retention certificate is not issued pursuant to subdivision (w) of section nine hundred fifty-nine of the general municipal law to the empire zone enterprise which is the basis of the credit.

(e-1) Hire a vet credit. (1) Allowance of credit. For taxable years beginning on or after January first, two thousand seventeen and before January first, two thousand nineteen, a taxpayer shall be allowed a credit, to be computed as provided in this subsection, against the tax imposed by this article, for hiring and employing, for not less than one year and for not less than thirty-five hours each week, a qualified veteran within the state. The taxpayer may claim the credit in the year in which the qualified veteran completes one year of employment by the taxpayer. If the taxpayer claims the credit allowed under this subsection, the taxpayer may not use the hiring of a qualified veteran that is the basis for this credit in the basis of any other credit allowed in this article.

(2) Qualified veteran. A qualified veteran is an individual:

(A) who served on active duty in the United States army, navy, air force, marine corps, coast guard or the reserves thereof, or who served in active military service of the United States as a member of the army national guard, air national guard, New York guard or New York naval militia; who was released from active duty by general or honorable discharge after September eleventh, two thousand one;

(B) who commences employment by the qualified taxpayer on or after January first, two thousand fourteen, and before January first, two thousand seventeen; and

(C) who certifies by signed affidavit, under penalty of perjury, that he or she has not been employed for thirty-five or more hours during any week in the one hundred eighty day period immediately prior to his or her employment by the taxpayer.

(3) Employer prohibition. An employer shall not discharge an employee and hire a qualifying veteran solely for the purpose of qualifying for this credit.

(4) Amount of credit. The amount of the credit shall be ten percent of the total amount of wages paid to the qualified veteran during the veteran's first full year of employment. Provided, however, that, if the qualified veteran is a disabled veteran, as defined in paragraph (b) of subdivision one of section eighty-five of the civil service law, the amount of the credit shall be fifteen percent of the total amount of wages paid to the qualified veteran during the veteran's first full year of employment. The credit allowed pursuant to this subsection shall not exceed in any taxable year, five thousand dollars for any qualified veteran and fifteen thousand dollars for any qualified veteran who is a disabled veteran.

(5) Carryover. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the amount prescribed in paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowable under this subsection 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 three years and may be deducted from the taxpayer's tax for such year or years.

(f) Credit for employment of persons with disabilities. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article, for employing within the state a qualified employee.

(2) Qualified employee. A qualified employee is an individual:

(A) who is certified by the education department, or in the case of an individual who is blind or visually handicapped, by the state agency responsible for provision of vocational rehabilitation services to the blind and visually handicapped: (i) as a person with a disability which constitutes or results in a substantial handicap to employment and (ii) as having completed or as receiving services under an individualized written rehabilitation plan approved by the education department or other state agency responsible for providing vocational rehabilitation services to such individual; and

(B) who has worked on a full-time basis for the employer who is claiming the credit for at least one hundred eighty days or four hundred hours.

(3) Amount of credit. Except as provided in paragraph four of this subsection, the amount of credit shall be thirty-five percent of the first six thousand dollars in qualified first-year wages earned by each qualified employee. "Qualified first-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employee, to services

rendered during the one-year period beginning with the day the employee begins work for the taxpayer.

(4) Credit where federal work opportunity tax credit applies. With respect to any qualified employee whose qualified first-year wages under paragraph three of this subsection also constitute qualified first-year wages for purposes of the work opportunity tax credit for vocational rehabilitation referrals under section fifty-one of the internal revenue code, the amount of credit under this subsection shall be thirty-five percent of the first six thousand dollars in qualified second-year wages earned by each such employee. "Qualified second-year wages" means wages paid or incurred by the taxpayer during the taxable year to qualified employees which are attributable, with respect to any such employees, to services rendered during the one-year period beginning one year after the employee begins work for the taxpayer.

(5) Carryover. The credit and carryovers of such credit allowed under this subsection for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subdivision for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus 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.

(6) Coordination with federal work opportunity tax credit. The provisions of sections fifty-one and fifty-two of the internal revenue code, as such sections applied on October first, nineteen hundred ninety-six, that apply to the work opportunity tax credit for vocational rehabilitation referrals shall apply to the credit under this subsection to the extent that such sections are consistent with the specific provisions of this subsection, provided that in the event of a conflict the provisions of this subsection shall control.

(g) Order of credits. Credits allowable under this article which cannot be carried over and which are not refundable shall be deducted first. Credits allowable under this article which can be carried over, and carryovers of such credits, shall be deducted next, and among such credits, those whose carryover is of limited duration shall be deducted before those whose carryover is of unlimited duration; provided, however, that the credit allowable under subsection (e) of this section shall be deducted prior to all other credits described in this sentence. Credits allowable under this article which are refundable shall be deducted last.

(h) Credits for New York S corporations. Notwithstanding the provisions of this section, no carryover of credit allowable in a New York C year shall be deducted from the tax otherwise due under this article in a New York S year, and no credit allowable in a New York S year, or carryover of such credit, shall be deducted from the tax imposed by this article. However, a New York S year shall be treated as a taxable year for purposes of determining the number of taxable years to which a credit may be carried over under this section. Notwithstanding the first sentence of this subsection, however, the credit for the special additional mortgage recording tax shall be allowed as provided in subsection (c) of this section, and the carryover of any such credit shall be determined without regard to whether the credit is carried from a New York C year to a New York S year or vice-versa.

(i) Investment tax credit (ITC). (1) A taxpayer shall be allowed a credit, to be computed as hereinafter provided, against the tax imposed by this article. Provided, however, a taxpayer shall not be allowed such credit provided by this paragraph unless (i) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or (ii) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (iii) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For the purposes of subparagraph (iii) of this paragraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. The amount of the credit shall be the percent provided for herein below of the investment credit base. The investment credit base is the cost or other basis for federal income tax purposes of tangible personal property and other tangible property, including buildings and structural components of buildings, described in paragraph two of this subsection, less the amount of the nonqualified nonrecourse financing with respect to such property to the extent such financing would be excludible from the credit base pursuant to section 46(c)(8) of the Internal Revenue Code (treating such property as section thirty-eight property irrespective of whether or not it in fact constitutes section thirty-eight property). If, at the close of a taxable year following the taxable year in which such property was placed in service, there is a net decrease in the amount of nonqualified nonrecourse financing with respect to such property, such net decrease shall be treated as if it were the cost or other basis of property described in paragraph two of this subsection acquired, constructed, reconstructed or erected during the year of the decrease in the amount of nonqualified nonrecourse financing. In the case of a combined report the term investment credit base shall mean the sum of the investment credit base of each corporation included on such report. The percentage to be used to compute the credit allowed pursuant to this subsection shall be

For taxable years beginning after
1997 .................................. five percent with
respect to the first three hundred fifty million dollars of

the investment credit base, and four percent with respect to the investment credit base in excess of three hundred fifty million dollars.

(2) A credit shall be allowed under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which are: depreciable pursuant to section one hundred sixty-seven of the Internal Revenue Code, have a useful life of four years or more, are acquired by purchase as defined in section one hundred seventy-nine (d) of the Internal Revenue Code, have a situs in this state and are (A) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c) (2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, or (B) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c) (2) of the Internal Revenue Code. For purposes of subparagraphs (A) and (B) of this paragraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, or registered investment adviser is allowed a credit under this subsection if the property is used by its affiliated regulated broker, dealer, or registered investment adviser in accordance with this subsection. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in subparagraphs (A) and (B) of this paragraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under either or both of such subparagraphs may be aggregated.

