

# 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:

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

### ARTICLE 32

#### FRANCHISE TAX ON BANKING CORPORATIONS

##### Section 1450. General definitions.

6 1451. Imposition of tax.

7 1452. Banking corporation defined; exempt corporations.

8 1453. Computations of entire net income.

9 1453-A. Computation of alternative entire net income.

10 1454. Allocation.

11 1455. Computation of tax.

12 1455-A. Tax surcharge.

13 1455-B. Temporary metropolitan transportation business tax  
14 surcharge on banks.

15 1456. Credits.

16 1460. Declarations of estimated tax.

17 1461. Payments of estimated tax.

18 1462. Returns.

19 1463. Payment of tax.

20 1466. Deposit and disposition of revenue.

21 1467. Secrecy required of officials; penalty for violation.

22 1468. Procedural provisions.

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

23 (a) The word "taxpayer" means a corporation or association subject to  
24 a tax imposed by this article.  
25

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

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

4     **(c) The term "international banking facility" shall mean an interna-**  
5 **tional banking facility located in New York state and shall have the**  
6 **same meaning as is set forth in the New York state banking law or regu-**  
7 **lations of the New York state department of financial services or as is**  
8 **set forth in the laws of the United States or regulations of the board**  
9 **of governors of the federal reserve system.**

10    **(d) The term "subsidiary" means a corporation or association of which**  
11 **over fifty percent of the number of shares of stock entitling the hold-**  
12 **ers thereof to vote for the election of directors or trustees is owned**  
13 **by the taxpayer.**

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

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

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

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

49    **(2) the stocks, bonds and other securities issued by, and any indebt-**  
50 **edness from, the QSSS shall not be subsidiary capital of the parent**  
51 **corporation,**

52    **(3) transactions between the parent corporation and the QSSS, includ-**  
53 **ing the payment of interest and dividends, shall not be taken into**  
54 **account, and**

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

(h) The term "financial holding company" means a corporation that, pursuant to subsection (1) 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;

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

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

4 (5) every federal savings and loan association which is doing a bank-  
5 ing business;

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

10 (7) every other corporation or association organized under the author-  
11 ity of the United States which is doing a banking business;

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

14 (9) any corporation sixty-five percent or more of whose voting stock  
15 is owned or controlled, directly or indirectly, by a corporation or  
16 corporations subject to article three-A of the banking law, or regis-  
17 tered under the federal bank holding company act of nineteen hundred  
18 fifty-six, as amended, or registered as a savings and loan holding  
19 company (but excluding a diversified savings and loan holding company)  
20 under the federal national housing act, as amended, or by a corporation  
21 or corporations described in any of the foregoing paragraphs of this  
22 subsection, provided the corporation whose voting stock is so owned or  
23 controlled is principally engaged in a business, regardless of where  
24 conducted, which (i) might be lawfully conducted by a corporation  
25 subject to article three of the banking law or by a national banking  
26 association, or (ii) is so closely related to banking or managing or  
27 controlling banks as to be a proper incident thereto, as set forth in  
28 paragraph eight of subsection (c) or subparagraph (F) of paragraph four  
29 of subsection (k) of section four of the federal bank holding company  
30 act of nineteen hundred fifty-six, as amended, or (iii) holds and  
31 manages investment assets, including but not limited to bonds, notes,  
32 debentures and other obligations for the payment of money, stocks, part-  
33 nership interests or other equity interests, and other investment secu-  
34 rities and which is not a business described in subparagraph (i) or (ii)  
35 of this paragraph; and provided, further, that in no event shall a  
36 corporation principally engaged in a business described in section one  
37 hundred eighty-three or one hundred eighty-four, or section one hundred  
38 eighty-six as it was in effect on December thirty-first, nineteen  
39 hundred ninety-nine, of this chapter be subject to the tax imposed under  
40 this article if any of its business receipts from such principally  
41 engaged in business are from other than a corporation (A) which owns or  
42 controls, directly or indirectly, sixty-five percent or more of its  
43 voting stock, or (B) sixty-five percent or more of whose voting stock is  
44 owned or controlled, directly or indirectly, by the corporation engaged  
45 in such business, or (C) sixty-five percent or more of whose voting  
46 stock is owned or controlled, directly or indirectly, by the same inter-  
47 est.

48 (b) Banking business defined. The words "banking business" as used in  
49 this section mean such business as a corporation or association may be  
50 created to do under article three, three-B, five, five-A, five-C, six or  
51 ten of the banking law or any business which a corporation or associ-  
52 ation is authorized by such article to do. However, with respect to a  
53 national banking association organized under the authority of the United  
54 States, a federal savings bank, a federal savings and loan association  
55 or a production credit association, the words "banking business" as used  
56 in this section mean such business as a national banking association,

1 federal savings bank, federal savings and loan association or production  
2 credit association, respectively, may be created to do or is authorized  
3 to do under the laws of the United States or this state. The words  
4 "banking business" as used in this section shall also mean such business  
5 as any corporation or association organized under the authority of the  
6 United States or organized under the laws of any other state or country  
7 has authority to do which is substantially similar to the business which  
8 a corporation or association may be created to do under article three,  
9 three-B, five, five-A, five-C, six or ten of the banking law or any  
10 business which a corporation or association is authorized by such arti-  
11 cle to do.

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

15 (d) Corporations taxable under article nine-A. Notwithstanding the  
16 provisions of this article, all corporations of classes now or hereto-  
17 fore taxable under article nine-A of this chapter shall continue to be  
18 taxable under such article nine-A, except: (1) corporations organized  
19 under article five-A of the banking law; (2) corporations subject to  
20 article three-A of the banking law, or registered under the federal bank  
21 holding company act of nineteen hundred fifty-six, as amended, or regis-  
22 tered as a savings and loan holding company (but excluding a diversified  
23 savings and loan holding company) under the federal national housing  
24 act, as amended, which make a combined return under the provisions of  
25 subsection (f) of section fourteen hundred sixty-two of this article;  
26 (3) banking corporations described in paragraph nine of subsection (a)  
27 of this section; (4) any captive REIT or captive RIC that is required to  
28 be included in a combined return under the provisions of subsection (f)  
29 of section fourteen hundred sixty-two of this article; and (5) any over-  
30 capitalized captive insurance company required to be included in a  
31 combined return under subsection (f) of section fourteen hundred sixty-  
32 two of this article. Provided, however, that a corporation described in  
33 paragraph three of this subsection which was subject to the tax imposed  
34 by article nine-A of this chapter for its taxable year ending during  
35 nineteen hundred eighty-four may, on or before the due date for filing  
36 its return (determined with regard to extensions) for its taxable year  
37 ending during nineteen hundred eighty-five, make a one time election to  
38 continue to be taxable under such article nine-A. Such election shall  
39 continue to be in effect until revoked by the taxpayer. In no event  
40 shall such election or revocation be for a part of a taxable year.

41 (e) Corporations taxable under article thirty-three. Except for corpo-  
42 rations described in subsection (1) of section fourteen hundred fifty-  
43 three of this article, corporations liable to tax under article thirty-  
44 three of this chapter shall not be subject to tax under this article.

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

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



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

3 (h) Transitional provisions relating to the enactment and implementa-  
4 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
5 to the contrary contained in this section other than subsection (n) of  
6 this section, a corporation that was in existence before January first,  
7 two thousand and was subject to tax under such article nine-A of this  
8 chapter for its last taxable year beginning before January first, two  
9 thousand, shall continue to be taxable under such article nine-A for all  
10 taxable years beginning on or after January first, two thousand and  
11 before January first, two thousand one. The preceding sentence shall not  
12 apply to any taxable year during which such corporation is a banking  
13 corporation described in paragraphs one through eight of subsection (a)  
14 of this section. Notwithstanding anything to the contrary contained in  
15 this section other than subsection (n) of this section, a banking corpo-  
16 ration that was in existence before January first, two thousand and was  
17 subject to tax under this article for its last taxable year beginning  
18 before January first, two thousand, shall continue to be taxable under  
19 this article for all taxable years beginning on or after January first,  
20 two thousand and before January first, two thousand one. Provided,  
21 however, that nothing in this subsection shall prohibit a corporation  
22 that elected pursuant to subsection (d) of this section to be taxable  
23 under article nine-A of this chapter from revoking that election in  
24 accordance with such subsection (d).

25 For purposes of this paragraph, a corporation shall be considered to  
26 be subject to tax under article nine-A of this chapter for a taxable  
27 year if such corporation was not a taxpayer but was properly included in  
28 a combined report filed pursuant to section two hundred eleven of this  
29 chapter for such taxable year and a corporation shall be considered to  
30 be subject to tax under this article for a taxable year if such corpo-  
31 ration was not a taxpayer but was properly included in a combined return  
32 filed pursuant to subsection (f) or (g) of section fourteen hundred  
33 sixty-two of this article for such taxable year. A corporation that was  
34 in existence before January first, two thousand but first becomes a  
35 taxpayer in a taxable year beginning on or after January first, two  
36 thousand and before January first, two thousand one, shall be considered  
37 for purposes of this paragraph to have been subject to tax under article  
38 nine-A of this chapter for its last taxable year beginning before Janu-  
39 ary first, two thousand if such corporation would have been subject to  
40 tax under such article for such taxable year if it had been a taxpayer  
41 during such taxable year. A corporation that was in existence before  
42 January first, two thousand but first becomes a taxpayer in a taxable  
43 year beginning on or after January first, two thousand and before Janu-  
44 ary first, two thousand one, shall be considered for purposes of this  
45 paragraph to have been subject to tax under this article for its last  
46 taxable year beginning before January first, two thousand if such corpo-  
47 ration would have been subject to tax under this article for such taxa-  
48 ble year if it had been a taxpayer during such taxable year.

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

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

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

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

39 (i) Transitional provisions relating to the enactment and implementa-  
40 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
41 to the contrary contained in this section other than subsection (n) of  
42 this section, a corporation that was in existence before January first,  
43 two thousand one and was subject to tax under article nine-A of this  
44 chapter for its last taxable year beginning before January first, two  
45 thousand one, shall continue to be taxable under article nine-A for all  
46 taxable years beginning on or after January first, two thousand one and  
47 before January first, two thousand three. The preceding sentence shall  
48 not apply to any taxable year during which such corporation is a banking  
49 corporation described in paragraphs one through eight of subsection (a)  
50 of this section. Notwithstanding anything to the contrary contained in  
51 this section other than subsection (n) of this section, a banking corpo-  
52 ration that was in existence before January first, two thousand one and  
53 was subject to tax under this article for its last taxable year begin-  
54 ning before January first, two thousand one, shall continue to be taxa-  
55 ble under this article for all taxable years beginning on or after Janu-  
56 ary first, two thousand one and before January first, two thousand

1 three. Provided, however, that nothing in this subsection shall prohibit  
2 a corporation that elected pursuant to subsection (d) of this section to  
3 be taxable under article nine-A of this chapter from revoking that  
4 election in accordance with such subsection (d).

5 For purposes of this paragraph, a corporation shall be considered to  
6 be subject to tax under article nine-A of this chapter for a taxable  
7 year if such corporation was not a taxpayer but was properly included in  
8 a combined report filed pursuant to section two hundred eleven of this  
9 chapter for such taxable year and a corporation shall be considered to  
10 be subject to tax under this article for a taxable year if such corpo-  
11 ration was not a taxpayer but was properly included in a combined return  
12 filed pursuant to subsection (f) or (g) of section fourteen hundred  
13 sixty-two of this article for such taxable year. A corporation that was  
14 in existence before January first, two thousand one but first becomes a  
15 taxpayer in a taxable year beginning on or after January first, two  
16 thousand one and before January first, two thousand three, shall be  
17 considered for purposes of this paragraph to have been subject to tax  
18 under article nine-A of this chapter for its last taxable year beginning  
19 before January first, two thousand one if such corporation would have  
20 been subject to tax under such article for such taxable year if it had  
21 been a taxpayer during such taxable year. A corporation that was in  
22 existence before January first, two thousand one but first becomes a  
23 taxpayer in a taxable year beginning on or after January first, two  
24 thousand one and before January first, two thousand three, shall be  
25 considered for purposes of this paragraph to have been subject to tax  
26 under this article for its last taxable year beginning before January  
27 first, two thousand one if such corporation would have been subject to  
28 tax under this article for such taxable year if it had been a taxpayer  
29 during such taxable year.

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

44 An election under this paragraph may not be made by a corporation  
45 described in paragraphs one through eight of subsection (a) of this  
46 section or in subsection (e) of this section. In addition, an election  
47 under this paragraph may not be made by a corporation that is a party to  
48 a reorganization, as defined in subsection (a) of section 368 of the  
49 internal revenue code of 1986, as amended, of a corporation described in  
50 paragraph one of this subsection if both corporations were sixty-five  
51 percent or more owned or controlled, directly or indirectly, by the same  
52 interests at the time of the reorganization. An election under this  
53 paragraph must be made by the taxpayer on or before the due date for  
54 filing its return (determined with regard to extensions of time for  
55 filing) for the applicable taxable year. The election to be taxed under  
56 article nine-A of this chapter shall be made by the taxpayer by filing



1 the report required pursuant to section two hundred eleven of this chap-  
2 ter and the election to be taxed under this article shall be made by the  
3 taxpayer by filing the return required pursuant to section fourteen  
4 hundred sixty-two of this article. Any election made pursuant to this  
5 paragraph shall be irrevocable and shall apply to each subsequent taxa-  
6 ble year beginning on or after January first, two thousand one and  
7 before January first, two thousand three, provided that the stock owner-  
8 ship requirements described in subparagraph (i) of this paragraph are  
9 met or such corporation described in subparagraph (ii) of this paragraph  
10 continues as a financial subsidiary.

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

21 (j) Transitional provisions relating to the enactment and implementa-  
22 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
23 to the contrary contained in this section other than subsection (n) of  
24 this section, a corporation that was in existence before January first,  
25 two thousand three and was subject to tax under article nine-A of this  
26 chapter for its last taxable year beginning before January first, two  
27 thousand three, shall continue to be taxable under such article nine-A  
28 for all taxable years beginning on or after January first, two thousand  
29 three and before January first, two thousand four. The preceding  
30 sentence shall not apply to any taxable year during which such corpo-  
31 ration is a banking corporation described in paragraphs one through  
32 eight of subsection (a) of this section. Notwithstanding anything to the  
33 contrary contained in this section other than subsection (n) of this  
34 section, a banking corporation that was in existence before January  
35 first, two thousand three and was subject to tax under this article for  
36 its last taxable year beginning before January first, two thousand  
37 three, shall continue to be taxable under this article for all taxable  
38 years beginning on or after January first, two thousand three and before  
39 January first, two thousand four. Provided, however, that nothing in  
40 this subsection shall prohibit a corporation that elected pursuant to  
41 subsection (d) of this section to be taxable under article nine-A of  
42 this chapter from revoking that election in accordance with such  
43 subsection (d).

44 For purposes of this paragraph, a corporation shall be considered to  
45 be subject to tax under article nine-A of this chapter for a taxable  
46 year if such corporation was not a taxpayer but was properly included in  
47 a combined report filed pursuant to section two hundred eleven of this  
48 chapter for such taxable year and a corporation shall be considered to  
49 be subject to tax under this article for a taxable year if such corpo-  
50 ration was not a taxpayer but was properly included in a combined return  
51 filed pursuant to subsection (f) or (g) of section fourteen hundred  
52 sixty-two of this article for such taxable year. A corporation that was  
53 in existence before January first, two thousand three but first becomes  
54 a taxpayer in a taxable year beginning on or after January first, two  
55 thousand three and before January first, two thousand four, shall be  
56 considered for purposes of this paragraph to have been subject to tax

1 under article nine-A of this chapter for its last taxable year beginning  
2 before January first, two thousand three if such corporation would have  
3 been subject to tax under such article for such taxable year if it had  
4 been a taxpayer during such taxable year. A corporation that was in  
5 existence before January first, two thousand three but first becomes a  
6 taxpayer in a taxable year beginning on or after January first, two  
7 thousand three and before January first, two thousand four, shall be  
8 considered for purposes of this paragraph to have been subject to tax  
9 under this article for its last taxable year beginning before January  
10 first, two thousand three if such corporation would have been subject to  
11 tax under this article for such taxable year if it had been a taxpayer  
12 during such taxable year.

