

STATE OF NEW YORK

604

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

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

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

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

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4 tax in the event of certain judicial determinations, is REPEALED.

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

ARTICLE 2-E

CITY EARNINGS TAX ON NONRESIDENTS

7
8
9 Section 25-m. Authorization to impose tax.

10 25-n. Administrative provisions.

11 25-o. Deposit and disposition of revenues.

12 § 25-m. Authorization to impose tax. In addition to any other taxes,
13 now authorized by law, any city having a population of one million or
14 more is hereby authorized and empowered to adopt and amend local laws
15 imposing a tax on the earnings of nonresidents of such city to be admin-
16 istered in the manner provided for in this article by the administrator
17 as defined in section one of the model local law hereinafter set forth.

18 The tax authorized by this article may be imposed only if the city
19 imposing the tax authorized by this article also imposes a tax on the
20 personal income of its residents. The rates of such tax shall be the

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

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

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

11 EARNINGS TAX ON NONRESIDENTS

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

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

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

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

54 (e) "Net earnings from self-employment" shall mean the same as net
55 earnings from self-employment as defined in subsection (a) of section
56 fourteen hundred two of the internal revenue code, except that the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) (i) In lieu of the method of computation of tax prescribed in paragraph (1), if the taxpayer maintains adequate records for any taxable year ending on or after July first, nineteen hundred sixty-six and on or before June thirtieth, nineteen hundred sixty-seven, the tax for such taxable year, at the election of the taxpayer, may be computed on the basis of the wages which the taxpayer would have reported had he or she filed a federal income tax return for a taxable year beginning July first, nineteen hundred sixty-six and ending with the close of such taxable year ending on or before June thirtieth, nineteen hundred sixty-seven, and the net earnings from self-employment which the taxpayer would have reported for federal income tax purposes had he or she filed a self-employment tax return for a taxable year beginning July first, nineteen hundred sixty-six and ending with the close of such taxable year ending on or before June thirtieth, nineteen hundred sixty-seven.

(ii) For purposes of this paragraph, the exclusions allowable under section two shall be reduced by a fraction the numerator of which is the number of months (or major portions thereof) of the taxable year occurring before July first, nineteen hundred sixty-six and the denominator of which is the number of months (or major portions thereof) in the taxable year. Except as provided in this paragraph, the tax for such period ending on or before June thirtieth, nineteen hundred sixty-seven,

1 shall be computed in accordance with the other provisions of this local
2 law.

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

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

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

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

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

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

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

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

55 (d) Special rules for real estate.-- Income and deductions from the
56 rental of real property and gain and loss from the sale, exchange or

1 other disposition of real property, shall not be subject to allocation
2 under subsection (b) or (c), but shall be considered as entirely derived
3 from or connected with the place in which such property is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ment within the city. Any regulation allowing such waiver of return may
2 provide for additional limitations on and conditions and prerequisites
3 to the privilege of not filing a return.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 than six years from the date of the filing of the return, except as
2 otherwise provided herein.

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

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

19 Whenever the purchaser, transferee or assignee shall fail to give the
20 notice to the administrator required by the preceding paragraph, or
21 whenever the administrator shall inform the purchaser, transferee or
22 assignee that a possible claim for such tax or taxes exists, any sums of
23 money, property or choses in action, or other consideration, which the
24 purchaser, transferee or assignee is required to transfer over to the
25 seller, transferrer or assignor shall be subject to a first priority
26 right and lien for any such taxes theretofore or thereafter determined
27 to be due from the seller, transferrer or assignor to the city, and the
28 purchaser, transferee or assignee is forbidden to transfer to the sell-
29 er, transferrer or assignor any such sums of money, property or choses
30 in action to the extent of the amount of the city's claim. For failure
31 to comply with the provisions of this subdivision the purchaser, trans-
32 feree or assignee, in addition to being subject to liabilities and reme-
33 dies imposed under any provisions of law, shall be personally liable for
34 the payment to the city of any such taxes, theretofore or thereafter
35 determined to be due to the city from the seller, transferrer or assig-
36 nor and such liability may be assessed and enforced in the same manner
37 as the liability for tax is imposed under this local law.

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

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

1 § 25-o. Deposit and disposition of revenues. Revenues resulting from
2 the imposition of the tax authorized by this article shall be paid into
3 the treasury of the city and shall be credited to and deposited in the
4 general fund of such city and shall be available for any lawful city
5 purpose. For taxable years beginning on or after January first, nineteen
6 hundred seventy-six such revenues shall be deposited and disposed of in
7 the same manner as revenues resulting from the imposition of the taxes
8 authorized by article thirty of the tax law.

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

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

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

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