(3) A taxpayer shall not be allowed a credit under this subsection with respect to any property described in paragraph two of this subsection if such property qualifies for the deduction allowed under subsection (k) of section one thousand four hundred fifty-three of this article whether or not such amount shall have been deducted.

(4) A taxpayer shall not be allowed a credit under this subsection with respect to tangible personal property and other tangible property, including buildings and structural components of buildings, which it leases to any other person or corporation except where a taxpayer leases property to an affiliated broker, dealer, or registered investment adviser that uses such property in accordance with subparagraph (A) or (B) of paragraph two of this subsection. For purposes of the preceding sentence, any contract or agreement to lease or rent or for a license to use such property shall be considered a lease.

(5) Except as otherwise provided in this paragraph, the credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the dollar amount fixed as a minimum tax by subsection (b) of section one thousand four hundred fifty-five of this article. However, if the amount of credit allowable under this subsection for any taxable year reduces the tax to such amount, any

amount of credit allowed for a taxable year may be carried over to the fifteen taxable years next following such taxable year and may be deducted from the taxpayer's tax for such year or years. In lieu of such carryover, any such taxpayer which qualifies as a new business under paragraph eight of this subsection may elect to treat the amount of such carryover 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.

(6) At the option of the taxpayer an eligible business facility for which a credit is allowed under subsection (b) of this section may be treated as property (A) principally used in the ordinary course of the taxpayer's trade or business as a broker or dealer in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of stocks, bonds or other securities as defined in section four hundred seventy-five (c) (2) of the Internal Revenue Code, or of commodities as defined in section four hundred seventy-five (e) of the Internal Revenue Code, or (B) principally used in the ordinary course of the taxpayer's trade or business of providing investment advisory services for a regulated investment company as defined in section eight hundred fifty-one of the Internal Revenue Code, or lending, loan arrangement or loan origination services to customers in connection with the purchase or sale (which shall include but not be limited to the issuance, entering into, assumption, offset, assignment, termination, or transfer) of securities as defined in section four hundred seventy-five (c) (2) of the Internal Revenue Code provided the property otherwise qualifies under paragraph two of this subsection, in which event a credit shall not be allowed under subsection (b) of this section.

(7)(A) With respect to property which is depreciable pursuant to section one hundred sixty-seven of the Internal Revenue Code but is not subject to the provisions of section one hundred sixty-eight of such code and which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to the months of useful life. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of its useful life, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the months of useful life. For purposes of this subparagraph, useful life of property shall be the same as the taxpayer uses for depreciation purposes when computing his federal income tax liability.

(B) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to three-year property, as defined in subsection (e) of section one hundred sixty-eight of the Internal Revenue Code, which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to thirty-six. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of thirty-six months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to thirty-six.

(C) Except with respect to that property to which subparagraph (D) of this paragraph applies, with respect to property subject to the provisions of section one hundred sixty-eight of the Internal Revenue Code, other than three-year property as defined in subsection (e) of such section one hundred sixty-eight which is disposed of or ceases to be in qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to sixty. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of sixty months, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to sixty.

(D) With respect to any property to which section one hundred sixty-eight of the Internal Revenue Code applies, which is a building or a structural component of a building and which is disposed of or ceases to be in a qualified use prior to the end of the taxable year in which the credit is to be taken, the amount of the credit shall be that portion of the credit provided for in this subsection which represents the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the Internal Revenue Code. If property on which credit has been taken is disposed of or ceases to be in qualified use prior to the end of the period over which the taxpayer chooses to deduct the property under the Internal Revenue Code, the difference between the credit taken and the credit allowed for actual use must be added back in the year of disposition. Provided, however, if such property is disposed of or ceases to be in qualified use after it has been in qualified use for more than twelve consecutive years, it shall not be necessary to add back the credit as provided in this subparagraph. The amount of credit allowed for actual use shall be determined by multiplying the original credit by the ratio which the months of qualified use bear to the total number of months over which the taxpayer chooses to deduct the property under the Internal Revenue Code.

(E) For taxable years commencing on or after January first, nineteen hundred ninety-eight the amount required to be added back pursuant to this paragraph shall be augmented by an amount equal to the product of such amount and the underpayment rate of interest (without regard to compounding), set by the commissioner pursuant to subsection (e) of section one thousand ninety-six of this chapter, in effect on the last day of the taxable year.

(F) If, as of the close of the taxable year, there is a net increase with respect to the taxpayer in the amount of nonqualified nonrecourse financing (within the meaning of section 46(c)(8) of the Internal Revenue Code) with respect to any property with respect to which the credit under this subsection was limited based on attributable nonqualified nonrecourse financing, then an amount equal to the decrease in such credit which would have resulted from reducing, by the amount of such net increase, the cost or other basis taken into account with respect to such property must be added back in such taxable year. The amount of nonqualified nonrecourse financing shall not be treated as increased by reason of a transfer of (or agreement to transfer) any evidence of an indebtedness if such transfer occurs (or such agreement is entered into) more than one year after the date such indebtedness was incurred.

(8) For purposes of paragraph five of this subsection, a new business shall include any corporation, except a corporation which:

(A) 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 this article; section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; article nine-A or article thirty-three of this chapter; or

(B) is substantially similar in operation and in ownership to a business entity (or entities) taxable, or previously taxable, under this article; section one hundred eighty-three, one hundred eighty-four or one hundred eighty-five of article nine; article nine-A or article thirty-three of this chapter; article twenty-three of this chapter or which would have been subject to tax under such article twenty-three (as such article was in effect on January first, nineteen hundred eighty) or the income (or losses) of which is (or was) includable under article twenty-two of this chapter whereby the intent and purpose of this paragraph and paragraph five of this subsection with respect to refunding of credit to new business would be evaded; or

(C) has been subject to tax under this article for more than five taxable years (excluding short taxable years).

(9)(A)(i) If a taxpayer is required by paragraph seven of this subsection to add back a portion of the credit taken because property was destroyed or ceased to be in qualified use as a direct result of the September eleventh, two thousand one terrorist attacks, such taxpayer may elect to defer the amount to be recaptured for all such property to the taxable year next succeeding the taxable year in which the destruction or cessation of qualified use occurred. The taxable year in which the destruction or cessation of qualified use occurred shall be hereinafter referred to as the "recapture event taxable year". If the taxpayer's total employment number in the state on the last day of the taxable year next succeeding the recapture event taxable year is a significant percentage of the taxpayer's average total employment number in the state for the taxpayer's recapture event taxable year and the two taxable years immediately preceding the recapture event taxable year, then the taxpayer shall not be required to recapture any credit with respect to such property. If the taxpayer's total employment number in the state on the last day of the taxable year next succeeding the recapture event taxable year is not a significant percentage of the taxpayer's average total employment number in the state for the taxpayer's recapture event taxable year and the two taxable years immediately preceding the recapture event taxable year, the taxpayer shall be required to recapture the portion of the credit taken under this subsection, as required by paragraph seven of this subsection, for all of its property destroyed or which ceased to be in qualified use as a direct result of the September eleventh, two thousand one terrorist attacks. The amount required to be recaptured shall be augmented as required pursuant to subparagraph (E) of paragraph seven of this subsection by using an interest rate equal to two times the rate of interest specified in such subparagraph seven applicable for the taxable year in which the recapture occurs.