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

27 An election under this paragraph may not be made by a corporation  
28 described in paragraphs one through eight of subsection (a) of this  
29 section or in subsection (e) of this section. In addition, an election  
30 under this paragraph may not be made by a corporation that is a party to  
31 a reorganization, as defined in subsection (a) of section 368 of the  
32 internal revenue code of 1986, as amended, of a corporation described in  
33 paragraph one of this subsection if both corporations were sixty-five  
34 percent or more owned or controlled, directly or indirectly, by the same  
35 interests at the time of the reorganization. An election under this  
36 paragraph must be made by the taxpayer on or before the due date for  
37 filing its return (determined with regard to extensions of time for  
38 filing) for the applicable taxable year. The election to be taxed under  
39 article nine-A of this chapter shall be made by the taxpayer by filing  
40 the report required pursuant to section two hundred eleven of this chap-  
41 ter and the election to be taxed under this article shall be made by the  
42 taxpayer by filing the return required pursuant to section fourteen  
43 hundred sixty-two of this article. Any election made pursuant to this  
44 paragraph shall be irrevocable and shall apply to each subsequent tax-  
45 able year beginning on or after January first, two thousand three and  
46 before January first, two thousand four, provided that the stock owner-  
47 ship requirements described in subparagraph (i) of this paragraph are  
48 met or such corporation described in subparagraph (ii) of this paragraph  
49 continues as a financial subsidiary.

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

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

4 (k) Transitional provisions relating to the enactment and implementa-  
5 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
6 to the contrary contained in this section other than subsection (n) of  
7 this section, a corporation that was in existence before January first,  
8 two thousand four and was subject to tax under article nine-A of this  
9 chapter for its last taxable year beginning before January first, two  
10 thousand four, shall continue to be taxable under such article nine-A  
11 for all taxable years beginning on or after January first, two thousand  
12 four and before January first, two thousand six. The preceding sentence  
13 shall not apply to any taxable year during which such corporation is a  
14 banking corporation described in paragraphs one through eight of  
15 subsection (a) of this section. Notwithstanding anything to the contrary  
16 contained in this section other than subsection (n) of this section, a  
17 banking corporation that was in existence before January first, two  
18 thousand four and was subject to tax under this article for its last  
19 taxable year beginning before January first, two thousand four, shall  
20 continue to be taxable under this article for all taxable years begin-  
21 ning on or after January first, two thousand four and before January  
22 first, two thousand six. Provided, however, that nothing in this  
23 subsection shall prohibit a corporation that elected pursuant to  
24 subsection (d) of this section to be taxable under article nine-A of  
25 this chapter from revoking that election in accordance with such  
26 subsection (d).

27 For purposes of this paragraph, a corporation shall be considered to  
28 be subject to tax under article nine-A of this chapter for a taxable  
29 year if such corporation was not a taxpayer but was properly included in  
30 a combined report filed pursuant to section two hundred eleven of this  
31 chapter for such taxable year and a corporation shall be considered to  
32 be subject to tax under this article for a taxable year if such corpo-  
33 ration was not a taxpayer but was properly included in a combined return  
34 filed pursuant to subsection (f) or (g) of section fourteen hundred  
35 sixty-two of this article for such taxable year. A corporation that was  
36 in existence before January first, two thousand four but first becomes a  
37 taxpayer in a taxable year beginning on or after January first, two  
38 thousand four and before January first, two thousand six, shall be  
39 considered for purposes of this paragraph to have been subject to tax  
40 under article nine-A of this chapter for its last taxable year beginning  
41 before January first, two thousand four, if such corporation would have  
42 been subject to tax under such article for such taxable year if it had  
43 been a taxpayer during such taxable year. A corporation that was in  
44 existence before January first, two thousand four, but first becomes a  
45 taxpayer in a taxable year beginning on or after January first, two  
46 thousand four and before January first, two thousand six, shall be  
47 considered for purposes of this paragraph to have been subject to tax  
48 under this article for its last taxable year beginning before January  
49 first, two thousand four if such corporation would have been subject to  
50 tax under this article for such taxable year if it had been a taxpayer  
51 during such taxable year.

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

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

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

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

43 (1) Transitional provisions relating to the enactment and implementa-  
44 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything  
45 to the contrary contained in this section other than subsection (n) of  
46 this section, a corporation that was in existence before January first,  
47 two thousand six and was subject to tax under article nine-A of this  
48 chapter for its last taxable year beginning before January first, two  
49 thousand six, shall continue to be taxable under article nine-A for all  
50 taxable years beginning on or after January first, two thousand six and  
51 before January first, two thousand eight. The preceding sentence shall  
52 not apply to any taxable year during which such corporation is a banking  
53 corporation described in paragraphs one through eight of subsection (a)  
54 of this section. Notwithstanding anything to the contrary contained in  
55 this section other than subsection (n) of this section, a banking corpo-  
56 ration that was in existence before January first, two thousand six and



1 was subject to tax under this article for its last taxable year begin-  
2 ning before January first, two thousand six, shall continue to be taxa-  
3 ble under this article for all taxable years beginning on or after Janu-  
4 ary first, two thousand six and before January first, two thousand  
5 eight. Provided, however, that nothing in this subsection shall prohibit  
6 a corporation that elected pursuant to subsection (d) of this section to  
7 be taxable under article nine-A of this chapter from revoking that  
8 election in accordance with such subsection (d).

9 For purposes of this paragraph, a corporation shall be considered to  
10 be subject to tax under article nine-A of this chapter for a taxable  
11 year if such corporation was not a taxpayer but was properly included in  
12 a combined report filed pursuant to section two hundred eleven of this  
13 chapter for such taxable year and a corporation shall be considered to  
14 be subject to tax under this article for a taxable year if such corpo-  
15 ration was not a taxpayer but was properly included in a combined return  
16 filed pursuant to subsection (f) or (g) of section fourteen hundred  
17 sixty-two of this article for such taxable year. A corporation that was  
18 in existence before January first, two thousand six but first becomes a  
19 taxpayer in a taxable year beginning on or after January first, two  
20 thousand six and before January first, two thousand eight, shall be  
21 considered for purposes of this paragraph to have been subject to tax  
22 under article nine-A of this chapter for its last taxable year beginning  
23 before January first, two thousand six if such corporation would have  
24 been subject to tax under such article for such taxable year if it had  
25 been a taxpayer during such taxable year. A corporation that was in  
26 existence before January first, two thousand six but first becomes a  
27 taxpayer in a taxable year beginning on or after January first, two  
28 thousand six and before January first, two thousand eight, shall be  
29 considered for purposes of this paragraph to have been subject to tax  
30 under this article for its last taxable year beginning before January  
31 first, two thousand six if such corporation would have been subject to  
32 tax under this article for such taxable year if it had been a taxpayer  
33 during such taxable year.

34 (2) Notwithstanding anything to the contrary contained in this section  
35 other than subsection (n) of this section, a corporation formed on or  
36 after January first, two thousand six and before January first, two  
37 thousand eight may elect to be subject to tax under this article or  
38 under article nine-A of this chapter for its first taxable year begin-  
39 ning on or after January first, two thousand six and before January  
40 first, two thousand eight in which either (i) sixty-five percent or more  
41 of its voting stock is owned or controlled, directly or indirectly by a  
42 financial holding company, provided the corporation whose voting stock  
43 is so owned or controlled is principally engaged in activities that are  
44 described in section 4(k)(4) or 4(k)(5) of the federal bank holding  
45 company act of nineteen hundred fifty-six, as amended and the regu-  
46 lations promulgated pursuant to the authority of such section, or (ii)  
47 it is a financial subsidiary. An election under this paragraph may not  
48 be made by a corporation described in paragraphs one through eight of  
49 subsection (a) of this section or in subsection (e) of this section. In  
50 addition, an election under this paragraph may not be made by a corpo-  
51 ration that is a party to a reorganization, as defined in subsection (a)  
52 of section 368 of the internal revenue code of 1986, as amended, of a  
53 corporation described in paragraph one of this subsection if both corpo-  
54 rations were sixty-five percent or more owned or controlled, directly or  
55 indirectly, by the same interests at the time of the reorganization.



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

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

25 (m) Transitional provisions relating to the enactment and implementa-  
26 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding  
27 anything to the contrary contained in this section other than subsection  
28 (n) of this section, a corporation that was in existence before January  
29 first, two thousand twelve and was subject to tax under article nine-A  
30 of this chapter for its last taxable year beginning before January  
31 first, two thousand twelve, shall continue to be taxable under such  
32 article for all taxable years beginning on or after January first, two  
33 thousand twelve and before January first, two thousand seventeen. The  
34 preceding sentence shall not apply to any taxable year during which such  
35 corporation is a banking corporation described in paragraphs one through  
36 eight of subsection (a) of this section. Notwithstanding anything to  
37 the contrary contained in this section other than subsection (n) of this  
38 section, a banking corporation or corporation that was in existence  
39 before January first, two thousand twelve and was subject to tax under  
40 this article for its last taxable year beginning before January first,  
41 two thousand twelve, shall continue to be taxable under this article for  
42 all taxable years beginning on or after January first, two thousand  
43 twelve and before January first, two thousand seventeen only if the  
44 corporation is a banking corporation as defined in subsection (a) of  
45 this section or the corporation satisfies the requirements for a corpo-  
46 ration to elect to be taxable under this article. Provided further, that  
47 nothing in this subsection shall prohibit a corporation that elected  
48 pursuant to subsection (d) of this section to be taxable under article  
49 nine-A of this chapter from revoking that election in accordance with  
50 such subsection (d).

51 For purposes of this paragraph, a corporation shall be considered to  
52 be subject to tax under article nine-A of this chapter for a taxable  
53 year if such corporation was not a taxpayer but was properly included in  
54 a combined report filed pursuant to section two hundred eleven of this  
55 chapter for such taxable year and a corporation shall be considered to  
56 be subject to tax under this article for a taxable year if such corpo-

1 ration was not a taxpayer but was properly included in a combined return  
2 filed pursuant to subsection (f) or (g) of section fourteen hundred  
3 sixty-two of this article for such taxable year. A corporation that was  
4 in existence before January first, two thousand twelve but first becomes  
5 a taxpayer in a taxable year beginning on or after January first, two  
6 thousand twelve and before January first, two thousand seventeen, shall  
7 be considered for purposes of this paragraph to have been subject to tax  
8 under article nine-A of this chapter for its last taxable year beginning  
9 before January first, two thousand twelve if such corporation would have  
10 been subject to tax under such article for such taxable year if it had  
11 been a taxpayer during such taxable year. A corporation that was in  
12 existence before January first, two thousand twelve but first becomes a  
13 taxpayer in a taxable year beginning on or after January first, two  
14 thousand twelve and before January first, two thousand seventeen, shall  
15 be considered for purposes of this paragraph to have been subject to tax  
16 under this article for its last taxable year beginning before January  
17 first, two thousand twelve if such corporation would have been subject  
18 to tax under this article for such taxable year if it had been a taxpay-  
19 er during such taxable year.

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

43 An election under this paragraph must be made by the taxpayer on or  
44 before the due date for filing its return (determined with regard to  
45 extensions of time for filing) for the applicable taxable year. The  
46 election to be taxed under article nine-A of this chapter shall be made  
47 by the taxpayer by filing the report required pursuant to section two  
48 hundred eleven of this chapter and the election to be taxed under this  
49 article shall be made by the taxpayer by filing the return required  
50 pursuant to section fourteen hundred sixty-two of this article. Any  
51 election made pursuant to this paragraph shall be irrevocable and shall  
52 apply to each subsequent taxable year beginning on or after January  
53 first, two thousand twelve and before January first, two thousand seven-  
54 teen, provided that the stock ownership and activities requirements  
55 described in subparagraph (i) of this paragraph are met or such corpo-

1 ration described in subparagraph (ii) of this paragraph continues as a  
2 financial subsidiary.

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

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

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

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

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

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

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

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

50 (D) sixty-five percent or more of the voting stock of the corporation  
51 becomes owned or controlled directly by a corporation that acquired the  
52 stock in a transaction (or series of related transactions) that quali-  
53 fies as a purchase within the meaning of paragraph three of subsection  
54 (h) of section three hundred thirty-eight of the internal revenue code  
55 unless the corporation whose stock was acquired and the corporation  
56 acquiring the stock were, immediately prior to such purchase, members of

1 the same affiliated group (as such term is defined in section fifteen  
2 hundred four of the internal revenue code without regard to the exclu-  
3 sions provided for in subsection (b) of such section); provided that any  
4 acquisition that was completed on or before January third, two thousand  
5 seven shall be treated for purposes of this subparagraph as an acquisi-  
6 tion made before January first, two thousand seven; or

7 (E) the corporation, in a transaction or series of related trans-  
8 actions, acquires assets, whether by contribution, purchase, or other-  
9 wise, having an average value (determined in accordance with subdivision  
10 two of section two hundred ten of this chapter), or, if greater, a total  
11 tax basis, in excess of forty percent of the average value, or, if  
12 greater, the total tax basis, of all the assets of the corporation imme-  
13 diately prior to such acquisition and as a result of such acquisition  
14 the corporation is principally engaged in a business that is different  
15 from the business immediately prior to such acquisition, provided that  
16 such different business is described in subparagraph (i), (ii) or (iii)  
17 of paragraph nine of subsection (a) of this section.

18 § 1453. Computations of entire net income. (a) Entire net income means  
19 total net income from all sources which shall be the same as the entire  
20 taxable income (but not alternative minimum taxable income).

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

4 (10) upon the disposition of property to which paragraph seven of  
5 subsection (e) of this section applies, the amount, if any, by which the  
6 aggregate of the amounts described in such paragraph seven attributable  
7 to such property exceeds the aggregate of the amounts described in para-  
8 graph nine of this subsection attributable to such property,

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

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

19 (13) for taxable years beginning after December thirty-first, two  
20 thousand two, in the case of qualified property described in paragraph  
21 two of subsection k of section 168 of the internal revenue code, other  
22 than qualified resurgence zone property described in subsection (u) of  
23 this section, and other than qualified New York Liberty Zone property  
24 described in paragraph two of subsection b of section 1400L of the  
25 internal revenue code (without regard to clause (i) of subparagraph (C)  
26 of such paragraph), which was placed in service on or after June first,  
27 two thousand three, the amount allowable as a deduction under section  
28 167 of the internal revenue code.

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

31 (15) The amount of any federal deduction for taxes imposed under arti-  
32 cle twenty-three of this chapter.

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

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

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

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

52 (iii) where both the cost and the fair market price or value on Janu-  
53 ary first, nineteen hundred twenty-six, are less than the value real-  
54 ized, the basis for computing gain shall be the cost or the fair market  
55 price or value on such date, whichever is higher;

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

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

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

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

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

21 (iii) where both the cost and the fair market price or value on Janu-  
22 ary first, nineteen hundred fifty-three, are less than the value real-  
23 ized, the basis for computing gain shall be the cost or the fair market  
24 price or value on such date, whichever is higher;

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

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

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

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

39 (2) ordinary and necessary expenses paid or incurred during the taxa-  
40 ble year attributable to income which is subject to tax under this arti-  
41 cle but exempt from federal income tax,

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

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

48 (5) for taxable years beginning after December thirty-first, nineteen  
49 hundred eighty-one, except with respect to property which is a qualified  
50 mass commuting vehicle described in subparagraph (D) of paragraph eight  
51 of subsection (f) of section one hundred sixty-eight of the internal  
52 revenue code (relating to qualified mass commuting vehicles), any amount  
53 which is included in the taxpayer's federal taxable income solely as a  
54 result of an election made pursuant to the provisions of such paragraph  
55 eight as it was in effect for agreements entered into prior to January  
56 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

1 included in federal taxable income pursuant to section 585(c) of such  
2 code.

3 (14) for taxable years beginning before January first, two thousand  
4 ten, in the case of a taxpayer subject to the provisions of section  
5 585(c) of the internal revenue code, any amount which is included in  
6 federal taxable income as a result of a recovery of a loan.

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

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

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

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

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

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

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

43 (B) making or placing deposits with foreign persons which are banks or  
44 foreign branches of banks (including foreign subsidiaries or foreign  
45 branches of the taxpayer) or with other international banking facili-  
46 ties; or

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

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

52 (4) Adjusted eligible net income shall be determined by subtracting  
53 from eligible net income the ineligible funding amount, and by subtract-  
54 ing from the amount then remaining the floor amount.

55 (5) The ineligible funding amount shall be the amount, if any, deter-  
56 mined by multiplying eligible net income by a fraction, the numerator of

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

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

11 (A) The numerator shall be

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

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

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

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

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

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

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

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

47 (C) a foreign branch of a domestic corporation (including the taxpay-  
48 er),

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

51 (E) an international banking facility.

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

55 (g) Entire net income shall be computed without regard to the  
56 reduction in the basis of property that is required by section three



1 hundred sixty-two of the internal revenue code, because of any amount of  
2 money or other property received from the federal deposit insurance  
3 corporation pursuant to subsection (c) of section thirteen of the feder-  
4 al deposit insurance act, as amended, or from the federal savings and  
5 loan insurance corporation pursuant to paragraph one, two, three or four  
6 of subsection (f) of section four hundred six of the federal national  
7 housing act, as amended.

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

11 (A) Such banking corporation must be (i) a banking corporation as  
12 defined in paragraph one of subsection (a) of section fourteen hundred  
13 fifty-two of this article created or authorized to do business under  
14 article six or ten of the banking law, (ii) a banking corporation as  
15 defined in paragraph two or seven of subsection (a) of section fourteen  
16 hundred fifty-two of this article which is doing a business substantial-  
17 ly similar to the business which a corporation or association may be  
18 created to do under article six or ten of the banking law or any busi-  
19 ness which a corporation or association is authorized by such article to  
20 do, or (iii) a banking corporation as defined in paragraph four or five  
21 of subsection (a) of section fourteen hundred fifty-two of this article.

22 (B) At least sixty percent of the amount of the total assets (at the  
23 close of the taxable year) of such banking corporation must consist of  
24 (i) cash; (ii) obligations of the United States or of a state or poli-  
25 tical subdivision thereof, and stock or obligations of a corporation  
26 which is an instrumentality of the United States or of a state or poli-  
27 tical subdivision thereof, but not including obligations the interest on  
28 which is excludable from gross income under section 103 of the internal  
29 revenue code; (iii) loans secured by a deposit or share of a member;  
30 (iv) loans secured by an interest in real property which is (or from the  
31 proceeds of the loan, will become) residential real property or real  
32 property used primarily for church purposes, loans made for the improve-  
33 ment of residential real property or real property used primarily for  
34 church purposes, provided that for purposes of this clause, residential  
35 real property shall include single or multifamily dwellings, facilities  
36 in residential developments dedicated to public use or property used on  
37 a nonprofit basis for residents, and mobile homes not used on a tran-  
38 sient basis; (v) property acquired through the liquidation of defaulted  
39 loans described in clause (iv) of this subparagraph; (vi) any regular or  
40 residual interest in a REMIC, as such term is defined in section 860D of  
41 the internal revenue code and any regular interest in a FASIT, as such  
42 term is defined in section 860L of the internal revenue code, but only  
43 in the proportion which the assets of such REMIC or FASIT consist of  
44 property described in any of the preceding clauses of this subparagraph,  
45 except that if ninety-five percent or more of the assets of such REMIC  
46 or FASIT are assets described in clauses (i) through (v) of this subpar-  
47 agraph, the entire interest in the REMIC or FASIT shall qualify; (vii)  
48 any mortgage-backed security which represents ownership of a fractional  
49 undivided interest in a trust, the assets of which consist primarily of  
50 mortgage loans, provided that the real property which serves as security  
51 for the loans is (or from the proceeds of the loan, will become) the  
52 type of property described in clause (iv) of this subparagraph and any  
53 collateralized mortgage obligation, the security for which consists  
54 primarily of mortgage loans, provided that the real property which  
55 serves as security for the loans is (or from the proceeds of the loan,  
56 will become) the type of property described in clause (iv) of this

1 subparagraph; (viii) certificates of deposit in, or obligations of, a  
2 corporation organized under a state law which specifically authorizes  
3 such corporation to insure the deposits or share accounts of member  
4 associations; (ix) loans secured by an interest in real property located  
5 within any urban renewal area to be developed for predominantly residen-  
6 tial use under an urban renewal plan approved by the Secretary of Hous-  
7 ing and Urban Development under part A or part B of title I of the Hous-  
8 ing Act of 1949, as amended, or located within any area covered by a  
9 program eligible for assistance under section 103 of the Demonstration  
10 Cities and Metropolitan Development Act of 1966, as amended, and loans  
11 made for the improvement of any such real property; (x) loans secured by  
12 an interest in educational, health, or welfare institutions or facili-  
13 ties, including structures designed or used primarily for residential  
14 purposes for students, residents, and persons under care, employees, or  
15 members of the staff of such institutions or facilities; (xi) loans made  
16 for the payment of expenses of college or university education or voca-  
17 tional training; (xii) property used by the taxpayer in the conduct of  
18 business which consists principally of acquiring the savings of the  
19 public and investing in loans; (xiii) loans for which the taxpayer is  
20 the creditor and which are wholly secured by loans described in clause  
21 (iv) of this subparagraph, but excluding loans for which the taxpayer is  
22 the creditor to any banking corporation described in paragraphs one  
23 through seven of subsection (a) of section fourteen hundred fifty-two of  
24 this article or a real estate investment trust, as such term is defined  
25 in section 856 of the internal revenue code, and excluding loans which  
26 are treated by the taxpayer as subsidiary capital for purposes of the  
27 deductions provided by paragraph eleven of subsection (e) of this  
28 section; (xiv) small business loans or small farm loans located in low-  
29 income or moderate-income census tracts or block numbering areas deline-  
30 ated by the United States bureau of the census in the most recent decen-  
31 nal census; and (xv) community development loans or community  
32 development investments. For purposes of clause (xv) of this subpara-  
33 graph, a "community development loan" is a loan that (I) has as its  
34 primary purpose community development, (II) has not been reported or  
35 collected by the taxpayer for consideration in the taxpayer's community  
36 reinvestment act evaluation pursuant to the federal community reinvest-  
37 ment act of 1977, as amended, or section twenty-eight-b of the banking  
38 law as a mortgage loan described in clause (iv) of this subparagraph or  
39 a small business loan, small farm loan, or consumer loan, (III) benefits  
40 the taxpayer's assessment area or areas for purposes of the federal  
41 community reinvestment act of 1977, as amended or section twenty-eight-b  
42 of the banking law or a broader statewide or regional area that includes  
43 the taxpayer's assessment area, and (IV) is identified in the taxpayer's  
44 books and records as a community development loan for purposes of its  
45 community reinvestment act evaluation pursuant to the federal community  
46 reinvestment act of 1977, as amended or section twenty-eight-b of the  
47 banking law. For purposes of clause (xv) of this subparagraph, a "commu-  
48 nity development investment" is an investment in a security which has as  
49 its primary purpose community development and which is identified in the  
50 taxpayer's books and records as a qualified investment for purposes of  
51 its community reinvestment act evaluation pursuant to the federal commu-  
52 nity reinvestment act of 1977, as amended or section twenty-eight-b of  
53 the banking law. For purposes of the two preceding sentences, "community  
54 development" means (I) affordable housing (including multifamily rental  
55 housing for low-income or moderate-income individuals); (II) community  
56 services targeted to low-income or moderate-income individuals; (III)

1 activities that promote economic development by financing businesses or  
2 farms that meet the size eligibility standards of the small business  
3 administration's development company or small business investment compa-  
4 ny programs or have gross annual revenues of one million dollars or  
5 less; (IV) activities that revitalize or stabilize low-income or moder-  
6 ate-income census tracts or block numbering areas delineated by the  
7 United States bureau of the census in the most recent decennial census;  
8 or (V) activities that seek to prevent defaults and/or foreclosures in  
9 loans included in items (I) and (III) of this sentence.

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

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

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

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

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

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

52 (ii) the amount which, when added to the amount determined under  
53 subparagraph (A) of this paragraph, equals the amount by which twelve  
54 percent of the total deposits or withdrawable accounts of depositors of  
55 the taxpayer at the close of such year exceeds the sum of its surplus,  
56 undivided profits and reserves at the beginning of such year (taking

1 into account any portion thereof attributable to the period before the  
2 first taxable year beginning after December thirty-first, nineteen  
3 hundred fifty-one).

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

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

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

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

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

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

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

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

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

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

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



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

17 (B) Any debt becoming worthless or partially worthless in respect of a  
18 qualifying real property loan shall be charged to the reserve for losses  
19 on such loans and any debt becoming worthless or partially worthless in  
20 respect of a nonqualifying loan shall be charged to the reserve for  
21 losses on nonqualifying loans, except that any such debt may, at the  
22 election of the taxpayer, be charged in whole or in part to the supple-  
23 mental reserve for losses on loans.

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

29 (7) (A) For purposes of this subsection, the term "qualifying real  
30 property loan" shall mean any loan secured by an interest in improved  
31 real property or secured by an interest in real property which is to be  
32 improved out of the proceeds of the loan. Such term shall include any  
33 mortgage-backed security which represents ownership of a fractional  
34 undivided interest in a trust, the assets of which consist primarily of  
35 mortgage loans, provided that the real property which serves as security  
36 for the loans is (or from the proceeds of the loan, will become) the  
37 type of property described in clauses (i) through (v) of subparagraph  
38 (B) of paragraph one of this subdivision. However, such term shall not  
39 include: (i) any loan evidenced by a security (as defined in section  
40 165(g) (2) (C) of the internal revenue code); (ii) any loan, whether or  
41 not evidenced by a security (as defined in such section 165(g) (2) (C)),  
42 the primary obligor of which is (I) a government or political subdivi-  
43 sion or instrumentality thereof, (II) a banking corporation, or (III)  
44 any corporation sixty-five percent or more of whose voting stock is  
45 owned or controlled, directly or indirectly, by the taxpayer or by a  
46 banking corporation or bank holding company that owns or controls,  
47 directly or indirectly, sixty-five percent or more of the voting stock  
48 of the taxpayer; (iii) any loan, to the extent secured by a deposit in  
49 or share of the taxpayer; or (iv) any loan which, within a sixty-day  
50 period beginning in one taxable year of the creditor and ending in its  
51 next taxable year, is made or acquired and then repaid or disposed of,  
52 unless the transactions by which such loan was made or acquired and then  
53 repaid or disposed of are established to be for bona fide business  
54 purposes.

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



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

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

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

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

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

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

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

30 This subparagraph shall apply in the case of any distribution in redemp-  
31 tion of stock or in partial or complete liquidation of a thrift institu-  
32 tion, except that any such distribution shall be treated as made first  
33 out of the amount referred to in clause (ii) of this subparagraph,  
34 second out of the amount referred to in clause (iii) of this subpara-  
35 graph, third out of the amount referred to in clause (i) of this subpar-  
36 agraph and then out of such other accounts as may be proper. This  
37 subparagraph shall not apply to any transaction to which section 381 of  
38 such code (relating to carryovers and certain corporate acquisitions)  
39 applies, or to any distribution to the federal savings and loan insur-  
40 ance corporation or the federal deposit insurance corporation in redemp-  
41 tion of an interest in an association or institution, if such interest  
42 was originally received by the federal savings and loan insurance corpo-  
43 ration or the federal deposit insurance corporation in exchange for  
44 financial assistance pursuant to section 406(f) of the federal national  
45 housing act or pursuant to subsection (c) of section thirteen of the  
46 federal deposit insurance act.

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

55 (C) (i) For purposes of clause (ii) of subparagraph (A) of this para-  
56 graph, additions to the New York reserve for losses on qualifying real

1 property loans for the taxable year in which the distribution occurs  
2 shall be taken into account.

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

8 (9) A taxpayer which maintains a New York reserve for losses on quali-  
9 fying real property loans and which ceases to meet the definition of a  
10 thrift institution as defined in paragraph one of this subsection, must  
11 include in its entire net income for the last taxable year such para-  
12 graph applied the excess of its New York reserve for losses on qualify-  
13 ing real property loans over the greater of (A) its reserve for losses  
14 on qualifying real property loans as of the last day of the last taxable  
15 year such reserve is maintained for federal income tax purposes or (B)  
16 the balance of the New York reserve for losses on qualifying real prop-  
17 erty loans which would be allowable to the taxpayer for the last taxable  
18 year such taxpayer met such definition of a thrift institution if the  
19 taxpayer had computed its reserve balance pursuant to the method  
20 described in subparagraph (A) of paragraph one of subsection (i) of this  
21 section.

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

30 (A) The amount determined pursuant to this subparagraph shall be the  
31 amount necessary to increase the balance of its New York reserve for  
32 losses on loans (at the close of the taxable year) to the amount which  
33 bears the same ratio to loans outstanding at the close of the taxable  
34 year as (i) the total bad debts sustained during the taxable year and  
35 the five preceding taxable years (or, with the approval of the commis-  
36 sioner of taxation and finance, a shorter period), adjusted for recov-  
37 eries of bad debts during such period, bears to (ii) the sum of the  
38 loans outstanding at the close of such six or fewer taxable years.

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

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

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

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

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

15     (B) For purposes of subparagraph (A) of this paragraph, a taxpayer  
16 which had previously been subject to the provisions of subsection (h) of  
17 this section shall establish a New York reserve for losses on loans  
18 equal to the sum of (i) the greater of (I) the balance of its federal  
19 reserve for losses on qualifying real property loans as of the first day  
20 of the first taxable year the taxpayer becomes subject to the provisions  
21 of this subsection or (II) the greater of the amounts determined under  
22 subparagraphs (A) and (B) of paragraph nine of subsection (h) of this  
23 section in the year such paragraph applied to the taxpayer, (ii) the  
24 greater of (I) the balance in its federal reserve for losses on nonqual-  
25 ifying loans as of the first day of the first taxable year the taxpayer  
26 becomes subject to this subsection or (II) the balance in its New York  
27 reserve for losses on nonqualifying loans as of the last date the  
28 taxpayer was subject to the provisions of subsection (h) of this section  
29 and (iii) the balance in its supplemental reserve for losses on loans as  
30 of the last date the taxpayer was subject to the provisions of  
31 subsection (h) of this section.

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

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

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

40     (C) any other unusual circumstances  
41 shall be determined by the commissioner of taxation and finance.  
42 Provided, however, any banking corporation which was subject to tax for  
43 federal income tax purposes but not subject to tax under this article  
44 for prior taxable years shall have as its opening New York reserve for  
45 losses on loans the amount determined by applying the provisions of  
46 subparagraph (A) of paragraph one of this subsection to loans outstand-  
47 ing at the close of its last taxable year for federal income tax  
48 purposes ending prior to the first taxable year for which the taxpayer  
49 is subject to tax under this article and provided, further, that the  
50 provisions of subparagraph (B) of paragraph one of this subsection shall  
51 not apply.

52     (j) (1) In the case of property placed in service prior to January  
53 first, nineteen hundred seventy-three, for which the taxpayer properly  
54 adopted a different method of computing depreciation under section two  
55 hundred nineteen-z or section two hundred nineteen-xx of this chapter  
56 (as such sections were in effect on or before December thirty-first,

1 nineteen hundred seventy-two) than was adopted for federal income tax  
2 purposes with respect to such property, entire net income under this  
3 article shall be computed without regard to the amount allowable as a  
4 deduction for depreciation of such property in computing federal taxable  
5 income for the taxable year but, in lieu thereof, shall be computed as  
6 if such deduction were determined by the method of depreciation adopted  
7 with respect to such property under sections two hundred nineteen-z or  
8 two hundred nineteen-xx of this chapter (as such sections were in effect  
9 on or before December thirty-first, nineteen hundred seventy-two).