(ii) The taxpayer's total employment number shall include all employees of the taxpayer employed full-time by the taxpayer in the state. The average total employment number for the recapture event taxable year and the two taxable years immediately preceding the recapture event taxable year shall be computed by determining the taxpayer's total employment number on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September and the thirty-first day of December during the applicable taxable years, adding together the number of such individuals determined to be so employed on each of such dates and dividing the sum so obtained by the number of such dates occurring within such applicable taxable years. However, in the case of the taxable year which included September eleventh, two thousand one, the average total employment number for such taxable year shall be determined by using the total employment number on September first, two thousand one in lieu of September thirtieth, two thousand one and, if such taxable year included December thirty-first, two thousand one, by excluding the total employment number on December thirty-first, two thousand one.

(B) In lieu of subparagraph (A) of this paragraph, a taxpayer may elect to recapture the portion of the credit taken under this subsection, as required by paragraph seven of this subsection, for all of its property destroyed or which ceased to be in qualified use as a direct result of the September eleventh, two thousand one terrorist attacks, in the taxable year in which the destruction or cessation of qualified use occurred. If the taxpayer makes such election and acquires property (hereinafter referred to as "replacement property") to replace any property destroyed as a direct result of the September eleventh, two thousand one terrorist attacks (regardless of when such property was placed in service and whether a credit was claimed on that property pursuant to this subsection), and such replacement property is similar or related in service or use to such destroyed property, the investment credit base of the replacement property shall be determined without regard to any basis reduction required pursuant to section 1033 of the internal revenue code.

(C) The election made by the taxpayer under subparagraph (A) or (B) of this paragraph shall be made in the manner and form prescribed by the commissioner.

(D) A taxpayer, over fifty percent of whose employees died as a direct result of the September eleventh, two thousand one terrorist attacks, may make the election provided for in subparagraph (A) of this paragraph, and shall not be required to recapture any credit with respect to property which was destroyed or which ceased to be in qualified use as a direct result of such attacks, whether or not it meets the employment test specified in clause (i) of subparagraph (A) of this paragraph.

(j) Credit for purchase of an automated external defibrillator. A taxpayer shall be allowed a credit as hereinafter provided, against the tax imposed by this article for the purchase, other than for resale, of an automated external defibrillator, as such term is defined in section three thousand-b of the public health law. The amount of the credit shall be the cost to the taxpayer of automated external defibrillators purchased during the taxable year, such credit not to exceed five hundred dollars with respect to each unit purchased. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article.

(k) (1) A taxpayer shall be allowed a credit against the tax imposed by this article equal to twenty percent of the premium paid during the taxable year for long-term care insurance. In order to qualify for such credit, the taxpayer's premium payment must be for the purchase of or for continuing coverage under a long-term care insurance policy that qualifies for such credit pursuant to section one thousand one hundred seventeen of the insurance law.

(2) In no event shall the credit herein provided for, and carryovers of such credit, be allowed in an amount which will reduce the tax payable to less than the dollar amount fixed as a minimum tax by subsection (b) of section fourteen hundred fifty-five of this article. If, however, the amount of credit or carryovers of such credit, or both, allowable under this subsection for any taxable year reduces the tax to such amount, any amount of credit or carryovers of such credit thus 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.

(l) Low-income housing credit. (1) Allowance of credit. A taxpayer shall be allowed a credit against the tax imposed by this article with respect to the ownership of eligible low-income buildings, computed as provided in section eighteen of this chapter.

(2) Application of credit. The credit and carryovers of such credit allowed under this subsection for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subsection for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus 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.

(3) Credit recapture. For provisions requiring recapture of credit, see subdivision (b) of section eighteen of this chapter.

(m) Green building credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section nineteen of this chapter, against the tax imposed by this article.

(2) Carryover. The credit and carryovers of such credit allowed under this subsection for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit or carryovers of such credit, or both, allowed under this subsection for any taxable year reduces the tax to such amount, then any amount of credit or carryovers of such credit thus 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.

(n) Credit for transportation improvement contributions. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed

under this subsection for any taxable year reduces the tax to such amount, then 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 ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(3) Credit recapture. For provisions requiring recapture of credit, see subdivision (c) of section twenty of this chapter.

(o) QEZE credit for real property taxes. (1) Allowance of credit. A taxpayer which is a qualified empire zone enterprise shall be allowed a credit for eligible real property taxes, to be computed as provided in section fifteen of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, then 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 ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(p) QEZE tax reduction credit. (1) Allowance of credit. A taxpayer which is a qualified empire zone enterprise shall be allowed a QEZE tax reduction credit, to be computed as provided in section sixteen of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article.

(q) Brownfield redevelopment tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-one of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credits allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(r) Remediated brownfield credit for real property taxes for qualified sites. (1) Allowance of credit. A taxpayer which is a developer of a qualified site shall be allowed a credit for eligible real property taxes, to be computed as provided in subdivision (b) of section twenty-two of this chapter, against the tax imposed by this article. For purposes of this subsection, the terms "qualified site" and "developer" shall have the same meaning as set forth in paragraphs two and three, respectively, of subdivision (a) of section twenty-two of this chapter.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section ten hundred eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section ten hundred eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(s) Environmental remediation insurance credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-three of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credits allowed under this subdivision for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(t) Security training tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section twenty-six of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credits allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(u) Credit for fuel cell electric generating equipment expenditures. (1) Allowance of credit. For taxable years beginning before January first, two thousand nine, a taxpayer shall be allowed a credit against the tax imposed by this article, equal to its qualified fuel cell electric generating equipment expenditures. This credit shall not exceed one thousand five hundred dollars per generating unit with respect to any taxable year. The credit provided for in this subsection shall be allowed with respect to the taxable year in which the fuel cell electric generating equipment is placed in service.

(2) Qualified fuel cell electric generating equipment expenditures. (A) Qualified fuel cell electric generating equipment expenditures are the costs, incurred on or after July first, two thousand five, associated with the purchase of on-site electricity generation units utilizing proton exchange membrane fuel cells, providing a rated baseload capacity of no less than one kilowatt and no more than one hundred kilowatts of

electricity, which are located in this state at the time the qualified fuel cell electric generating equipment is placed in service.

(B) Qualified fuel cell electric generating equipment expenditures shall also include costs, incurred on or after July first, two thousand five, for materials, labor for on-site preparation, assembly and original installation, engineering services, designs and plans directly related to construction or installation and utility compliance costs.

(C) Such qualified expenditures shall not include interest or other finance charges.

(D) The amount of any federal, state or local grant received by the taxpayer, which was used for the purpose and/or installation of such equipment and which was not included in the federal gross income of the taxpayer, shall not be included in the amount of such qualified expenditures.

(3) Application of credit. The credit allowed under this subsection for any taxable year shall not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(v) Excelsior jobs program tax credit. (1) Allowance of credit. A taxpayer will be allowed a credit, to be computed as provided in section thirty-one of this chapter, against the tax imposed by this article.

(2) The credit allowed under this subsection for any taxable year will not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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 will be paid thereon.

(w) Credit for rehabilitation of historic properties. (1) (A) For taxable years beginning on or after January first, two thousand ten and before January first, two thousand 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 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.

(B) If the taxpayer is a partner in a partnership or a shareholder of a New York S corporation, then the credit caps imposed in subparagraph (A) of this paragraph shall be applied at the entity level, so that the aggregate credit allowed to all the partners or shareholders of each such entity in the taxable year does not exceed the credit cap that is applicable in that taxable year.

(2) Tax credits allowed pursuant to this subsection shall be allowed in the taxable year that the qualified rehabilitation is placed in service under section 167 of the federal internal revenue code.

(3) If the credit allowed the taxpayer pursuant to section 47 of the internal revenue code with respect to a qualified rehabilitation is recaptured pursuant to subsection (a) of section 50 of the internal revenue code, a portion of the credit allowed under this subsection must be added back in the same taxable year and in the same proportion as the federal recapture.