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

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

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

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

44 (k) (1) At the election of the taxpayer, there shall be deducted from  
45 the portion of its entire net income allocated within the state, depre-  
46 ciation with respect to any property such as described in paragraph two  
47 of this subsection, not exceeding twice the depreciation allowed with  
48 respect to the same property for federal income tax purposes. Such  
49 deduction shall be allowed only upon condition that entire net income be  
50 computed without any deduction for depreciation or amortization of the  
51 same property, and the total of all deductions allowed under article  
52 nine-B or nine-C of this chapter (as such articles were in effect on or  
53 before December thirty-first, nineteen hundred seventy-two) and this  
54 article in any taxable year or years with respect to the depreciation of  
55 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



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

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

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

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

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

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

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

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

54 (m) If the period covered by a return under this article is other than  
55 the period covered by the return to the United States treasury depart-  
56 ment,

(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

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

3 (3) For purposes of determining whether the nonrecognition of gain  
4 under this subsection applies to a qualified emerging technologies  
5 investment that is sold, the taxpayer's holding period for such invest-  
6 ment and the qualified emerging technologies investment that is  
7 purchased shall be determined without regard to Internal Revenue Code §  
8 1223.

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

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

26 (s) Related members expense add back. (1) Definitions. (A) Related  
27 member. "Related member" means a related person as defined in subpara-  
28 graph (c) of paragraph three of subsection (b) of section four hundred  
29 sixty-five of the internal revenue code, except that "fifty percent"  
30 shall be substituted for "ten percent".

31 (B) Effective rate of tax. "Effective rate of tax" means, as to any  
32 state or U.S. possession, the maximum statutory rate of tax imposed by  
33 the state or possession on or measured by a related member's net income  
34 multiplied by the apportionment percentage, if any, applicable to the  
35 related member under the laws of said jurisdiction. For purposes of this  
36 definition, the effective rate of tax as to any state or U.S. possession  
37 is zero where the related member's net income tax liability in said  
38 jurisdiction is reported on a combined or consolidated return including  
39 both the taxpayer and the related member where the reported transactions  
40 between the taxpayer and the related member are eliminated or offset.  
41 Also, for purposes of this definition, when computing the effective rate  
42 of tax for a jurisdiction in which a related member's net income is  
43 eliminated or offset by a credit or similar adjustment that is dependent  
44 upon the related member either maintaining or managing intangible prop-  
45 erty or collecting interest income in that jurisdiction, the maximum  
46 statutory rate of tax imposed by said jurisdiction shall be decreased to  
47 reflect the statutory rate of tax that applies to the related member as  
48 effectively reduced by such credit or similar adjustment.

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

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

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

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

20 (B) Exceptions. (i) The adjustment required in this subsection shall  
21 not apply to the portion of the royalty payment that the taxpayer estab-  
22 lishes, by clear and convincing evidence of the type and in the form  
23 specified by the commissioner, meets all of the following requirements:  
24 (I) the related member was subject to tax in this state or another state  
25 or possession of the United States or a foreign nation or some combina-  
26 tion thereof on a tax base that included the royalty payment paid,  
27 accrued or incurred by the taxpayer; (II) the related member during the  
28 same taxable year directly or indirectly paid, accrued or incurred such  
29 portion to a person that is not a related member; and (III) the trans-  
30 action giving rise to the royalty payment between the taxpayer and the  
31 related member was undertaken for a valid business purpose.

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

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



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

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

14     (u) For purposes of subsections (r) and (t) of this section, qualified  
15 resurgence zone property shall mean qualified property described in  
16 paragraph two of subsection k of section 168 of the internal revenue  
17 code substantially all of the use of which is in the resurgence zone, as  
18 defined below, and is in the active conduct of a trade or business by  
19 the taxpayer in such zone, and the original use of which in the resur-  
20 gence zone commences with the taxpayer after December thirty-first, two  
21 thousand two. The resurgence zone shall mean the area of New York county  
22 bounded on the south by a line running from the intersection of the  
23 Hudson River with the Holland Tunnel, and running thence east to Canal  
24 Street, then running along the centerline of Canal Street to the inter-  
25 section of the Bowery and Canal Street, running thence in a southeaster-  
26 ly direction diagonally across Manhattan Bridge Plaza, to the Manhattan  
27 Bridge and thence along the centerline of the Manhattan Bridge to the  
28 point where the centerline of the Manhattan Bridge would intersect with  
29 the easterly bank of the East River, and bounded on the north by a line  
30 running from the intersection of the Hudson River with the Holland  
31 Tunnel and running thence north along West Avenue to the intersection of  
32 Clarkson Street then running east along the centerline of Clarkson  
33 Street to the intersection of Washington Avenue, then running south  
34 along the centerline of Washington Avenue to the intersection of West  
35 Houston Street, then east along the centerline of West Houston Street,  
36 then at the intersection of the Avenue of the Americas continuing east  
37 along the centerline of East Houston Street to the easterly bank of the  
38 East River.

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

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

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

53     (D) As used in this subsection, the term "RIC holding company" means a  
54 corporation that (i) owns, directly or indirectly, over fifty percent of  
55 the capital stock of a RIC, or (ii) in connection with one or more other  
56 corporations in its affiliated group (as such term is defined in section

1 fifteen hundred four of the internal revenue code without regard to the  
2 exclusions provided for in subsection (b) of such section fifteen  
3 hundred four), owns over fifty percent of the capital stock of a RIC.

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

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

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

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

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

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

32 § 1453-A. Computation of alternative entire net income.--(a) Alterna-  
33 tive entire net income means entire net income as determined pursuant to  
34 section fourteen hundred fifty-three of this article, except that the  
35 deductions described in paragraphs eleven and twelve of subsection (e)  
36 of section fourteen hundred fifty-three of this article shall not be  
37 allowed.

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

43 § 1454. Allocation. (a) In general. If a taxpayer's entire net income,  
44 alternative entire net income, or taxable assets are derived from busi-  
45 ness carried on within and without the state, the taxpayer shall, for  
46 purposes of computing allocation percentages, compute payroll, receipts,  
47 and deposits percentages in accordance with the following rules:

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

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

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

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

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

12     (i) In the case of a taxpayer described in paragraph one, two, three,  
13 four, five or seven of subsection (a) of section fourteen hundred  
14 fifty-two of this article, a loan or financing lease attributed by such  
15 taxpayer to a branch without the state shall be presumed to be properly  
16 so attributed provided that such presumption may be rebutted if the tax  
17 commission demonstrates that the greater portion of income producing  
18 activity related to the loan or financing lease did not occur at such  
19 branch. Where such presumption has been rebutted, the loan or financing  
20 lease shall be presumed to be within this state if the taxpayer had a  
21 branch within this state at the time the loan or financing lease was  
22 made. The taxpayer may rebut such presumption by demonstrating that the  
23 greater portion of income producing activity related to the loan or  
24 financing lease did not occur within the state. In the case of a loan or  
25 financing lease which is recorded on the books of a place without the  
26 state which is not a branch, it shall be presumed that the greater  
27 portion of income producing activity related to such loan or financing  
28 lease occurred within this state if the taxpayer had a branch within  
29 this state at the time the loan or financing lease was made. The taxpay-  
30 er may rebut such presumption by demonstrating that the greater portion  
31 of income producing activity related to the loan or financing lease did  
32 not occur within this state.

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

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

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

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

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

52     (E) The portion of total net gains and other income from trading  
53 activities (including but not limited to foreign exchange, options and  
54 financial futures), and from investment activities which is attributed  
55 within the state shall be ascertained by multiplying such total net  
56 gains and other income by a fraction the numerator of which is the aver-

1 age value of trading assets and investment assets attributable to this  
2 state and the denominator of which is the average value of all trading  
3 and investment assets. A trading asset or investment asset is attribut-  
4 able to this state if the greater portion of income producing activity  
5 related to the trading asset or investment asset occurred within the  
6 state.

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

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

17 (2) The New York portion shall be the product of (i) the total of such  
18 receipts from the sale of such services and (ii) a fraction. The numera-  
19 tor of that fraction is the sum of the monthly percentages (as defined  
20 hereinafter) determined for each month of the investment company's taxa-  
21 ble year for federal income tax purposes which taxable year ends within  
22 the taxable year of the taxpayer (but excluding any month during which  
23 the investment company had no outstanding shares). The monthly percent-  
24 age for each such month is determined by dividing (i) the number of  
25 shares in the investment company which are owned on the last day of the  
26 month by shareholders which are domiciled in the state by (ii) the total  
27 number of shares in the investment company outstanding on that date. The  
28 denominator of the fraction is the number of such monthly percentages.

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

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

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

52 (iv) For purposes of this subparagraph, the term "management services"  
53 means the rendering of investment advice to an investment company,  
54 making determinations as to when sales and purchases of securities are  
55 to be made on behalf of an investment company, or the selling or  
56 purchasing of securities constituting assets of an investment company,

1 and related activities, but only where such activity or activities are  
2 performed pursuant to a contract with the investment company entered  
3 into pursuant to section 15(a) of the federal investment company act of  
4 nineteen hundred forty, as amended.

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

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

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

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

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

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

43 (5) For purposes of this section:

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

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

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



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

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

8 (b) Allocation of entire net income.

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

20 (1-a) Notwithstanding the provisions of paragraph one of this  
21 subsection, each banking corporation described in paragraph nine of  
22 subsection (a) of section fourteen hundred fifty-two of this article  
23 subject to the tax imposed by this article that substantially provides  
24 management, administrative or distribution services to an investment  
25 company, as such terms are defined in subparagraph (G) of paragraph two  
26 of subsection (a) of this section, shall determine the portion of its  
27 entire net income derived from business carried on within the state by  
28 multiplying such income by an income allocation percentage obtained as  
29 follows:

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

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

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

37 (iii) the product of thirty-three percent and the percentage deter-  
38 mined under paragraph three of subsection (a) of this section.

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

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

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

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

48 (C) For taxable years beginning on or after January first, two thou-  
49 sand eight, by the percentage ascertained under paragraph two of  
50 subsection (a) of this section.

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

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

3 (i) wages, salaries and other personal service compensation properly  
4 attributable to the production of eligible gross income of the tax-  
5 payer's international banking facility shall not be included in the  
6 computation of wages, salaries and other personal service compensation  
7 of employees within the state,

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

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

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

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

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

33 (2) When an election has been made pursuant to paragraph two of  
34 subsection (b) of this section (relating to international banking facil-  
35 ities) the taxpayer shall make the modifications described in such para-  
36 graph for purposes of its alternative entire net income allocation  
37 percentage.

38 (3) For taxable years beginning on or after January first, two thou-  
39 sand six, each banking corporation described in paragraph nine of  
40 subsection (a) of section fourteen hundred fifty-two of this article  
41 subject to the tax imposed by this article that substantially provides  
42 management, administrative or distribution services to an investment  
43 company, as such terms are defined in subparagraph (G) of paragraph two  
44 of subsection (a) of this section, shall determine the portion of its  
45 alternative entire net income derived from business carried on within  
46 the state by multiplying such income by the percentage ascertained for  
47 the taxable year under paragraph one-a of subsection (b) of this  
48 section, except that in computing such percentage (A) for taxable years  
49 beginning before January first, two thousand eight, no consideration  
50 shall be given to the phrase "eighty percent of" in paragraph one of  
51 subsection (a) of this section, (B) for taxable years beginning before  
52 January first, two thousand eight, when an election has been made pursu-  
53 ant to paragraph two of subsection (b) of this section (relating to an  
54 international banking facility) the taxpayer shall make the modifica-  
55 tions described in such paragraph, and (C) for taxable years beginning  
56 on or after January first, two thousand eight, when an election has been

1 made pursuant to paragraph two of subsection (b) of this section (relat-  
2 ing to an international banking facility) the taxpayer shall make the  
3 modifications described in clause (ii) of subparagraph (A) of such para-  
4 graph.

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

14 § 1455. Computation of tax. The tax imposed by section fourteen  
15 hundred fifty-one of this article shall be, in the case of each taxpayer  
16 other than a New York S corporation, the greater of the following compu-  
17 tations:

18 (a) Basic tax. For taxable years beginning before July first, two  
19 thousand, nine percent of the taxpayer's entire net income, or the  
20 portion thereof allocated to this state, for the taxable year, or part  
21 thereof. For taxable years beginning after June thirtieth, two thousand  
22 and before July first, two thousand one, eight and one-half percent of  
23 the taxpayer's entire net income, or portion thereof allocated to this  
24 state, for the taxable year, or part thereof. For taxable years begin-  
25 ning after June thirtieth, two thousand one and before July first, two  
26 thousand two, eight percent of the taxpayer's entire net income, or  
27 portion thereof allocated to this state, for the taxable year, or part  
28 thereof. For taxable years beginning after June thirtieth, two thousand  
29 two and before January first, two thousand seven, seven and one-half  
30 percent of the taxpayer's entire net income, or portion thereof allo-  
31 cated to this state, for the taxable year, or part thereof. For taxable  
32 years beginning on or after January first, two thousand seven, seven and  
33 one-tenth percent of the taxpayer's entire net income, or the portion  
34 thereof allocated to this state, for the taxable year, or part thereof.

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

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

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

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

50 (iv) For taxable years beginning on or after January first, nineteen  
51 hundred eighty-five, a taxpayer (whether or not a qualified institution  
52 as defined in subparagraph (B) of paragraph five of subsection (f) of  
53 section four hundred six of the federal national housing act, as  
54 amended, or as defined in paragraph two of subsection (i) of section  
55 thirteen of the federal deposit insurance act, as amended) shall not be  
56 subject to the provisions of this paragraph for that portion of the

1 taxable year in which it had outstanding net worth certificates issued  
2 in accordance with paragraph five of subsection (f) of section four  
3 hundred six of the federal national housing act, as amended, or issued  
4 in accordance with subsection (i) of section thirteen of the federal  
5 deposit insurance act, as amended.

6 (v) For the purposes of this article:

7 (A) The term "taxable assets" shall mean the average value of total  
8 assets reduced by any amount of money or other property received from or  
9 attributable to amounts received from the federal deposit insurance  
10 corporation pursuant to subsection (c) of section thirteen of the feder-  
11 al deposit insurance act, as amended, or the federal savings and loan  
12 insurance corporation pursuant to paragraph one, two, three or four of  
13 subsection (f) of section four hundred six of the federal national hous-  
14 ing act, as amended. Total assets are those assets which are properly  
15 reflected on a balance sheet the income or expenses of which are proper-  
16 ly reflected (or would have been properly reflected if not fully depre-  
17 ciated or expensed or depreciated or expensed to a nominal amount) in  
18 the computation of alternative entire net income for the taxable year or  
19 in the computation of the eligible net income of the taxpayer's interna-  
20 tional banking facility for the taxable year.

21 (B) The term "net worth ratio" shall mean the percentage of net worth  
22 to assets on the last day of the taxable year. The term "net worth"  
23 means the sum of preferred stock, common stock, surplus, capital  
24 reserves, undivided profits, mutual capital certificates, reserve for  
25 contingencies, reserve for loan losses and reserve for security losses  
26 minus assets classified loss. The term "assets" means the sum of mort-  
27 gage loans, nonmortgage loans, repossessed assets, real estate held for  
28 development or investment or resale, cash, deposits, investment securi-  
29 ties, fixed assets and other assets (such as financial futures, goodwill  
30 and other intangible assets) minus assets classified loss. In no event  
31 shall assets be reduced by reserves for losses.

32 (C) The term "mortgages" shall mean loans secured by real property  
33 within or without the state, participations in and securities collater-  
34 alized by pools of residential mortgages, whether or not issued or quar-  
35 anteed by a United States government agency, and loans secured by stock  
36 in a cooperative housing corporation. The percentage of total assets  
37 comprised of mortgages shall be an amount equal to the ratio of the  
38 average of the four quarterly balances of such mortgages ending within  
39 the taxable year, to the average of the four quarterly balances of all  
40 assets ending within the taxable year. Such quarterly balances shall be  
41 computed in the same manner as the report of condition required for  
42 federal deposit insurance corporation or federal savings and loan insur-  
43 ance corporation purposes, whether or not such report is required. For  
44 taxable periods of less than one year, the taxpayer shall compute such  
45 ratio using the number of such quarterly balances ending within such  
46 taxable period.