(4) The credit allowed under this subsection for any taxable year shall not reduce the tax to less than the dollar amount fixed as a minimum tax by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year shall be treated as an overpayment of tax to be credited or refunded in accordance with the provisions of section one thousand eighty-six of this chapter. Provided, however, the provisions of subsection (c) of section one thousand eighty-eight of this chapter notwithstanding, no interest shall be paid thereon.

(5) To be eligible for the credit allowable under this subsection the rehabilitation project shall be in whole or in part located within a census tract which is identified as being at or below one hundred percent of the state median family income as calculated as of January first of each year using the most recent five year estimate from the American community survey published by the United States Census bureau.

(x) Temporary deferral nonrefundable payout credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision one of section thirty-four of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subdivision for any taxable year shall not reduce the tax due for that year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit 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 may be carried over to the following year or years and may be deducted from the taxpayer's tax for such year or years.

(y) Temporary deferral refundable payout credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in subdivision two of section thirty-four of this chapter, against the tax imposed by this article.

(2) Application of credit. In no event shall the credit under this section be allowed in an amount which will reduce the tax to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. If, however, the amount of credit allowed under this section for any taxable year reduces the tax to such amount, any amount of credit not deductible in such taxable year shall be treated as an overpayment of tax to be refunded in accordance with the provisions of section one thousand eighty-six of this chapter, provided however, that no interest shall be paid thereon.

(z) Economic transformation and facility redevelopment program tax credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section thirty-five of this chapter, against the tax imposed by this article.

(2) The credit allowed under this subsection for any taxable year will not reduce the tax due for such year to less than the minimum tax fixed by paragraph three of subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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 will be paid thereon.

(aa) Empire state jobs retention program credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided in section thirty-six of this chapter, against the taxes imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year will not reduce the tax due for such year to less than the minimum tax fixed by this article. However, if the amount of credit allowed under this subsection for any taxable year reduces the tax to such amount, any amount of credit thus not deductible in such taxable year will 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 will be paid thereon.

(bb) Minimum wage reimbursement credit. (1) Allowance of credit. A taxpayer shall be allowed a credit, to be computed as provided under section thirty-eight of this chapter, against the tax imposed by this article.

(2) Application of credit. The credit allowed under this subsection for any taxable year shall not, in the aggregate, reduce the tax due for such year to less than the minimum tax fixed by subsection (b) of section fourteen hundred fifty-five of this article. However, if the amount of credit of such credit allowed under this subsection for any taxable year reduces the tax to such amount, then any amount of credit thus not deductible 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.

§ 1460. Declarations of estimated tax. (a) Requirements of declaration.--Every taxpayer subject to the tax imposed by subsection (a) of section fourteen hundred fifty-one of this article shall make a declaration of its estimated tax for the current taxable year, containing such information as the commissioner of taxation and finance may prescribe by regulations or instructions, if such estimated tax can reasonably be expected to exceed one thousand dollars. If a taxpayer is subject to the tax surcharge imposed by section fourteen hundred fifty-five-B of this article and such taxpayer's estimated tax under subsection (a) of section fourteen hundred fifty-one of this article can reasonably be expected to exceed one thousand dollars, such taxpayer shall also make a declaration of its estimated tax surcharge for the current taxable year.

(b) Definition of estimated tax and estimated tax surcharge.--The terms "estimated tax" and "estimated tax surcharge" mean the amounts which a taxpayer estimates to be the tax or tax surcharge imposed by subsection (a) of section fourteen hundred fifty-one of this article or fourteen hundred fifty-five-B of this article, respectively, for the current taxable year, less the amount which it estimates to be the sum of any credits allowable against the tax or tax surcharge, respectively.

(c) Time for filing declaration.--A declaration of estimated tax and a declaration of estimated tax surcharge shall be filed on or before June fifteenth of the current taxable year in the case of a taxpayer which reports on the basis of a calendar year, except that if the requirements of subsection (a) of this section are first met:

(1) after May thirty-first and before September first of such current taxable year, the declaration shall be filed on or before September fifteenth, or

(2) after August thirty-first and before December first of such current taxable year, the declaration shall be filed on or before December fifteenth.

(d) Amendments of declaration.--A taxpayer may amend a declaration under regulations of the tax commission.

(e) Return as declaration.--If, on or before February fifteenth of the succeeding year in the case of a taxpayer whose taxable year is a calendar year, a taxpayer files its return for the year for which the declaration is required, and pays therewith the balance, if any, of the full amount of the tax or tax surcharge shown to be due on the return:

(1) such return shall be considered as its declaration if no declaration was required to be filed during the taxable year for which the tax or tax surcharge was imposed, but is otherwise required to be filed on or before December fifteenth pursuant to paragraph two of subsection (c) of this section, and

(2) such return shall be considered as the amendment permitted by subsection (d) of this section to be filed on or before December fifteenth if the tax or tax surcharge shown on the return is greater than the estimated tax or estimated tax surcharge, as the case may be, shown on a declaration previously made.

(f) Fiscal year.--This section shall apply to taxable years of twelve months other than a calendar year by the substitutions of the months of such fiscal year for the corresponding months specified in this section.

(g) Short taxable period.--If the taxable period for which a tax or tax surcharge is imposed by subsection (a) of section fourteen hundred fifty-one of this article or section fourteen hundred fifty-five-B of this article, respectively, is less than twelve months, every taxpayer required to make a declaration of estimated tax or a declaration of estimated tax surcharge for such taxable period shall make such a declaration in accordance with regulations of the commissioner of taxation and finance.

(h) Extension of time.--The tax commission may grant a reasonable extension of time, not to exceed three months, for the filing of any declaration required pursuant to this section, on such terms and conditions as it may require.

§ 1461. Payments of estimated tax. (a) Every taxpayer subject to the tax imposed by section fourteen hundred fifty-one of this article must pay an amount equal to (i) twenty-five percent of the preceding year's tax if the preceding year's tax exceeded one thousand dollars but was equal to or less than one hundred thousand dollars, or (ii) forty percent of the preceding year's tax if the preceding year's tax exceeded one hundred thousand dollars. The amount must be paid with the return required to be filed for the preceding taxable year or with an application for an extension of the time for filing the return. If the preceding year's tax under section fourteen hundred fifty-one of this article exceeded one thousand dollars and the taxpayer is subject to the tax surcharge imposed by section fourteen hundred fifty-five-B of this article, the taxpayer must also pay with the tax surcharge return required to be filed for the preceding taxable year, or with an application for an extension of the time for filing the return, an amount equal to (i) twenty-five percent of the tax surcharge imposed for the preceding year if the preceding year's tax was equal to or less than one hundred thousand dollars, or (ii) forty percent of the tax surcharge imposed for the preceding year if the preceding year's tax exceeded one hundred thousand dollars.

(b) Other installments.--The estimated tax or estimated tax surcharge for each taxable year with respect to which a declaration of estimated tax or a declaration of estimated tax surcharge, respectively, is required to be filed under this article shall be paid, in the case of a taxpayer which reports on the basis of a calendar year, as follows:

(1) If the declaration is filed on or before June fifteenth, the estimated tax or estimated tax surcharge shown thereon, after applying thereto the amount, if any, paid during the same taxable year pursuant to subsection (a) of this section, shall be paid in three equal installments. One of such installments shall be paid at the time of the filing of the declaration, one shall be paid on the following September fifteenth, and one on the following December fifteenth.