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

50 (3) Two hundred fifty dollars.

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

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

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

13     § 1455-A. Tax surcharge. (a) In addition to the tax imposed under  
14 section fourteen hundred fifty-one of this article, there is hereby  
15 imposed, (1) for taxable years ending after June thirtieth, nineteen  
16 hundred eighty-nine and before July first, nineteen hundred ninety, a  
17 tax surcharge at the rate of two and one-half percent of the tax imposed  
18 under section fourteen hundred fifty-one of this article, before  
19 deduction of any credits against tax otherwise allowable under this  
20 article for all or any parts of such taxable years, (2) for taxable  
21 years ending after June thirtieth, nineteen hundred ninety and before  
22 July first, nineteen hundred ninety-four, and until such rate is super-  
23 seded, a tax surcharge at the rate of fifteen percent of the tax imposed  
24 under section fourteen hundred fifty-one of this article, after  
25 deduction of any credits against tax otherwise allowable under this  
26 article, (3) for taxable years ending after June thirtieth, nineteen  
27 hundred ninety-four and before July first, nineteen hundred ninety-five,  
28 and until such rate is superseded, a tax surcharge at the rate of ten  
29 percent of the tax imposed under section fourteen hundred fifty-one of  
30 this article, after deduction of any credits against the tax otherwise  
31 allowable under this article, (4) for taxable years ending after June  
32 thirtieth, nineteen hundred ninety-five and before July first, nineteen  
33 hundred ninety-six, and until such rate is superseded, a tax surcharge  
34 at the rate of five percent of the tax imposed under section fourteen  
35 hundred fifty-one of this article, after deduction of any credits  
36 against the tax otherwise allowable under this article and (5) for taxa-  
37 ble years ending after June thirtieth, nineteen hundred ninety-six and  
38 before July first, nineteen hundred ninety-seven, a tax surcharge at the  
39 rate of zero percent of the tax imposed under section fourteen hundred  
40 fifty-one of this article, after deduction of any credits against the  
41 tax otherwise allowable under this article. However, the tax surcharge  
42 imposed by this section at the rate of two and one-half percent shall  
43 not be imposed upon any taxpayer for more than twelve months, the tax  
44 surcharge imposed by this section at the rate of fifteen percent shall  
45 not be imposed upon any taxpayer for more than forty-eight months, and  
46 the tax surcharges imposed by this section at the rates of ten percent,  
47 five percent and zero percent shall not, respectively, be imposed upon  
48 any taxpayer for more than twelve months, and the commissioner shall  
49 prescribe by regulation or instructions a method of proration designed  
50 to effectuate such result. The credits against tax otherwise allowable  
51 under section fourteen hundred fifty-six of this article shall not be  
52 allowed as a credit against the tax surcharge imposed by this section.

53     (b) (1) The provisions concerning returns under section fourteen  
54 hundred sixty-two of this article shall be applicable to this section,  
55 except that for purposes of an automatic extension for six months for  
56 filing a return covering the taxes imposed by this article, such auto-



1 matic extension shall be allowed, for taxable years to which the tax  
2 surcharges imposed by this section apply, only if a taxpayer files with  
3 the commissioner an application for extension in such form as the  
4 commissioner may prescribe and pays on or before the date of such filing  
5 in addition to any other amounts required under this article, two and  
6 one-half percent, fifteen percent, ten percent, five percent or zero  
7 percent, whichever is the rate applicable to the taxable year pursuant  
8 to subsection (a) of this section, of the amount properly estimated as  
9 provided in subsection (b) of section fourteen hundred sixty-three of  
10 this article as its tax payable under section fourteen hundred fifty-one  
11 of this article, before deduction of any credits against tax otherwise  
12 allowable under section fourteen hundred fifty-six of this article in  
13 the case of the tax surcharge imposed at the rate of two and one-half  
14 percent, and after deduction of any credits against tax otherwise allow-  
15 able under section fourteen hundred fifty-six of this article in the  
16 case of the tax surcharge imposed at the rate of fifteen, ten, five or  
17 zero percent. The tax surcharge imposed by this section shall be paya-  
18 ble to the commissioner in full at the time the return is required to be  
19 filed.

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

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

41 (d) Insofar as subsection (a) of this section establishes a rate of  
42 fifteen percent in the case of taxable years ending after June thirti-  
43 eth, nineteen hundred ninety and before July first, nineteen hundred  
44 ninety-four and until such rate is superseded, a rate of ten percent in  
45 the case of taxable years ending after June thirtieth, nineteen hundred  
46 ninety-four and before July first, nineteen hundred ninety-five and  
47 until such rate is superseded, a rate of five percent in the case of  
48 taxable years ending after June thirtieth, nineteen hundred ninety-five  
49 and before July first, nineteen hundred ninety-six and until such rate  
50 is superseded, and a rate of zero percent in the case of taxable years  
51 ending after June thirtieth, nineteen hundred ninety-six and before July  
52 first, nineteen hundred ninety-seven, the transition from such rate of  
53 fifteen percent to such rate of ten percent, from such rate of ten  
54 percent to such rate of five percent, and from such rate of five percent  
55 to such rate of zero percent, shall be deemed to occur, respectively, on  
56 the first day of the seventh month of each of such taxable years, with

1 the result that for purposes of implementation of such changes in rates,  
2 and notwithstanding such subsection (a), there is hereby imposed with  
3 respect to all taxable years ending after June thirtieth, nineteen  
4 hundred ninety-four and before July first, nineteen hundred ninety-five,  
5 including taxable years of fewer than twelve months, a tax surcharge at  
6 the rate of twelve and one-half percent; there is hereby imposed with  
7 respect to all taxable years ending after June thirtieth, nineteen  
8 hundred ninety-five and before July first, nineteen hundred ninety-six,  
9 including taxable years of fewer than twelve months, a tax surcharge at  
10 the rate of seven and one-half percent; and there is hereby imposed with  
11 respect to all taxable years ending after June thirtieth, nineteen  
12 hundred ninety-six and before July first, nineteen hundred ninety-seven,  
13 including taxable years of fewer than twelve months, a tax surcharge at  
14 the rate of two and one-half percent. In addition, for purposes of  
15 implementation of all the provisions of this section references to ten  
16 percent shall be read as references to twelve and one-half percent,  
17 references to five percent shall be read as references to seven and  
18 one-half percent and references to zero percent shall be read as refer-  
19 ences to two and one-half percent.

20 § 1455-B. Temporary metropolitan transportation business tax surcharge  
21 on banks. (a) For the privilege of exercising its franchise or doing  
22 business in the metropolitan commuter transportation district in a  
23 corporate or organized capacity, there is hereby imposed on every  
24 taxpayer subject to tax under this article, other than a New York S  
25 corporation, for the taxable years commencing on or after January first,  
26 nineteen hundred eighty-two but ending before December thirty-first, two  
27 thousand nineteen, a tax surcharge, in addition to the tax imposed under  
28 section fourteen hundred fifty-one of this article, at the rate of eigh-  
29 teen percent of the tax imposed under such section fourteen hundred  
30 fifty-one of this article, for such taxable years or any part of such  
31 taxable years ending before December thirty-first, nineteen hundred  
32 eighty-three after the deduction of any credits otherwise allowable  
33 under this article, and at the rate of seventeen percent of the tax  
34 imposed under such section for such taxable years or any part of such  
35 taxable years ending on or after December thirty-first, nineteen hundred  
36 eighty-three after the deduction of any credits otherwise allowable  
37 under this article; provided however, that such rates of tax surcharge  
38 shall be applied only to that portion of the tax imposed under section  
39 fourteen hundred fifty-one of this article after the deduction of any  
40 credits otherwise allowable under this article which is attributable to  
41 the taxpayer's business activity carried on within the metropolitan  
42 commuter transportation district; and provided, further, that the tax  
43 surcharge imposed by this section shall not be imposed upon any taxpayer  
44 for more than four hundred thirty-two months. Provided however, that for  
45 taxable years commencing on or after July first, two thousand, such  
46 surcharge shall be calculated as if the rate of the basic tax computed  
47 under subsection (a) of section fourteen hundred fifty-five of this  
48 article was nine percent.

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

55 (c) The provisions concerning returns under section fourteen hundred  
56 sixty-two of this article shall be applicable to this section, except

1 that for purposes of an automatic extension for six months for filing a  
2 return covering the tax surcharge imposed by this section, such automat-  
3 ic extension shall be allowed only if a taxpayer files with the commis-  
4 sioner an application for extension in such form as said commissioner  
5 may prescribe by regulation and pays on or before the date of such  
6 filing in addition to any other amounts required under this article,  
7 either ninety percent of the entire tax surcharge required to be paid  
8 under this section for the applicable period, or not less than the tax  
9 surcharge shown on the taxpayer's return for the preceding taxable year,  
10 if such preceding taxable year was a taxable year of twelve months. The  
11 tax surcharge imposed by this section shall be payable to the commis-  
12 sioner in full at the time the return is required to be filed, and such  
13 tax surcharge or the balance thereof, imposed on any taxpayer which  
14 ceases to exercise its franchise or be subject to the tax surcharge  
15 imposed by this section shall be payable to the commissioner at the time  
16 the return is required to be filed, provided such tax surcharge of a  
17 domestic corporation which continues to possess its franchise shall be  
18 subject to adjustment as the circumstances may require; all other tax  
19 surcharges of any such taxpayer, which pursuant to the foregoing  
20 provisions of this section would otherwise be payable subsequent to the  
21 time such return is required to be filed, shall nevertheless be payable  
22 at such time. All of the provisions of this article presently applicable  
23 are applicable to the tax surcharge imposed by this section.

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

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

33 § 1456. Credits. (a) Credit for servicing certain mortgages. Every  
34 bank, as defined in section two thousand four hundred two of the public  
35 authorities law, which shall have entered into a contract with the state  
36 of New York mortgage agency to service mortgages acquired by such agency  
37 pursuant to the state of New York mortgage agency act, shall have cred-  
38 ited to it annually to apply upon or in lieu of the payment of any tax  
39 to which it may be subject under this article an amount equal to two and  
40 ninety-three one hundredths percentum of the total principal and inter-  
41 est collected by the bank during its taxable year on each such mortgage  
42 secured by a lien on real estate improved by a one-family to four-family  
43 residential structure and an amount equal to the interest collected by  
44 the bank during its taxable year on each such mortgage secured by a lien  
45 on real property improved by a structure occupied as the residence of  
46 five or more families living independently of each other, multiplied by  
47 a fraction the denominator of which shall be the interest rate payable  
48 on the mortgage (computed to five decimal places) and the numerator of  
49 which shall be .00125 in the case of such a mortgage acquired by such  
50 agency for less than one million dollars, and .00100 in the case of such  
51 a mortgage acquired by such agency for one million dollars or more;  
52 provided, however, that there shall in no case be credited to any such  
53 bank an amount in excess of the amount due from such bank for taxes  
54 payable to the state under this article for the taxable year for which  
55 such credit is given. In computing such tax credit for the servicing of  
56 mortgages on one-family to four-family residential structures, the bank

1 shall be entitled to no credit for the collection of curtailments or  
2 payments in discharge of any such mortgage. For the purposes of this  
3 section, (1) a "curtailment" shall mean amounts paid by mortgagors (i)  
4 in excess of the monthly constant due during the month of collection and  
5 (ii) in reduction of the unpaid principal balance of the mortgage; in  
6 the absence of clear evidence to the contrary, amounts paid in excess of  
7 the monthly constant due during the month of collection shall be deemed  
8 to be in reduction of the unpaid principal balance of the mortgage; and  
9 (2) "monthly constant" shall mean the amount of principal and interest  
10 which is due and payable according to the mortgage documents on each  
11 periodic payment date.

12 (b) Eligible business facility credit.

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

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

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

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

53 (C) adding together the percentages so determined and dividing the  
54 result by two; provided, however, that if no wages, salaries or other  
55 personal service compensation were paid or incurred by the taxpayer  
56 during such period to employees within the state other than general

1 executive officers, subparagraph (B) of this paragraph shall be disre-  
2 garded and the amount of credit allowable shall be determined by multi-  
3 plying the tax otherwise due by the percentage specified in subparagraph  
4 (A) of this paragraph.

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

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

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

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

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

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

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

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

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

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

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



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

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

17 (9) For purposes of the requirement for eligibility for the credit  
18 allowed under this subdivision that a business facility create or retain  
19 not less than five jobs as provided in subdivision (c) of section one  
20 hundred eighteen of the commerce law as such section existed on March  
21 thirty-first, nineteen hundred eighty-three, a business facility shall  
22 have (i) created not less than five jobs only if the number of jobs for  
23 the taxable year exceeds the number of jobs at the time of the commence-  
24 ment of the project as stated on its application for initial approval by  
25 five or more; or (ii) retained not less than five jobs only if initial  
26 approval was based on the retention of five or more jobs and (A) the  
27 number of jobs for the taxable year is at least equal to the number of  
28 jobs at the time of the commencement of the project as stated on its  
29 application for initial approval or (B) where initial approval was based  
30 on the retention of fewer jobs than the number of jobs at the time of  
31 the commencement of the project as stated on its application for initial  
32 approval, the number of jobs for the taxable year is at least equal to  
33 the number approved for retention. For purposes of this paragraph, the  
34 phrase "initial approval was based on the retention of five or more  
35 jobs" shall mean that such initial approval was given by the job incen-  
36 tive board to an applicant that had not stated in its application for  
37 initial approval that it would increase the number of jobs at its facil-  
38 ity by at least five.

39 (c) Mortgage recording tax credit. (1) A taxpayer shall be allowed a  
40 credit, to be credited against the tax imposed by this article. The  
41 amount of the credit shall be the amount of the special additional mort-  
42 gage recording tax paid by the taxpayer pursuant to the provisions of  
43 subdivision one-a of section two hundred fifty-three of this chapter on  
44 mortgages recorded on and after January first, nineteen hundred seven-  
45 ty-nine. Provided, however, no credit shall be allowed with respect to a  
46 mortgage of real property principally improved or to be improved by one  
47 or more structures containing in the aggregate not more than six resi-  
48 dential dwelling units, each dwelling unit having its own separate cook-  
49 ing facilities, where the real property is located in one or more of the  
50 counties comprising the metropolitan commuter transportation district  
51 and where the mortgage is recorded on or after May first, nineteen  
52 hundred eighty-seven. Provided, however, no credit shall be allowed with  
53 respect to a mortgage of real property principally improved or to be  
54 improved by one or more structures containing in the aggregate not more  
55 than six residential dwelling units, each dwelling unit having its own  
56 separate cooking facilities, where the real property is located in the

1 county of Erie and where the mortgage is recorded on or after May first,  
2 nineteen hundred eighty-seven.

3 (2) In no event shall the credit herein provided for, and carryovers  
4 of such credit, in the aggregate, be allowed in an amount which will  
5 reduce the tax payable to less than the dollar amount fixed as a minimum  
6 tax by subsection (b) of section fourteen hundred fifty-five. However,  
7 if the amount of credit or carryovers of such credit, or both, allowable  
8 under this subdivision for any taxable year reduces the tax to such  
9 amount, any amount of credit or carryovers of such credit thus not  
10 deductible in such taxable year may be carried over to the following  
11 year or years and may be deducted from the taxpayer's tax for such year  
12 or years.

13 (d) Empire zone capital credit.

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

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

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

6 (2-a) Any carryover of a credit from prior taxable years will not be  
7 allowed to an empire zone enterprise which is the basis of the credit,  
8 if an empire zone retention certificate is not issued to such entity  
9 pursuant to subdivision (w) of section nine hundred fifty-nine of the  
10 general municipal law.

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

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

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

32 (C) The required portion of the credit originally allowed shall be the  
33 product of (i) the portion of such credit attributable to the property  
34 disposed of or the payment or contribution recovered and (ii) the appli-  
35 cable percentage.

36 (D) The applicable percentage shall be:

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

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

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

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

1 project as payment of a commitment made by the taxpayer to that communi-  
2 ty development project before the empire zones expired.

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

8 (2) For purposes of this subsection, the following terms shall have  
9 the following meanings: (A) "Empire zone wages" means wages paid by the  
10 taxpayer for full-time employment, other than to general executive offi-  
11 cers, during the taxable year in an area designated or previously desig-  
12 nated as an empire zone or zone equivalent area pursuant to article  
13 eighteen-B of the general municipal law where such employment is in a  
14 job created in the area (i) during the period of its designation as an  
15 empire zone, (ii) within four years of the expiration of such desig-  
16 nation, or (iii) during the ten year period immediately following the  
17 date of designation as a zone equivalent area, provided, however, that  
18 if the taxpayer's certification under article eighteen-B of the general  
19 municipal law is revoked with respect to an empire zone or zone equiv-  
20 alent area, any wages paid by the taxpayer, on or after the effective  
21 date of such decertification, for employment in such zone shall not  
22 constitute empire zone wages.

23 (B) "Targeted employee" means a New York resident who receives empire  
24 zone wages and who is (i) an eligible individual under the provisions of  
25 the targeted jobs tax credit (section fifty-one of the internal revenue  
26 code), (ii) eligible for benefits under the provisions of the workforce  
27 investment act as a dislocated worker or low-income individual (P.L.  
28 105-220, as amended), (iii) a recipient of public assistance benefits,  
29 (iv) an individual whose income is below the most recently established  
30 poverty rate promulgated by the United States department of commerce, or  
31 a member of a family whose family income is below the most recently  
32 established poverty rate promulgated by the appropriate federal agency  
33 or (v) an honorably discharged member of any branch of the armed forces  
34 of the United States.

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

42 (C) "Average number of individuals, excluding general executive offi-  
43 cers, employed full-time" shall be computed by ascertaining the number  
44 of such individuals employed by the taxpayer on the thirty-first day of  
45 March, the thirtieth day of June, the thirtieth day of September and the  
46 thirty-first day of December during each taxable year or other applica-  
47 ble period, by adding together the number of such individuals ascer-  
48 tained on each of such dates and dividing the sum so obtained by the  
49 number of such dates occurring within such taxable year or other appli-  
50 cable period.

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

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

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

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

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

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

52 (D) If a taxpayer is certified in an empire zone designated under  
53 subdivision (a) or (d) of section nine hundred fifty-eight of the gener-  
54 al municipal law, the dollar amounts specified under subparagraph (A) or  
55 (B) of this paragraph shall be increased by five hundred dollars for



1 each qualifying individual under such subparagraph who received, during  
2 the taxable year, wages in excess of forty thousand dollars.

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

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

25 (5) The credit and carryovers of such credit allowed under this  
26 subsection for any taxable year shall not, in the aggregate, reduce the  
27 tax due for such year to less than the minimum tax fixed by subsection  
28 (b) of section fourteen hundred fifty-five of this article. However, if  
29 the amount of credit or carryovers of such credit, or both, allowed  
30 under this subsection for any taxable year reduces the tax to such  
31 amount, or if any part of the credit or carryovers of such credit may  
32 not be deducted from the tax otherwise due by reason of the final  
33 sentence in paragraph four hereof, any amount of credit or carryovers of  
34 such credit thus not deductible in such taxable year may be carried over  
35 to the following year or years and may be deducted from the taxpayer's  
36 tax for such year or years.

37 (5-a) Any carry over of a credit from prior taxable years will not be  
38 allowed if an empire zone retention certificate is not issued pursuant  
39 to subdivision (w) of section nine hundred fifty-nine of the general  
40 municipal law to the empire zone enterprise which is the basis of the  
41 credit.

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

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

55 (A) who served on active duty in the United States army, navy, air  
56 force, marine corps, coast guard or the reserves thereof, or who served

1 in active military service of the United States as a member of the army  
2 national guard, air national guard, New York guard or New York naval  
3 militia; who was released from active duty by general or honorable  
4 discharge after September eleventh, two thousand one;

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

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

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

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

26 (5) Carryover. The credit allowed under this subsection for any taxa-  
27 ble year shall not reduce the tax due for such year to less than the  
28 amount prescribed in paragraph three of subsection (b) of section four-  
29 teen hundred fifty-five of this article. However, if the amount of cred-  
30 it allowable under this subsection for any taxable year reduces the tax  
31 to such amount, any amount of credit not deductible in such taxable year  
32 may be carried over to the following three years and may be deducted  
33 from the taxpayer's tax for such year or years.

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

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

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

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

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

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

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

15 (5) Carryover. The credit and carryovers of such credit allowed under  
16 this subsection for any taxable year shall not, in the aggregate, reduce  
17 the tax due for such year to less than the minimum tax fixed by  
18 subsection (b) of section fourteen hundred fifty-five of this article.  
19 However, if the amount of credit or carryovers of such credit, or both,  
20 allowed under this subdivision for any taxable year reduces the tax to  
21 such amount, then any amount of credit or carryovers of such credit thus  
22 not deductible in such taxable year may be carried over to the following  
23 year or years and may be deducted from the taxpayer's tax for such year  
24 or years.

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

33 (g) Order of credits. Credits allowable under this article which  
34 cannot be carried over and which are not refundable shall be deducted  
35 first. Credits allowable under this article which can be carried over,  
36 and carryovers of such credits, shall be deducted next, and among such  
37 credits, those whose carryover is of limited duration shall be deducted  
38 before those whose carryover is of unlimited duration; provided, howev-  
39 er, that the credit allowable under subsection (e) of this section shall  
40 be deducted prior to all other credits described in this sentence.  
41 Credits allowable under this article which are refundable shall be  
42 deducted last.

43 (h) Credits for New York S corporations. Notwithstanding the  
44 provisions of this section, no carryover of credit allowable in a New  
45 York C year shall be deducted from the tax otherwise due under this  
46 article in a New York S year, and no credit allowable in a New York S  
47 year, or carryover of such credit, shall be deducted from the tax  
48 imposed by this article. However, a New York S year shall be treated as  
49 a taxable year for purposes of determining the number of taxable years  
50 to which a credit may be carried over under this section. Notwithstand-  
51 ing the first sentence of this subsection, however, the credit for the  
52 special additional mortgage recording tax shall be allowed as provided  
53 in subsection (c) of this section, and the carryover of any such credit  
54 shall be determined without regard to whether the credit is carried from  
55 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

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

4       (2) A credit shall be allowed under this subsection with respect to  
5       tangible personal property and other tangible property, including build-  
6       ings and structural components of buildings, which are: depreciable  
7       pursuant to section one hundred sixty-seven of the Internal Revenue  
8       Code, have a useful life of four years or more, are acquired by purchase  
9       as defined in section one hundred seventy-nine (d) of the Internal  
10       Revenue Code, have a situs in this state and are (A) principally used in  
11       the ordinary course of the taxpayer's trade or business as a broker or  
12       dealer in connection with the purchase or sale (which shall include but  
13       not be limited to the issuance, entering into, assumption, offset,  
14       assignment, termination, or transfer) of stocks, bonds or other securi-  
15       ties as defined in section four hundred seventy-five (c) (2) of the  
16       Internal Revenue Code, or of commodities as defined in section four  
17       hundred seventy-five (e) of the Internal Revenue Code, or (B) principal-  
18       ly used in the ordinary course of the taxpayer's trade or business of  
19       providing investment advisory services for a regulated investment compa-  
20       ny as defined in section eight hundred fifty-one of the Internal Revenue  
21       Code, or lending, loan arrangement or loan origination services to  
22       customers in connection with the purchase or sale (which shall include  
23       but not be limited to the issuance, entering into, assumption, offset,  
24       assignment, termination, or transfer) of securities as defined in  
25       section four hundred seventy-five (c) (2) of the Internal Revenue Code.  
26       For purposes of subparagraphs (A) and (B) of this paragraph, property  
27       purchased by a taxpayer affiliated with a regulated broker, dealer, or  
28       registered investment adviser is allowed a credit under this subsection  
29       if the property is used by its affiliated regulated broker, dealer, or  
30       registered investment adviser in accordance with this subsection. For  
31       purposes of determining if the property is principally used in qualify-  
32       ing uses, the uses by the taxpayer described in subparagraphs (A) and  
33       (B) of this paragraph may be aggregated. In addition, the uses by the  
34       taxpayer, its affiliated regulated broker, dealer and registered invest-  
35       ment adviser under either or both of such subparagraphs may be aggre-  
36       gated.

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

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

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



1 amount of credit allowed for a taxable year may be carried over to the  
2 fifteen taxable years next following such taxable year and may be  
3 deducted from the taxpayer's tax for such year or years. In lieu of such  
4 carryover, any such taxpayer which qualifies as a new business under  
5 paragraph eight of this subsection may elect to treat the amount of such  
6 carryover as an overpayment of tax to be credited or refunded in accord-  
7 ance with the provisions of section one thousand eighty-six of this  
8 chapter, provided, however, the provisions of subsection (c) of section  
9 one thousand eighty-eight of this chapter notwithstanding no interest  
10 shall be paid thereon.

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

31 (7)(A) With respect to property which is depreciable pursuant to  
32 section one hundred sixty-seven of the Internal Revenue Code but is not  
33 subject to the provisions of section one hundred sixty-eight of such  
34 code and which is disposed of or ceases to be in qualified use prior to  
35 the end of the taxable year in which the credit is to be taken, the  
36 amount of the credit shall be that portion of the credit provided for in  
37 this subsection which represents the ratio which the months of qualified  
38 use bear to the months of useful life. If property on which credit has  
39 been taken is disposed of or ceases to be in qualified use prior to the  
40 end of its useful life, the difference between the credit taken and the  
41 credit allowed for actual use must be added back in the year of disposi-  
42 tion. Provided, however, if such property is disposed of or ceases to be  
43 in qualified use after it has been in qualified use for more than twelve  
44 consecutive years, it shall not be necessary to add back the credit as  
45 provided in this subparagraph. The amount of credit allowed for actual  
46 use shall be determined by multiplying the original credit by the ratio  
47 which the months of qualified use bear to the months of useful life. For  
48 purposes of this subparagraph, useful life of property shall be the same  
49 as the taxpayer uses for depreciation purposes when computing his feder-  
50 al income tax liability.

51 (B) Except with respect to that property to which subparagraph (D) of  
52 this paragraph applies, with respect to three-year property, as defined  
53 in subsection (e) of section one hundred sixty-eight of the Internal  
54 Revenue Code, which is disposed of or ceases to be in qualified use  
55 prior to the end of the taxable year in which the credit is to be taken,  
56 the amount of the credit shall be that portion of the credit provided

1 for in this subsection which represents the ratio which the months of  
2 qualified use bear to thirty-six. If property on which credit has been  
3 taken is disposed of or ceases to be in qualified use prior to the end  
4 of thirty-six months, the difference between the credit taken and the  
5 credit allowed for actual use must be added back in the year of disposi-  
6 tion. The amount of credit allowed for actual use shall be determined by  
7 multiplying the original credit by the ratio which the months of quali-  
8 fied use bear to thirty-six.

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

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

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

52 (F) If, as of the close of the taxable year, there is a net increase  
53 with respect to the taxpayer in the amount of nonqualified nonrecourse  
54 financing (within the meaning of section 46(c)(8) of the Internal Reven-  
55 ue Code) with respect to any property with respect to which the credit  
56 under this subsection was limited based on attributable nonqualified

1 nonrecourse financing, then an amount equal to the decrease in such  
2 credit which would have resulted from reducing, by the amount of such  
3 net increase, the cost or other basis taken into account with respect to  
4 such property must be added back in such taxable year. The amount of  
5 nonqualified nonrecourse financing shall not be treated as increased by  
6 reason of a transfer of (or agreement to transfer) any evidence of an  
7 indebtedness if such transfer occurs (or such agreement is entered into)  
8 more than one year after the date such indebtedness was incurred.

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

11 (A) over fifty percent of the number of shares of stock entitling the  
12 holders thereof to vote for the election of directors or trustees is  
13 owned or controlled, either directly or indirectly, by a taxpayer  
14 subject to tax under this article; section one hundred eighty-three, one  
15 hundred eighty-four or one hundred eighty-five of article nine; article  
16 nine-A or article thirty-three of this chapter; or

17 (B) is substantially similar in operation and in ownership to a busi-  
18 ness entity (or entities) taxable, or previously taxable, under this  
19 article; section one hundred eighty-three, one hundred eighty-four or  
20 one hundred eighty-five of article nine; article nine-A or article thir-  
21 ty-three of this chapter; article twenty-three of this chapter or which  
22 would have been subject to tax under such article twenty-three (as such  
23 article was in effect on January first, nineteen hundred eighty) or the  
24 income (or losses) of which is (or was) includable under article twen-  
25 ty-two of this chapter whereby the intent and purpose of this paragraph  
26 and paragraph five of this subsection with respect to refunding of cred-  
27 it to new business would be evaded; or

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

30 (9)(A)(i) If a taxpayer is required by paragraph seven of this  
31 subsection to add back a portion of the credit taken because property  
32 was destroyed or ceased to be in qualified use as a direct result of the  
33 September eleventh, two thousand one terrorist attacks, such taxpayer  
34 may elect to defer the amount to be recaptured for all such property to  
35 the taxable year next succeeding the taxable year in which the  
36 destruction or cessation of qualified use occurred. The taxable year in  
37 which the destruction or cessation of qualified use occurred shall be  
38 hereinafter referred to as the "recapture event taxable year". If the  
39 taxpayer's total employment number in the state on the last day of the  
40 taxable year next succeeding the recapture event taxable year is a  
41 significant percentage of the taxpayer's average total employment number  
42 in the state for the taxpayer's recapture event taxable year and the two  
43 taxable years immediately preceding the recapture event taxable year,  
44 then the taxpayer shall not be required to recapture any credit with  
45 respect to such property. If the taxpayer's total employment number in  
46 the state on the last day of the taxable year next succeeding the recap-  
47 ture event taxable year is not a significant percentage of the taxpay-  
48 er's average total employment number in the state for the taxpayer's  
49 recapture event taxable year and the two taxable years immediately  
50 preceding the recapture event taxable year, the taxpayer shall be  
51 required to recapture the portion of the credit taken under this  
52 subsection, as required by paragraph seven of this subsection, for all  
53 of its property destroyed or which ceased to be in qualified use as a  
54 direct result of the September eleventh, two thousand one terrorist  
55 attacks. The amount required to be recaptured shall be augmented as  
56 required pursuant to subparagraph (E) of paragraph seven of this

1 subsection by using an interest rate equal to two times the rate of  
2 interest specified in such subparagraph seven applicable for the taxable  
3 year in which the recapture occurs.

4 (ii) The taxpayer's total employment number shall include all employ-  
5 ees of the taxpayer employed full-time by the taxpayer in the state. The  
6 average total employment number for the recapture event taxable year and  
7 the two taxable years immediately preceding the recapture event taxable  
8 year shall be computed by determining the taxpayer's total employment  
9 number on the thirty-first day of March, the thirtieth day of June, the  
10 thirtieth day of September and the thirty-first day of December during  
11 the applicable taxable years, adding together the number of such indi-  
12 viduals determined to be so employed on each of such dates and dividing  
13 the sum so obtained by the number of such dates occurring within such  
14 applicable taxable years. However, in the case of the taxable year which  
15 included September eleventh, two thousand one, the average total employ-  
16 ment number for such taxable year shall be determined by using the total  
17 employment number on September first, two thousand one in lieu of  
18 September thirtieth, two thousand one and, if such taxable year included  
19 December thirty-first, two thousand one, by excluding the total employ-  
20 ment number on December thirty-first, two thousand one.

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

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

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

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

1 for such year to less than the minimum tax fixed by subsection (b) of  
2 section fourteen hundred fifty-five of this article.

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

10 (2) In no event shall the credit herein provided for, and carryovers  
11 of such credit, be allowed in an amount which will reduce the tax paya-  
12 ble to less than the dollar amount fixed as a minimum tax by subsection  
13 (b) of section fourteen hundred fifty-five of this article. If, however,  
14 the amount of credit or carryovers of such credit, or both, allowable  
15 under this subsection for any taxable year reduces the tax to such  
16 amount, any amount of credit or carryovers of such credit thus not  
17 deductible in such taxable year may be carried over to the following  
18 year or years and may be deducted from the taxpayer's tax for such year  
19 or years.