(2) If the declaration is filed after June fifteenth and not after September fifteenth of such taxable year, and is not required to be filed on or before June fifteenth of such year the estimated tax or estimated tax surcharge shown on such declaration, after applying thereto the amount, if any, paid during the same taxable year pursuant to subsection (a) of this section, shall be paid in two equal installments. One of such installments shall be paid at the time of the filing of the declaration and one shall be paid on the following December fifteenth.

(3) If the declaration is filed after September fifteenth of such taxable year, and is not required to be filed on or before September fifteenth of such year, the estimated tax or estimated tax surcharge shown on such declaration, after applying thereto the amount, if any, paid in respect of such year pursuant to subsection (a) of this section shall be paid in full at the time of the filing of the declaration.

(4) If the declaration is filed after the time prescribed therefor, or after the expiration of any extension of time therefor, paragraphs two and three of this subsection shall not apply and there shall be paid at the time of such filing all installments of estimated tax or estimated tax surcharge payable at or before such time, and the remaining installments shall be paid at the times at which, and in the amounts in which, they would have been payable if the declaration had been filed when due.

(c) Amendments of declarations.--If any amendment of a declaration is filed, the remaining installments, if any, shall be ratably increased or decreased (as the case may be) to reflect any increase or decrease in the estimated tax or estimated tax surcharge by reason of such amendment, and if any amendment is made after September fifteenth of the taxable year, any increase in the estimated tax or estimated tax surcharge by reason thereof shall be paid at the time of making such amendment.

(d) Application of installments based on the preceding year's tax.--(1) Any amount paid pursuant to subsection (a) shall be applied as a first installment against the estimated tax or estimated tax surcharge, respectively, of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section fourteen hundred sixty of this article, or if no declaration of estimated tax or a declaration of estimated tax surcharge is required to be filed by the taxpayer pursuant to such section, any such amount shall be considered a payment on account of the tax or tax surcharge shown on the return required to be filed by the taxpayer for such taxable year.

(2) Any amount paid pursuant to paragraph four of subsection (c) of section six hundred fifty-eight of this chapter on behalf of a taxpayer subject to tax under this article shall be applied against the estimated tax of the taxpayer for the taxable year shown on the declaration required to be filed pursuant to section fourteen hundred sixty of this article, or if no declaration is filed pursuant to such section, any such amount shall be considered a payment on account of tax shown on the return required to be filed by the taxpayer for such taxable year.

(e) Interest on certain installments based on the preceding year's tax.--Notwithstanding the provisions of section one thousand eighty-eight of this chapter or of section sixteen of the state finance law, if an amount paid pursuant to subsection (a) of this section exceeds the tax or tax surcharge, respectively, shown on the return required to be filed by the taxpayer for the taxable year during which the amount was paid, interest shall be allowed and paid on the amount by which the amount so paid pursuant to such subsection exceeds such tax or tax surcharge, at the overpayment rate set by the commissioner of taxation and finance pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six per cent per annum from the date of payment of the amount so paid pursuant to such subsection to the fifteenth day of the third month following the close of the taxable year, provided, however, that no interest shall be allowed or paid under this subsection if the amount thereof is less than one dollar.

(f) The preceding year's tax defined.--As used in this section, "the preceding year's tax" means the tax imposed upon the taxpayer by subsection (a) of section fourteen hundred fifty-one for the preceding taxable year, or, for purposes of computing the first installment of estimated tax when an application has been filed for extension of the time for filing the return required to be filed for such preceding taxable year, the amount properly estimated pursuant to paragraph one of subsection (b) of section fourteen hundred sixty-three as the tax imposed upon the taxpayer for such taxable year.

(g) Application to short taxable period.--This section shall apply to a taxable period of less than twelve months in accordance with regulations of the tax commission.

(h) Fiscal year.--The provisions of this section shall apply to taxable years of twelve months other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in such provisions.

(i) Extension of time.--The commissioner of taxation and finance may grant a reasonable extension of time, not to exceed six months, for payment of any installment of estimated tax or estimated tax surcharge required pursuant to this section, on such terms and conditions as he may require, including the furnishing of a bond or other security by the taxpayer in an amount not exceeding twice the amount for which any extension of time for payment is granted, provided, however, that interest at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six per centum per annum for the period of the extension shall be charged and collected on the amount for which any extension of time for payment is granted under this subsection.

(j) Payment of installments in advance.--A taxpayer may elect to pay any installment of estimated tax or estimated tax surcharge prior to the date prescribed in this section for payment thereof.

§ 1462. Returns. (a) Every taxpayer, as well as every other banking corporation having an employee, including any officer, within the state, shall annually on or before the fifteenth day of the third month following the close of each of its taxable years transmit to the tax commission a return in a form prescribed by it setting forth such information as the tax commission may prescribe and every taxpayer which ceases to exercise its franchise or to be subject to the tax imposed by this article shall transmit to the tax commission a return on the date of such cessation or at such other time as the tax commission may require covering each year or period for which no return was theretofore filed. In the case of a termination year of an S corporation, the S short year and the C short year shall be treated as separate short taxable years, provided, however, the due date of the report for the S short year shall be the same as the due date of the report for the C short year.

(b) Every taxpayer shall also transmit such other returns and such facts and information as the tax commission may require in the administration of this article.

(c) The tax commission may grant a reasonable extension of time for filing returns whenever good cause exists. An automatic extension of six months for the filing of its annual return shall be allowed any taxpayer, if within the time prescribed by subsection (a) of this section, such taxpayer files with the tax commission an application for extension in such form as said commission may prescribe by regulation and pays on or before the date of such filing the amount properly estimated as its tax.

(d) Every return shall have annexed thereto a certification by the president, vice president, treasurer, assistant treasurer, chief accounting officer or any other officer of the taxpayer duly authorized so to act to the effect that the statements contained therein are true. The fact that an individual's name is signed on a certification of the return shall be prima facie evidence that such individual is authorized to sign and certify the return on behalf of the corporation. In the case of an association or publicly traded partnership referred to in paragraph one of subsection (f) of this section, such certification shall be made by any person duly authorized so to act on behalf of such association or publicly traded partnership.

(e) If the amount of taxable income or alternative minimum taxable income for any year of any taxpayer (including any taxpayer which has elected to be taxed under subchapter s of chapter one of the internal revenue code) as returned to the United States treasury department is changed or corrected by the commissioner of internal revenue or other officer of the United States or other competent authority, such taxpayer shall report such change or corrected taxable income or alternative minimum taxable income within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this article for such year) after the final determination of such change or correction or as required by the commissioner, and shall concede the accuracy of such determination or state wherein it is erroneous. Any taxpayer filing an amended return with such department shall also file within ninety days (or one hundred twenty days, in the case of a taxpayer making a combined return under this article for such year) thereafter an amended return with the commissioner which shall contain such information as the commissioner shall require. The allowance of a tentative carryback adjustment based upon a net capital loss carryback pursuant to section sixty-four hundred eleven of the internal revenue code, shall be treated as a final determination for purposes of this subsection.

(f) (1) For purposes of this subsection, the term "bank holding company" means any corporation subject to article three-A of the banking law, or registered under the federal bank holding company act of nineteen hundred fifty-six, as amended, or registered as a savings and loan holding company (but excluding a diversified savings and loan holding company) under the federal national housing act, as amended. For purposes of the preceding sentence, the term "corporation" shall include an association, within the meaning of paragraph three of subsection (a) of section seventy-seven hundred one of the internal revenue code, and a publicly traded partnership treated as a corporation for purposes of the internal revenue code pursuant to section seventy-seven hundred four thereof.