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

24 (2) Application of credit. The credit and carryovers of such credit  
25 allowed under this subsection for any taxable year shall not, in the  
26 aggregate, reduce the tax due for such year to less than the minimum tax  
27 fixed by subsection (b) of section fourteen hundred fifty-five of this  
28 article. However, if the amount of credit or carryovers of such credit,  
29 or both, allowed under this subsection for any taxable year reduces the  
30 tax to such amount, then any amount of credit or carryovers of such  
31 credit thus not deductible in such taxable year may be carried over to  
32 the following year or years and may be deducted from the taxpayer's tax  
33 for such year or years.

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

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

39 (2) Carryover. The credit and carryovers of such credit allowed under  
40 this subsection for any taxable year shall not, in the aggregate, reduce  
41 the tax due for such year to less than the minimum tax fixed by  
42 subsection (b) of section fourteen hundred fifty-five of this article.  
43 However, if the amount of credit or carryovers of such credit, or both,  
44 allowed under this subsection for any taxable year reduces the tax to  
45 such amount, then any amount of credit or carryovers of such credit thus  
46 not deductible in such taxable year may be carried over to the following  
47 year or years and may be deducted from the taxpayer's tax for such year  
48 or years.

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

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



1 under this subsection for any taxable year reduces the tax to such  
2 amount, then any amount of credit thus not deductible in such taxable  
3 year shall be treated as an overpayment of tax to be credited or  
4 refunded in accordance with the provisions of section ten hundred eight-  
5 y-six of this chapter. Provided, however, the provisions of subsection  
6 (c) of section ten hundred eighty-eight of this chapter notwithstanding,  
7 no interest shall be paid thereon.

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

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

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

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

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

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

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

49 (r) Remediated brownfield credit for real property taxes for qualified  
50 sites. (1) Allowance of credit. A taxpayer which is a developer of a  
51 qualified site shall be allowed a credit for eligible real property  
52 taxes, to be computed as provided in subdivision (b) of section twenty-  
53 two of this chapter, against the tax imposed by this article. For  
54 purposes of this subsection, the terms "qualified site" and "developer"  
55 shall have the same meaning as set forth in paragraphs two and three,  
56 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

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

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

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

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

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

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

26 (2) The credit allowed under this subsection for any taxable year will  
27 not reduce the tax due for such year to less than the minimum tax fixed  
28 by paragraph three of subsection (b) of section fourteen hundred fifty-  
29 five of this article. However, if the amount of credit allowed under  
30 this subsection for any taxable year reduces the tax to such amount, any  
31 amount of credit thus not deductible in such taxable year will be treat-  
32 ed as an overpayment of tax to be credited or refunded in accordance  
33 with the provisions of section one thousand eighty-six of this chapter.  
34 Provided, however, the provisions of subsection (c) of section one thou-  
35 sand eighty-eight of this chapter notwithstanding, no interest will be  
36 paid thereon.

37 (w) Credit for rehabilitation of historic properties. (1) (A) For  
38 taxable years beginning on or after January first, two thousand ten and  
39 before January first, two thousand twenty, a taxpayer shall be allowed a  
40 credit as hereinafter provided, against the tax imposed by this article,  
41 in an amount equal to one hundred percent of the amount of credit  
42 allowed the taxpayer with respect to a certified historic structure  
43 under subsection (a)(2) of section 47 of the federal internal revenue  
44 code with respect to a certified historic structure located within the  
45 state. Provided, however, the credit shall not exceed five million  
46 dollars. For taxable years beginning on or after January first, two  
47 thousand twenty, a taxpayer shall be allowed a credit as hereinafter  
48 provided, against the tax imposed by this article, in an amount equal to  
49 thirty percent of the amount of credit allowed the taxpayer with respect  
50 to a certified historic structure under subsection (a)(2) of section 47  
51 of the federal internal revenue code with respect to a certified histor-  
52 ic structure located within the state. Provided, however, the credit  
53 shall not exceed one hundred thousand dollars.

54 (B) If the taxpayer is a partner in a partnership or a shareholder of  
55 a New York S corporation, then the credit caps imposed in subparagraph  
56 (A) of this paragraph shall be applied at the entity level, so that the

1 aggregate credit allowed to all the partners or shareholders of each  
2 such entity in the taxable year does not exceed the credit cap that is  
3 applicable in that taxable year.

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

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

13 (4) The credit allowed under this subsection for any taxable year  
14 shall not reduce the tax to less than the dollar amount fixed as a mini-  
15 imum tax by subsection (b) of section fourteen hundred fifty-five of this  
16 article. However, if the amount of credit allowed under this subsection  
17 for any taxable year reduces the tax to such amount, any amount of cred-  
18 it thus not deductible in such taxable year shall be treated as an over-  
19 payment of tax to be credited or refunded in accordance with the  
20 provisions of section one thousand eighty-six of this chapter. Provided,  
21 however, the provisions of subsection (c) of section one thousand eight-  
22 y-eight of this chapter notwithstanding, no interest shall be paid ther-  
23 eon.

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

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

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

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

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

55 (z) Economic transformation and facility redevelopment program tax  
56 credit. (1) Allowance of credit. A taxpayer shall be allowed a credit,

1 to be computed as provided in section thirty-five of this chapter,  
2 against the tax imposed by this article.

3 (2) The credit allowed under this subsection for any taxable year will  
4 not reduce the tax due for such year to less than the minimum tax fixed  
5 by paragraph three of subsection (b) of section fourteen hundred fifty-  
6 five of this article. However, if the amount of credit allowed under  
7 this subsection for any taxable year reduces the tax to such amount, any  
8 amount of credit thus not deductible in such taxable year will be treat-  
9 ed as an overpayment of tax to be credited or refunded in accordance  
10 with the provisions of section one thousand eighty-six of this chapter.  
11 Provided, however, the provisions of subsection (c) of section one thou-  
12 sand eighty-eight of this chapter notwithstanding, no interest will be  
13 paid thereon.

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

18 (2) Application of credit. The credit allowed under this subsection  
19 for any taxable year will not reduce the tax due for such year to less  
20 than the minimum tax fixed by this article. However, if the amount of  
21 credit allowed under this subsection for any taxable year reduces the  
22 tax to such amount, any amount of credit thus not deductible in such  
23 taxable year will be treated as an overpayment of tax to be credited or  
24 refunded in accordance with the provisions of section one thousand  
25 eighty-six of this chapter. Provided, however, the provisions of  
26 subsection (c) of section one thousand eighty-eight of this chapter  
27 notwithstanding, no interest will be paid thereon.

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

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

43 § 1460. Declarations of estimated tax. (a) Requirements of declara-  
44 tion.--Every taxpayer subject to the tax imposed by subsection (a) of  
45 section fourteen hundred fifty-one of this article shall make a declara-  
46 tion of its estimated tax for the current taxable year, containing such  
47 information as the commissioner of taxation and finance may prescribe by  
48 regulations or instructions, if such estimated tax can reasonably be  
49 expected to exceed one thousand dollars. If a taxpayer is subject to the  
50 tax surcharge imposed by section fourteen hundred fifty-five-B of this  
51 article and such taxpayer's estimated tax under subsection (a) of  
52 section fourteen hundred fifty-one of this article can reasonably be  
53 expected to exceed one thousand dollars, such taxpayer shall also make a  
54 declaration of its estimated tax surcharge for the current taxable year.

55 (b) Definition of estimated tax and estimated tax surcharge.--The  
56 terms "estimated tax" and "estimated tax surcharge" mean the amounts



1 which a taxpayer estimates to be the tax or tax surcharge imposed by  
2 subsection (a) of section fourteen hundred fifty-one of this article or  
3 fourteen hundred fifty-five-B of this article, respectively, for the  
4 current taxable year, less the amount which it estimates to be the sum  
5 of any credits allowable against the tax or tax surcharge, respectively.

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

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

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

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

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

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

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

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

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

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

49 § 1461. Payments of estimated tax. (a) Every taxpayer subject to the  
50 tax imposed by section fourteen hundred fifty-one of this article must  
51 pay an amount equal to (i) twenty-five percent of the preceding year's  
52 tax if the preceding year's tax exceeded one thousand dollars but was  
53 equal to or less than one hundred thousand dollars, or (ii) forty  
54 percent of the preceding year's tax if the preceding year's tax exceeded  
55 one hundred thousand dollars. The amount must be paid with the return  
56 required to be filed for the preceding taxable year or with an applica-

tion 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,

1 respectively, of the taxpayer for the taxable year shown on the declara-  
2 tion required to be filed pursuant to section fourteen hundred sixty of  
3 this article, or if no declaration of estimated tax or a declaration of  
4 estimated tax surcharge is required to be filed by the taxpayer pursuant  
5 to such section, any such amount shall be considered a payment on  
6 account of the tax or tax surcharge shown on the return required to be  
7 filed by the taxpayer for such taxable year.

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

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

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

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

43 (h) Fiscal year.--The provisions of this section shall apply to taxa-  
44 ble years of twelve months other than a calendar year by the substi-  
45 tution of the months of such fiscal year for the corresponding months  
46 specified in such provisions.

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

1 be charged and collected on the amount for which any extension of time  
2 for payment is granted under this subsection.

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

6 § 1462. Returns. (a) Every taxpayer, as well as every other banking  
7 corporation having an employee, including any officer, within the state,  
8 shall annually on or before the fifteenth day of the third month follow-  
9 ing the close of each of its taxable years transmit to the tax commis-  
10 sion a return in a form prescribed by it setting forth such information  
11 as the tax commission may prescribe and every taxpayer which ceases to  
12 exercise its franchise or to be subject to the tax imposed by this arti-  
13 cle shall transmit to the tax commission a return on the date of such  
14 cessation or at such other time as the tax commission may require cover-  
15 ing each year or period for which no return was theretofore filed. In  
16 the case of a termination year of an S corporation, the S short year and  
17 the C short year shall be treated as separate short taxable years,  
18 provided, however, the due date of the report for the S short year shall  
19 be the same as the due date of the report for the C short year.

20 (b) Every taxpayer shall also transmit such other returns and such  
21 facts and information as the tax commission may require in the adminis-  
22 tration of this article.

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

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

42 (e) If the amount of taxable income or alternative minimum taxable  
43 income for any year of any taxpayer (including any taxpayer which has  
44 elected to be taxed under subchapter s of chapter one of the internal  
45 revenue code) as returned to the United States treasury department is  
46 changed or corrected by the commissioner of internal revenue or other  
47 officer of the United States or other competent authority, such taxpayer  
48 shall report such change or corrected taxable income or alternative  
49 minimum taxable income within ninety days (or one hundred twenty days,  
50 in the case of a taxpayer making a combined return under this article  
51 for such year) after the final determination of such change or  
52 correction or as required by the commissioner, and shall concede the  
53 accuracy of such determination or state wherein it is erroneous. Any  
54 taxpayer filing an amended return with such department shall also file  
55 within ninety days (or one hundred twenty days, in the case of a taxpay-  
56 er making a combined return under this article for such year) thereafter

1 an amended return with the commissioner which shall contain such infor-  
2 mation as the commissioner shall require. The allowance of a tentative  
3 carryback adjustment based upon a net capital loss carryback pursuant to  
4 section sixty-four hundred eleven of the internal revenue code, shall be  
5 treated as a final determination for purposes of this subsection.

6 (f) (1) For purposes of this subsection, the term "bank holding compa-  
7 ny" means any corporation subject to article three-A of the banking law,  
8 or registered under the federal bank holding company act of nineteen  
9 hundred fifty-six, as amended, or registered as a savings and loan hold-  
10 ing company (but excluding a diversified savings and loan holding compa-  
11 ny) under the federal national housing act, as amended. For purposes of  
12 the preceding sentence, the term "corporation" shall include an associ-  
13 ation, within the meaning of paragraph three of subsection (a) of  
14 section seventy-seven hundred one of the internal revenue code, and a  
15 publicly traded partnership treated as a corporation for purposes of the  
16 internal revenue code pursuant to section seventy-seven hundred four  
17 thereof.

18 (2) (i) Any banking corporation or bank holding company which is exer-  
19 cising its corporate franchise or doing business in this state in a  
20 corporate or organized capacity, and

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

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

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

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

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

48 may be required or permitted to make a return on a combined basis under  
49 this article covering itself and such corporations described in clause  
50 (A) or (B) and shall set forth such information as the tax commission  
51 may require; provided, however, that no combined return shall be  
52 required or permitted unless the tax commission deems such report neces-  
53 sary in order to properly reflect the tax liability under this article  
54 of any one or more of such banking corporations or bank holding compa-  
55 nies.



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

12 (iv) (A) Notwithstanding any provision of this paragraph, any bank  
13 holding company exercising its corporate franchise or doing business in  
14 the state may make a return on a combined basis without seeking the  
15 permission of the commissioner with any banking corporation exercising  
16 its corporate franchise or doing business in the state in a corporate or  
17 organized capacity sixty-five percent or more of whose voting stock is  
18 owned or controlled, directly or indirectly, by such bank holding compa-  
19 ny, for the first taxable year beginning on or after January first, two  
20 thousand and before January first, two thousand seventeen during which  
21 such bank holding company registers for the first time under the federal  
22 bank holding company act, as amended, and also elects to be a financial  
23 holding company. In addition, for each subsequent taxable year beginning  
24 after January first, two thousand and before January first, two thousand  
25 seventeen, any such bank holding company may file on a combined basis  
26 without seeking the permission of the commissioner with any banking  
27 corporation that is exercising its corporate franchise or doing business  
28 in the state and sixty-five percent or more of whose voting stock is  
29 owned or controlled, directly or indirectly, by such bank holding compa-  
30 ny if either such banking corporation is exercising its corporate fran-  
31 chise or doing business in the state in a corporate or organized capaci-  
32 ty for the first time during such subsequent taxable year, or sixty-five  
33 percent or more of the voting stock of such banking corporation is owned  
34 or controlled, directly or indirectly, by such bank holding company for  
35 the first time during such subsequent taxable year. Provided however,  
36 for each subsequent taxable year beginning after January first, two  
37 thousand and before January first, two thousand seventeen, a banking  
38 corporation described in either of the two preceding sentences which  
39 filed on a combined basis with any such bank holding company in a previ-  
40 ous taxable year, must continue to file on a combined basis with such  
41 bank holding company if such banking corporation, during such subsequent  
42 taxable year, continues to exercise its corporate franchise or do busi-  
43 ness in the state in a corporate or organized capacity and sixty-five  
44 percent or more of such banking corporation's voting stock continues to  
45 be owned or controlled, directly or indirectly, by such bank holding  
46 company, unless the permission of the commissioner has been obtained to  
47 file on a separate basis for such subsequent taxable year. Provided  
48 further, however, for each subsequent taxable year beginning after Janu-  
49 ary first, two thousand and before January first, two thousand seven-  
50 teen, a banking corporation described in either of the first two  
51 sentences of this clause which did not file on a combined basis with any  
52 such bank holding company in a previous taxable year, may not file on a  
53 combined basis with such bank holding company during any such subsequent  
54 taxable year unless the permission of the commissioner has been obtained  
55 to file on a combined basis for such subsequent taxable year.