(2) (i) Any banking corporation or bank holding company which is exercising its corporate franchise or doing business in this state in a corporate or organized capacity, and

(A) which owns or controls, directly or indirectly, eighty percent or more of the voting stock of one or more banking corporations or bank holding companies, or

(B) whose voting stock is eighty percent or more owned or controlled, directly or indirectly, by a banking corporation or a bank holding company, shall make a return on a combined basis under this article covering itself and such corporations described in clause (A) or (B) and shall set forth such information as the tax commission may require unless the taxpayer or the tax commission shows that the inclusion of such a corporation in the combined return fails to properly reflect the tax liability of such corporation under this article. Provided, however, that no banking corporation or bank holding company not a taxpayer shall be subject to the requirements of this subparagraph unless the tax commission deems that the application of such requirements is necessary in order to properly reflect the tax liability under this article, because of intercompany transactions or some agreement, understanding, arrangement or transaction of the type referred to in subsection (g) of this section.

(ii) In the discretion of the tax commission, any banking corporation or bank holding company which is exercising its corporate franchise or doing business in this state in a corporate or organized capacity, and

(A) which owns or controls, directly or indirectly, sixty-five percent or more of the voting stock of one or more banking corporations or bank holding companies, or

(B) whose voting stock is sixty-five percent or more owned or controlled, directly or indirectly, by a banking corporation or a bank holding company,

may be required or permitted to make a return on a combined basis under this article covering itself and such corporations described in clause (A) or (B) and shall set forth such information as the tax commission may require; provided, however, that no combined return shall be required or permitted unless the tax commission deems such report necessary in order to properly reflect the tax liability under this article of any one or more of such banking corporations or bank holding companies.

(iii) In the discretion of the tax commission, banking corporations or bank holding companies which are sixty-five percent or more owned or controlled, directly or indirectly, by the same interest may be permitted or required to make a return on a combined basis under this article and shall set forth such information as the tax commission may require, if at least one such banking corporation or bank holding company is exercising its corporate franchise or doing business in this state in a corporate or organized capacity. No combined return shall be required or permitted unless the tax commission deems such report necessary in order to properly reflect the tax liability under this article of any one or more of such banking corporations or bank holding companies.

(iv) (A) Notwithstanding any provision of this paragraph, any bank holding company exercising its corporate franchise or doing business in the state may make a return on a combined basis without seeking the permission of the commissioner with any banking corporation exercising its corporate franchise or doing business in the state in a corporate or organized capacity sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company, for the first taxable year beginning on or after January first, two thousand and before January first, two thousand seventeen during which such bank holding company registers for the first time under the federal bank holding company act, as amended, and also elects to be a financial holding company. In addition, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand seventeen, any such bank holding company may file on a combined basis without seeking the permission of the commissioner with any banking corporation that is exercising its corporate franchise or doing business in the state and sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company if either such banking corporation is exercising its corporate franchise or doing business in the state in a corporate or organized capacity for the first time during such subsequent taxable year, or sixty-five percent or more of the voting stock of such banking corporation is owned or controlled, directly or indirectly, by such bank holding company for the first time during such subsequent taxable year. Provided however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand seventeen, a banking corporation described in either of the two preceding sentences which filed on a combined basis with any such bank holding company in a previous taxable year, must continue to file on a combined basis with such bank holding company if such banking corporation, during such subsequent taxable year, continues to exercise its corporate franchise or do business in the state in a corporate or organized capacity and sixty-five percent or more of such banking corporation's voting stock continues to be owned or controlled, directly or indirectly, by such bank holding company, unless the permission of the commissioner has been obtained to file on a separate basis for such subsequent taxable year. Provided further, however, for each subsequent taxable year beginning after January first, two thousand and before January first, two thousand seventeen, a banking corporation described in either of the first two sentences of this clause which did not file on a combined basis with any such bank holding company in a previous taxable year, may not file on a combined basis with such bank holding company during any such subsequent taxable year unless the permission of the commissioner has been obtained to file on a combined basis for such subsequent taxable year.

(B) Notwithstanding any provision of this paragraph other than clause (A) of this subparagraph, the commissioner may not require a bank holding company which, during a taxable year beginning on or after January first, two thousand and before January first, two thousand seventeen, registers for the first time during such taxable year under the federal bank holding company act, as amended, and also elects to be a financial holding company, to make a return on a combined basis for any taxable year beginning on or after January first, two thousand and before January first, two thousand seventeen with a banking corporation sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by such bank holding company.

(v) A banking corporation doing business in this state solely because it meets one or more of the tests in subparagraphs (i) through (v) of paragraph one of subsection (c) of section fourteen hundred fifty-one of this article (referred to in this subparagraph as the "credit card bank") will not be included in a combined return pursuant to subparagraph (i) of this paragraph with another banking corporation or bank holding company which is exercising its corporate franchise or doing business in this state unless the credit card bank or the commissioner shows that the inclusion of the credit card bank in the combined return is necessary to properly reflect the tax liability of the credit card bank, the banking corporation or bank holding company under this article. However, any banking corporation that meets one or more of the tests in subparagraphs (i) through (v) of paragraph one of subsection (c) of section fourteen hundred fifty-one and was included in a combined return for its last taxable year beginning before January first, two thousand eight may continue to be included in a combined return for future taxable years, provided that once that banking corporation has been included in a combined return for any taxable year beginning on or after January first, two thousand eight, it must continue to be included in a combined return until it obtains the consent of the commissioner to cease being included in a combined return because the combined return no longer properly reflects the tax liability under this article of any of the corporations included in the combined return. Further, the credit card bank will be included in a combined return with (i) any banking corporation not subject to tax under this article sixty-five percent or more of whose voting stock is owned or controlled, directly or indirectly, by the credit card bank, or (ii) any banking corporation or bank holding company not subject to tax under this article which owns or controls, directly or indirectly, sixty-five percent or more of the voting stock of the credit card bank, or (iii) any banking corporation not subject to tax under this article sixty-five percent or more of the voting stock of which is owned or controlled, directly or indirectly, by the same corporation or corporations that own or control, directly or indirectly, sixty-five percent or more of the voting stock of the credit card bank, if the corporation or corporations described in clauses (i), (ii) and (iii) of this subparagraph provide services for or support to the credit card bank's operations, unless the credit card bank or the commissioner shows that the inclusion of any of those corporations in the combined return fails to properly reflect the tax liability of the credit card bank. For purposes of this subparagraph, services for or support to the credit card bank's operations include such activities as billing, credit investigation and reporting, marketing, research, advertising, mailing, customer service, information technology, lending and financing services, and communications services, but will not include accounting, legal or personnel services.

(vi)(A) For purposes of this subparagraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of a captive REIT or captive RIC, is subject to tax under this article, article nine-A or article thirty-three of this chapter or otherwise required to be included in a combined return under this article, article nine-A or article thirty-three of this chapter, and is the fewest tiers of corporations away in the ownership structure from the captive REIT or captive RIC. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(B) A captive REIT or a captive RIC must be included in a combined return with the banking corporation or bank holding company that directly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC if that banking corporation or bank holding company is subject to tax or required to be included in a combined return under this article.

(C) If over fifty percent of the voting stock of a captive REIT or captive RIC is not directly owned or controlled by a banking corporation or bank holding company that is subject to tax or required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined return or report with the corporation that is the closest controlling stockholder of the captive REIT or captive RIC. If the closest controlling stockholder of the captive REIT or captive RIC is a banking corporation or bank holding company that is subject to tax or otherwise required to be included in a combined return under this article, then the captive REIT or captive RIC must be included in a combined return under this article.

(D) If the corporation which directly owns or controls the voting stock of the captive REIT or captive RIC is described in subparagraph (ii) or (iv) of paragraph four of this subsection as a corporation not permitted to make a combined return, then the provisions in clause (C) of this subparagraph must be applied to determine the corporation in whose combined return or report the captive REIT or captive RIC should be included. If, under clause (C) of this subparagraph, the corporation that is the closest controlling stockholder of the captive REIT or captive RIC is described in subparagraph (ii) or (iv) of paragraph four of this subsection as a corporation not permitted to make a combined return, then that corporation is deemed to not be in the ownership structure of the captive REIT or captive RIC, and the closest controlling stockholder will be determined without regard to that corporation.

(E) If a captive REIT owns the stock of a qualified REIT subsidiary (as defined in paragraph two of subsection (i) of section eight hundred fifty-six of the internal revenue code), then the qualified REIT subsidiary must be included in any combined return required to be made by the captive REIT that owns its stock.

(F) If a captive REIT or a captive RIC is required under this subparagraph to be included in a combined return with another corporation, and that other corporation is required to be included in a combined return with another corporation under other provisions of this subsection, the captive REIT or captive RIC must be included in that combined return with those corporations.

(G) If the banking corporation or bank holding company that directly or indirectly owns or controls over fifty percent of the voting stock of the captive REIT or captive RIC and is the closest controlling stockholder of the captive REIT or captive RIC is a member of an affiliated group (1) that does not include any corporation that is engaged in a business that a subsidiary of a bank holding company would not be permitted to engage in, unless such business is de minimus, and (2) whose members own assets the combined average value of which does not exceed eight billion dollars, then the captive REIT or captive RIC must not be included in a combined return under this article or article nine-A or article thirty-three of this chapter. In that instance, the captive REIT or captive RIC is subject to the provisions of subdivision five or seven of section two hundred nine of this chapter. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of that section.

(vii) (A) For purposes of this subparagraph, the term "closest controlling stockholder" means the corporation that indirectly owns or controls over fifty percent of the voting stock of an overcapitalized captive insurance company, is subject to tax under this article or article nine-A of this chapter or otherwise required to be included in a combined return under this article or article nine-A of this chapter, and is the fewest tiers of corporations away in the ownership structure from the overcapitalized captive insurance company. The commissioner is authorized to prescribe by regulation or published guidance the criteria for determining the closest controlling stockholder.

(B) An overcapitalized captive insurance company must be included in a combined return with the banking corporation or bank holding company that directly owns or controls over fifty percent of the voting stock of the overcapitalized captive insurance company if that banking corporation or bank holding company is subject to tax or required to be included in a combined return under this article.

(C) If over fifty percent of the voting stock of an overcapitalized captive insurance company is not directly owned or controlled by a banking corporation or bank holding company that is subject to tax or required to be included in a combined return under this article, then the overcapitalized captive insurance company must be included in a combined return or report with the corporation that is the closest controlling stockholder of the overcapitalized captive insurance company. If the closest controlling stockholder of the overcapitalized captive insurance company is a banking corporation or bank holding company that is subject to tax or otherwise required to be included in a combined return under this article, then the overcapitalized captive insurance company must be included in a combined return under this article.

(D) If the corporation that directly owns or controls the voting stock of the overcapitalized captive insurance company is described in subparagraph (ii) or (iv) of paragraph four of this subsection as a corporation not permitted to make a combined return, then the provisions in clause (C) of this subparagraph must be applied to determine the corporation in whose combined return or report the overcapitalized captive insurance company should be included. If, under clause (C) of this subparagraph, the corporation that is the closest controlling stockholder of the overcapitalized captive insurance company is described in subparagraph (ii) or (iv) of paragraph four of this subsection as a corporation not permitted to make a combined return, then that corporation is deemed not to be in the ownership structure of the overcapitalized captive insurance company, and the closest controlling stockholder will be determined without regard to that corporation.

(E) If an overcapitalized captive insurance company is required under this subparagraph to be included in a combined return with another corporation, and that other corporation is required to be included in a combined return with another corporation under other provisions of this subsection, the overcapitalized captive insurance company must be included in that combined return with those corporations.

(3) (i) In the case of a combined return, the tax shall be measured by the combined entire net income, combined alternative entire net income or combined assets of all the corporations included in the return, including any captive REIT, captive RIC or overcapitalized captive insurance company. The allocation percentage shall be computed based on the combined factors with respect to all the corporations included in the combined return. In computing combined entire net income and combined alternative entire net income intercorporate dividends and all other intercorporate transactions shall be eliminated and in computing combined assets intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated.

(ii) In the case of a captive REIT required under this subsection to be included in a combined return, "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven (as modified by section eight hundred fifty-eight) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. In the case of a captive RIC required under this subsection to be included in a combined return, "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two (as modified by section eight hundred fifty-five) of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of that code, subject to the modifications required by section fourteen hundred fifty-three of this article. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC will be limited to the following percentages: (A) fifty percent for taxable years beginning on or after January first, two thousand eight and before January first, two thousand nine; (B) twenty-five percent for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven; and (C) zero percent for taxable years beginning on or after January first, two thousand eleven. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of such section fifteen hundred four.

(iii) In the case of an overcapitalized captive insurance company required under this subsection to be included in a combined return, entire net income must be computed as required by section fourteen hundred fifty-three of this article.

(4) (i) In no event shall an item of income or expense of a corporation organized under the laws of a country other than the United States be included in a combined return unless it is includible in entire net income or alternative entire net income, as the case may be, nor shall an asset of such a corporation be included in a combined return unless it is included in taxable assets.

(ii) In no event shall a corporation organized under the laws of the United States, this state or any other state, be included in a combined return with a corporation organized under the laws of a country other than the United States.

(iii) In no event shall a corporation which has made an election pursuant to subsection (d) of section fourteen hundred fifty-two of this article to be subject to the tax imposed by article nine-a of this chapter be included in a combined return for those taxable years for which it is subject to the tax imposed by article nine-a of this chapter.

(iv) In no event shall a corporation whose net worth ratio is less than five percent and whose total assets are comprised of thirty-three percent or more of mortgages be included in a combined return for those taxable years for which its tax is determined pursuant to subparagraph (ii) or (iii) of paragraph one of subsection (b) of section fourteen hundred fifty-five of this article.

(5) Tax liability under this article may be deemed to be improperly reflected because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subsection (g) of this section.

(g) In case it shall appear to the tax commission that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or assets of the taxpayer within the state is improperly or inaccurately reflected, the tax commission is authorized and empowered, in its discretion and in such manner as it may determine, to adjust items of income or deductions in computing entire net income or alternative entire net income and to adjust assets, and to adjust wages, salaries and other personal service compensation, receipts or deposits in computing any allocation percentage, provided only that entire net income or alternative entire net income be adjusted accordingly and that any asset directly traceable to the elimination of any receipt be eliminated from assets so as to accurately determine the tax. If however, in the determination of the tax commission, such adjustments do not, or cannot effectively provide for the accurate determination of the tax, the commission shall be authorized to require the filing of a combined report by the taxpayer and any such other corporations. Where (1) any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person or persons directly or indirectly interested in such activity or business, by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement or understanding, might have been paid or received therefor, or (2) any taxpayer enters into any transaction with another corporation on such terms as to create an improper loss or net income, the tax commission may include in the entire net income or alternative entire net income of the taxpayer the fair profits which, but for such agreement, arrangement or understanding, the taxpayer might have derived from such transaction.