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

12 (v) A banking corporation doing business in this state solely because  
13 it meets one or more of the tests in subparagraphs (i) through (v) of  
14 paragraph one of subsection (c) of section fourteen hundred fifty-one of  
15 this article (referred to in this subparagraph as the "credit card  
16 bank") will not be included in a combined return pursuant to subpara-  
17 graph (i) of this paragraph with another banking corporation or bank  
18 holding company which is exercising its corporate franchise or doing  
19 business in this state unless the credit card bank or the commissioner  
20 shows that the inclusion of the credit card bank in the combined return  
21 is necessary to properly reflect the tax liability of the credit card  
22 bank, the banking corporation or bank holding company under this arti-  
23 cle. However, any banking corporation that meets one or more of the  
24 tests in subparagraphs (i) through (v) of paragraph one of subsection  
25 (c) of section fourteen hundred fifty-one and was included in a combined  
26 return for its last taxable year beginning before January first, two  
27 thousand eight may continue to be included in a combined return for  
28 future taxable years, provided that once that banking corporation has  
29 been included in a combined return for any taxable year beginning on or  
30 after January first, two thousand eight, it must continue to be included  
31 in a combined return until it obtains the consent of the commissioner to  
32 cease being included in a combined return because the combined return no  
33 longer properly reflects the tax liability under this article of any of  
34 the corporations included in the combined return. Further, the credit  
35 card bank will be included in a combined return with (i) any banking  
36 corporation not subject to tax under this article sixty-five percent or  
37 more of whose voting stock is owned or controlled, directly or indirect-  
38 ly, by the credit card bank, or (ii) any banking corporation or bank  
39 holding company not subject to tax under this article which owns or  
40 controls, directly or indirectly, sixty-five percent or more of the  
41 voting stock of the credit card bank, or (iii) any banking corporation  
42 not subject to tax under this article sixty-five percent or more of the  
43 voting stock of which is owned or controlled, directly or indirectly, by  
44 the same corporation or corporations that own or control, directly or  
45 indirectly, sixty-five percent or more of the voting stock of the credit  
46 card bank, if the corporation or corporations described in clauses (i),  
47 (ii) and (iii) of this subparagraph provide services for or support to  
48 the credit card bank's operations, unless the credit card bank or the  
49 commissioner shows that the inclusion of any of those corporations in  
50 the combined return fails to properly reflect the tax liability of the  
51 credit card bank. For purposes of this subparagraph, services for or  
52 support to the credit card bank's operations include such activities as  
53 billing, credit investigation and reporting, marketing, research, adver-  
54 tising, mailing, customer service, information technology, lending and  
55 financing services, and communications services, but will not include  
56 accounting, legal or personnel services.

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

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

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

28     (D) If the corporation which directly owns or controls the voting  
29 stock of the captive REIT or captive RIC is described in subparagraph  
30 (ii) or (iv) of paragraph four of this subsection as a corporation not  
31 permitted to make a combined return, then the provisions in clause (C)  
32 of this subparagraph must be applied to determine the corporation in  
33 whose combined return or report the captive REIT or captive RIC should  
34 be included. If, under clause (C) of this subparagraph, the corporation  
35 that is the closest controlling stockholder of the captive REIT or  
36 captive RIC is described in subparagraph (ii) or (iv) of paragraph four  
37 of this subsection as a corporation not permitted to make a combined  
38 return, then that corporation is deemed to not be in the ownership  
39 structure of the captive REIT or captive RIC, and the closest control-  
40 ling stockholder will be determined without regard to that corporation.

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

46     (F) If a captive REIT or a captive RIC is required under this subpara-  
47 graph to be included in a combined return with another corporation, and  
48 that other corporation is required to be included in a combined return  
49 with another corporation under other provisions of this subsection, the  
50 captive REIT or captive RIC must be included in that combined return  
51 with those corporations.

52     (G) If the banking corporation or bank holding company that directly  
53 or indirectly owns or controls over fifty percent of the voting stock of  
54 the captive REIT or captive RIC and is the closest controlling stock-  
55 holder of the captive REIT or captive RIC is a member of an affiliated  
56 group (1) that does not include any corporation that is engaged in a

1 business that a subsidiary of a bank holding company would not be  
2 permitted to engage in, unless such business is de minimus, and (2)  
3 whose members own assets the combined average value of which does not  
4 exceed eight billion dollars, then the captive REIT or captive RIC must  
5 not be included in a combined return under this article or article  
6 nine-A or article thirty-three of this chapter. In that instance, the  
7 captive REIT or captive RIC is subject to the provisions of subdivision  
8 five or seven of section two hundred nine of this chapter. The term  
9 "affiliated group" means "affiliated group" as defined in section  
10 fifteen hundred four of the internal revenue code, but without regard to  
11 the exceptions provided for in subsection (b) of that section.

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

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

28 (C) If over fifty percent of the voting stock of an overcapitalized  
29 captive insurance company is not directly owned or controlled by a bank-  
30 ing corporation or bank holding company that is subject to tax or  
31 required to be included in a combined return under this article, then  
32 the overcapitalized captive insurance company must be included in a  
33 combined return or report with the corporation that is the closest  
34 controlling stockholder of the overcapitalized captive insurance compa-  
35 ny. If the closest controlling stockholder of the overcapitalized  
36 captive insurance company is a banking corporation or bank holding  
37 company that is subject to tax or otherwise required to be included in a  
38 combined return under this article, then the overcapitalized captive  
39 insurance company must be included in a combined return under this arti-  
40 cle.

41 (D) If the corporation that directly owns or controls the voting stock  
42 of the overcapitalized captive insurance company is described in subpar-  
43 agraph (ii) or (iv) of paragraph four of this subsection as a corpo-  
44 ration not permitted to make a combined return, then the provisions in  
45 clause (C) of this subparagraph must be applied to determine the corpo-  
46 ration in whose combined return or report the overcapitalized captive  
47 insurance company should be included. If, under clause (C) of this  
48 subparagraph, the corporation that is the closest controlling stockhold-  
49 er of the overcapitalized captive insurance company is described in  
50 subparagraph (ii) or (iv) of paragraph four of this subsection as a  
51 corporation not permitted to make a combined return, then that corpo-  
52 ration is deemed not to be in the ownership structure of the overcapi-  
53 talized captive insurance company, and the closest controlling stock-  
54 holder will be determined without regard to that corporation.

55 (E) If an overcapitalized captive insurance company is required under  
56 this subparagraph to be included in a combined return with another



1 corporation, and that other corporation is required to be included in a  
2 combined return with another corporation under other provisions of this  
3 subsection, the overcapitalized captive insurance company must be  
4 included in that combined return with those corporations.

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

17 (ii) In the case of a captive REIT required under this subsection to  
18 be included in a combined return, "entire net income" means "real estate  
19 investment trust taxable income" as defined in paragraph two of subdivi-  
20 sion (b) of section eight hundred fifty-seven (as modified by section  
21 eight hundred fifty-eight) of the internal revenue code, plus the amount  
22 taxable under paragraph three of subdivision (b) of section eight  
23 hundred fifty-seven of that code, subject to the modifications required  
24 by section fourteen hundred fifty-three of this article. In the case of  
25 a captive RIC required under this subsection to be included in a  
26 combined return, "entire net income" means "investment company taxable  
27 income" as defined in paragraph two of subdivision (b) of section eight  
28 hundred fifty-two (as modified by section eight hundred fifty-five) of  
29 the internal revenue code, plus the amount taxable under paragraph three  
30 of subdivision (b) of section eight hundred fifty-two of that code,  
31 subject to the modifications required by section fourteen hundred  
32 fifty-three of this article. However, the deduction under the internal  
33 revenue code for dividends paid by the captive REIT or captive RIC to  
34 any member of the affiliated group that includes the corporation that  
35 directly or indirectly owns over fifty percent of the voting stock of  
36 the captive REIT or captive RIC will be limited to the following  
37 percentages: (A) fifty percent for taxable years beginning on or after  
38 January first, two thousand eight and before January first, two thousand  
39 nine; (B) twenty-five percent for taxable years beginning on or after  
40 January first, two thousand nine and before January first, two thousand  
41 eleven; and (C) zero percent for taxable years beginning on or after  
42 January first, two thousand eleven. The term "affiliated group" means  
43 "affiliated group" as defined in section fifteen hundred four of the  
44 internal revenue code, but without regard to the exceptions provided for  
45 in subsection (b) of such section fifteen hundred four.

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

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



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

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

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

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

20 (g) In case it shall appear to the tax commission that any agreement,  
21 understanding or arrangement exists between the taxpayer and any other  
22 corporation or any person or firm, whereby the activity, business,  
23 income or assets of the taxpayer within the state is improperly or inac-  
24 curately reflected, the tax commission is authorized and empowered, in  
25 its discretion and in such manner as it may determine, to adjust items  
26 of income or deductions in computing entire net income or alternative  
27 entire net income and to adjust assets, and to adjust wages, salaries  
28 and other personal service compensation, receipts or deposits in comput-  
29 ing any allocation percentage, provided only that entire net income or  
30 alternative entire net income be adjusted accordingly and that any asset  
31 directly traceable to the elimination of any receipt be eliminated from  
32 assets so as to accurately determine the tax. If however, in the deter-  
33 mination of the tax commission, such adjustments do not, or cannot  
34 effectively provide for the accurate determination of the tax, the  
35 commission shall be authorized to require the filing of a combined  
36 report by the taxpayer and any such other corporations. Where (1) any  
37 taxpayer conducts its activity or business under any agreement, arrange-  
38 ment or understanding in such manner as either directly or indirectly to  
39 benefit its members or stockholders, or any of them, or any person or  
40 persons directly or indirectly interested in such activity or business,  
41 by entering into any transaction at more or less than a fair price  
42 which, but for such agreement, arrangement or understanding, might have  
43 been paid or received therefor, or (2) any taxpayer enters into any  
44 transaction with another corporation on such terms as to create an  
45 improper loss or net income, the tax commission may include in the  
46 entire net income or alternative entire net income of the taxpayer the  
47 fair profits which, but for such agreement, arrangement or understand-  
48 ing, the taxpayer might have derived from such transaction.

49 § 1463. Payment of tax. (a) To the extent the tax imposed by section  
50 fourteen hundred fifty-one of this article shall not have been previous-  
51 ly paid pursuant to section fourteen hundred sixty-one,

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

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

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

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

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

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

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

29 § 1466. Deposit and disposition of revenue. All taxes, interest and  
30 penalties collected or received by the tax commission under this article  
31 shall be deposited and disposed of pursuant to the provisions of section  
32 one hundred seventy-one-a of this chapter.

33 § 1467. Secrecy required of officials; penalty for violation. (a)  
34 Except in accordance with the proper judicial order or as otherwise  
35 provided by law, it shall be unlawful for the commissioner of taxation  
36 and finance, any officer or employee of the department of taxation and  
37 finance, or any person who, pursuant to this section, is permitted to  
38 inspect any return, or any person engaged or retained by such department  
39 on an independent contract basis, or any person who in any manner may  
40 acquire knowledge of the contents of a return filed pursuant to this  
41 article, to divulge or make known in any manner the amount of income or  
42 any particulars set forth or disclosed in any return required under this  
43 article. The officers charged with the custody of such returns shall not  
44 be required to produce any of them or evidence of anything contained in  
45 them in any action or proceedings in any court, except on behalf of the  
46 state or the commissioner of taxation and finance in an action or  
47 proceeding under the provisions of this chapter or in any other action  
48 or proceeding involving the collection of a tax due under this chapter  
49 to which the state or the commissioner of taxation and finance is a  
50 party or a claimant or on behalf of any party in an action or proceeding  
51 under the provisions of this article when the returns or facts shown  
52 thereby are directly involved in such action or proceeding, in any of  
53 which events the court may require the production of and may admit in  
54 evidence so much of said returns or the facts shown thereby as are  
55 pertinent to the action or proceeding and no more. The commissioner of  
56 taxation and finance may, nevertheless, publish a copy or a summary of

1 any determination or decision rendered after the hearing provided for in  
2 section one thousand eighty-nine of this chapter. Nothing herein shall  
3 be construed to prohibit the delivery to a taxpayer or its duly author-  
4 ized representative of a certified copy of any return filed in  
5 connection with its tax nor to prohibit the publication of statistics so  
6 classified as to prevent the identification of particular returns and  
7 the items thereof, or the inspection by the attorney-general or other  
8 legal representatives of the state of the return of any taxpayer which  
9 shall bring action to set aside or review the tax based thereon, or  
10 against which an action or proceeding under this chapter has been recom-  
11 mended by the commissioner of taxation and finance or the attorney-gen-  
12 eral or has been instituted; or the inspection of the returns of any  
13 taxpayer by the comptroller or duly designated officer or employee of  
14 the state department of audit and control for purposes of the audit of a  
15 refund of any tax paid by such taxpayer under this article, or the  
16 disclosing to a state agency, pursuant to section one hundred seventy-  
17 one-f of this chapter, of the amount of an overpayment and interest  
18 thereon certified to the comptroller to be credited against a past-due  
19 legally enforceable debt owed to such agency and of the name and iden-  
20 tification number of the taxpayer who made such overpayment, or the  
21 disclosing to the commissioner of finance of the city of New York,  
22 pursuant to section one hundred seventy-one-l of this chapter, of the  
23 amount of an overpayment and interest thereon certified to the comp-  
24 troller to be credited against a city of New York tax warrant judgment  
25 debt and of the name and identification number of the taxpayer who made  
26 such overpayment. Returns shall be preserved for three years and there-  
27 after until the commissioner of taxation and finance orders them to be  
28 destroyed.

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

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

35 (c) Notwithstanding any provisions of this section, the tax commission  
36 may permit the secretary of the treasury of the United States or his  
37 delegates, or the proper officer of any other state charged with tax  
38 administration, or the authorized representative of either such officer,  
39 to inspect the returns filed under this article, or may furnish to such  
40 officer or his authorized representative an abstract of any return or  
41 supply him with information concerning an item contained in any return,  
42 or disclosed by an investigation of tax liability under this article,  
43 but such permission shall be granted or such information furnished to  
44 such officer or his representative only if the laws of the United States  
45 or of such other state, as the case may be, grant substantially similar  
46 privileges to the commission or officer of this state charged with the  
47 administration of the tax imposed by this article and such information  
48 is to be used for tax purposes only; and provided further the commis-  
49 sioner of taxation and finance may furnish to the secretary of the trea-  
50 sury of the United States or his delegates such returns filed under this  
51 article and other tax information, as he may consider proper, for use in  
52 court actions or proceedings under the internal revenue code, whether  
53 civil or criminal, where a written request therefor has been made to the  
54 commissioner of taxation and finance by the secretary of the treasury or  
55 his delegates provided the laws of the United States grant substantially  
56 similar powers to the secretary of the treasury or his delegates. Where

1 the commissioner of taxation and finance has so authorized use of  
2 returns or other information in such actions or proceedings, officers  
3 and employees of the department of taxation and finance may testify in  
4 such actions or proceedings in respect to such returns or other tax  
5 information.

6 (d) Notwithstanding the provisions of subsection (a) of this section,  
7 the tax commission may permit the officer charged with the adminis-  
8 tration of a tax on or measured by income imposed by any city of the  
9 state of New York, or the authorized representative of such officer, to  
10 inspect the returns filed under this article, or may furnish to such  
11 officer or his authorized representative an abstract of any such return  
12 or supply information concerning an item contained in any such return,  
13 or disclosed by any investigation of tax liability under this article,  
14 but such permission shall be granted or such information furnished to  
15 such officer or his representative only if the local laws of such city  
16 grant substantially similar privileges to the commission or officer of  
17 this state charged with the administration of the tax imposed by this  
18 article and such information is to be used for tax purposes only; and  
19 provided further the commissioner of taxation and finance may furnish to  
20 such city officer or his delegates and the legal representative of such  
21 city such returns filed under this article and other tax information, as  
22 he may consider proper, for use in court actions or proceedings under  
23 such local law, whether civil or criminal, where a written request  
24 therefor has been made to the commissioner of taxation and finance by  
25 such city officer or his delegates or by such legal representative of  
26 such city, provided the local law of such city grants substantially  
27 similar powers to the city officer charged with the administration of  
28 the city income tax or his delegates. Where the commissioner of taxation  
29 and finance has so authorized use of returns or other tax information in  
30 such actions or proceedings, officers and employees of the department of  
31 taxation and finance may testify in such actions or proceedings in  
32 respect to such returns or other tax information.

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

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

54 § 1468. Procedural provisions. The provisions of article twenty-seven  
55 of this chapter shall apply to the provisions of this article in the  
56 same manner and with the same force and effect as if the language of

1 such article twenty-seven had been incorporated in full into this arti-  
2 cle and had expressly referred to the tax under this article, except to  
3 the extent that any such provision is either inconsistent with a  
4 provision of this article or is not relevant to this article.

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