§ 1463. Payment of tax. (a) To the extent the tax imposed by section fourteen hundred fifty-one of this article shall not have been previously paid pursuant to section fourteen hundred sixty-one,

(1) such tax, or the balance thereof, shall be payable to the tax commission in full at the time its return is required to be filed, and

(2) such tax, or the balance thereof, imposed on any taxpayer which ceased to exercise its franchise or to be subject to the tax imposed by this article shall be payable to the tax commission at the time the

return is required to be filed, provided such tax of a domestic corporation which continues to possess its franchise shall be subject to adjustment as the circumstances may require; all other taxes of any such taxpayer, which pursuant to the foregoing provisions of this subsection would otherwise be payable subsequent to the time such return is required to be filed, shall nevertheless be payable at such time.

(b) If the taxpayer, within the time prescribed by subsection (c) of section fourteen hundred sixty-two, shall have applied for an automatic extension of time to file its annual return and shall have paid to the commissioner of taxation and finance on or before the date such application is filed an amount properly estimated as provided by said subsection the only amount payable in addition to the tax shall be interest at the underpayment rate set by the commissioner pursuant to section one thousand ninety-six of this chapter, or if no rate is set, at the rate of six per cent per annum upon the amount by which the tax, or portion thereof payable on or before the date the return was required to be filed, exceeds the amount so paid. For the purposes of the preceding sentence:

(1) an amount so paid shall be deemed properly estimated if it is either (i) not less than ninety per cent of the tax as finally determined, or (ii) not less than the tax shown on the taxpayer's return for the preceding taxable year, if such preceding year was a taxable year of twelve months; and

(2) the time when a return is required to be filed shall be determined without regard to any extension of time for filing such return.

(c) The tax commission may grant a reasonable extension of time for payment of any tax imposed by this article under such conditions as it deems just and proper.

§ 1466. Deposit and disposition of revenue. All taxes, interest and penalties collected or received by the tax commission under this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

§ 1467. Secrecy required of officials; penalty for violation. (a) Except in accordance with the proper judicial order or as otherwise provided by law, it shall be unlawful for the commissioner of taxation and finance, any officer or employee of the department of taxation and finance, or any person who, pursuant to this section, is permitted to inspect any return, or any person engaged or retained by such department on an independent contract basis, or any person who in any manner may acquire knowledge of the contents of a return filed pursuant to this article, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any return required under this article. The officers charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceedings in any court, except on behalf of the state or the commissioner of taxation and finance in an action or proceeding under the provisions of this chapter or in any other action or proceeding involving the collection of a tax due under this chapter to which the state or the commissioner of taxation and finance is a party or a claimant or on behalf of any party in an action or proceeding under the provisions of this article when the returns or facts shown thereby are directly involved in such action or proceeding, in any of which events the court may require the production of and may admit in evidence so much of said returns or the facts shown thereby as are pertinent to the action or proceeding and no more. The commissioner of taxation and finance may, nevertheless, publish a copy or a summary of any determination or decision rendered after the hearing provided for in section one thousand eighty-nine of this chapter. Nothing herein shall be construed to prohibit the delivery to a taxpayer or its duly authorized representative of a certified copy of any return filed in connection with its tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular returns and the items thereof, or the inspection by the attorney-general or other legal representatives of the state of the return of any taxpayer which shall bring action to set aside or review the tax based thereon, or against which an action or proceeding under this chapter has been recommended by the commissioner of taxation and finance or the attorney-general or has been instituted; or the inspection of the returns of any taxpayer by the comptroller or duly designated officer or employee of the state department of audit and control for purposes of the audit of a refund of any tax paid by such taxpayer under this article, or the disclosing to a state agency, pursuant to section one hundred seventy-one-f of this chapter, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a past-due legally enforceable debt owed to such agency and of the name and identification number of the taxpayer who made such overpayment, or the disclosing to the commissioner of finance of the city of New York, pursuant to section one hundred seventy-one-l of this chapter, of the amount of an overpayment and interest thereon certified to the comptroller to be credited against a city of New York tax warrant judgment debt and of the name and identification number of the taxpayer who made such overpayment. Returns shall be preserved for three years and thereafter until the commissioner of taxation and finance orders them to be destroyed.

(b) (1) Any officer or employee of the state who willfully violates the provisions of subsection (a) of this section shall be dismissed from office and be incapable of holding any public office in this state for a period of five years thereafter.

(2) Cross-reference: For criminal penalties, see article thirty-seven of this chapter.

(c) Notwithstanding any provisions of this section, the tax commission may permit the secretary of the treasury of the United States or his delegates, or the proper officer of any other state charged with tax administration, or the authorized representative of either such officer, to inspect the returns filed under this article, or may furnish to such officer or his authorized representative an abstract of any return or supply him with information concerning an item contained in any return, or disclosed by an investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the laws of the United States or of such other state, as the case may be, grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to the secretary of the treasury of the United States or his delegates such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under the internal revenue code, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by the secretary of the treasury or his delegates provided the laws of the United States grant substantially similar powers to the secretary of the treasury or his delegates. Where the commissioner of taxation and finance has so authorized use of returns or other information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other tax information.

(d) Notwithstanding the provisions of subsection (a) of this section, the tax commission may permit the officer charged with the administration of a tax on or measured by income imposed by any city of the state of New York, or the authorized representative of such officer, to inspect the returns filed under this article, or may furnish to such officer or his authorized representative an abstract of any such return or supply information concerning an item contained in any such return, or disclosed by any investigation of tax liability under this article, but such permission shall be granted or such information furnished to such officer or his representative only if the local laws of such city grant substantially similar privileges to the commission or officer of this state charged with the administration of the tax imposed by this article and such information is to be used for tax purposes only; and provided further the commissioner of taxation and finance may furnish to such city officer or his delegates and the legal representative of such city such returns filed under this article and other tax information, as he may consider proper, for use in court actions or proceedings under such local law, whether civil or criminal, where a written request therefor has been made to the commissioner of taxation and finance by such city officer or his delegates or by such legal representative of such city, provided the local law of such city grants substantially similar powers to the city officer charged with the administration of the city income tax or his delegates. Where the commissioner of taxation and finance has so authorized use of returns or other tax information in such actions or proceedings, officers and employees of the department of taxation and finance may testify in such actions or proceedings in respect to such returns or other tax information.

(e) Notwithstanding the provisions of subsection (a) of this section, the tax commission, in its discretion, may require or permit any or all persons liable for any tax imposed by this article, to make payments on account of estimated tax and payment of any tax, penalty or interest imposed by this article to banks, banking houses or trust companies designated by the tax commission and to file declarations of estimated tax, applications for automatic extensions of time to file returns, and returns with such banks, banking houses or trust companies as agents of the tax commission, in lieu of making any such payment directly to the tax commission. However, the tax commission shall designate only such banks, banking houses or trust companies as are or shall be designated by the comptroller as depositories pursuant to section fourteen hundred sixty-six.

(f) Notwithstanding the provisions of subsection (a) of this section, the commissioner may disclose to a taxpayer or a taxpayer's related member, as defined in subsection (s) of section fourteen hundred fifty-three of this article, information relating to any royalty paid, incurred or received by such taxpayer or related member to or from the other, including the treatment of such payments by the taxpayer or the related member in any report or return transmitted to the commissioner under this chapter.

§ 1468. Procedural provisions. The provisions of article twenty-seven of this chapter shall apply to the provisions of this article in the same manner and with the same force and effect as if the language of such article twenty-seven had been incorporated in full into this article and had expressly referred to the tax under this article, except to the extent that any such provision is either inconsistent with a provision of this article or is not relevant to this article.

§ 2. This act shall take effect immediately and apply to taxable years starting January 1, 2017.