STATE OF NEW YORK

3998

2019-2020 Regular Sessions

IN ASSEMBLY

January 31, 2019

Introduced by M. of A. WEPRIN -- 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; to amend the real property tax law, in relation to a real property tax credit; 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

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

Section 1. Short title. This act shall be known and may be cited as the "infrastructure jobs act".

§ 2. 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city law relating to the definition of nonresident for the purpose of imposing the earnings tax on nonresidents, is REPEALED.

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

ARTICLE 2-E

CITY EARNINGS TAX ON NONRESIDENTS

Section 25-m. Authorization to impose tax.
25-n. Administrative provisions.
25-o. Deposit and disposition of revenues.

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

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

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

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shall not be fixed higher than those contained in section two-A of such model local law.

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

EARNINGS TAX ON NONRESIDENTS

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

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

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

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

(e) "Net earnings from self-employment" shall mean the same as net earnings from self-employment as defined in subsection (a) of section fourteen hundred two of the internal revenue code, except that the deduction for wages and salaries paid or incurred for the taxable year which is not allowed pursuant to section two hundred eighty-C of such

code shall be allowed, and except that an estate or trust shall be deemed to have net earnings from self-employment determined in the same manner as if it were an individual subject to the tax on self-employment income imposed by section fourteen hundred one of the internal revenue code diminished by (1) the amount of any deduction allowed by subsection (c) of section six hundred forty-two of the internal revenue code and (2) the deductions allowed by sections six hundred fifty-one and six hundred sixty-one of said code to the extent that they represent distributions or payments to a resident of the city. However, "trade or business" as used in subsection (a) of section fourteen hundred two of such code shall mean the same as trade or business as defined in subsection (c) of section fourteen hundred two of such code, except that paragraphs (4), (5) and (6) of such subsection shall not apply in determining net earnings from self-employment taxable under this local law. Provided however, in the case of a nonresident individual or partner of a partnership doing an insurance business described in section six thousand two hundred one of the insurance law, any item of income, gain, loss or deduction of such business which is the individual's distributive or pro rata share for federal income tax purposes or which the individual is required to take into account separately for federal income tax purposes shall not be considered to be "net earnings from self-employment".

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A tax at the rate 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:

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

(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 percent on all wages.

(ii) A tax at the rate 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 one percent on all wages.

(ii) A tax at the rate 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:

Total of Wages and Net Earnings From Self-Employment	Exclusion Allowable

Not Over $10,000	$3,000
Over $10,000 But Not Over $20,000	$2,000
Over $20,000 But Not Over $30,000	$1,000
Over $30,000	NONE

(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, shall be computed in accordance with the other provisions of this local law.

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

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

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

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

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

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

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

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

(d) Special rules for real estate.-- Income and deductions from the rental of real property and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subsection (b) or (c), but shall be considered as entirely derived from or connected with the place in which such property is located.

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

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

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

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

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

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

Sec. 6. Withholding of tax on wages.--General.--On or after the first payroll period beginning forty-five days after the date this local law becomes effective every employer maintaining an office or transacting business within this state and making payment of any wages taxable under this local law shall deduct and withhold from such wages for each payroll period a tax computed in such manner as to result, so far as practicable, in withholding from the employee's wages during each calendar year an amount substantially equivalent to the tax reasonably estimated to be due from the employee under this local law. The method of determining the amount to be withheld shall be prescribed by regulations of the administrator.

Sec. 7. Withholding of tax on wages for taxable periods commencing on or after January first, nineteen hundred seventy-six.--The provisions contained in sections six, eight, nine, ten, eleven and twelve of this local law shall not be applicable to taxes imposed for taxable periods commencing on or after January first, nineteen hundred seventy-six provided however, with respect to such periods, the provisions contained in part five of article twenty-two of the tax law shall be applicable with the same force and effect as if those provisions had been incorporated in full in this section except where inconsistent with the provisions of this article, except that the term "aggregate amount" contained in paragraphs one, two and three of subsection (a) of section six hundred seventy-four of the tax law shall mean the aggregate of the aggregate amounts of New York state personal income tax, city earnings tax on nonresidents and city personal income tax on residents authorized

pursuant to article thirty of the tax law required to be deducted and withheld and provided, however, that the provisions of such paragraphs shall not be applicable to employer's returns required to be filed with respect to taxes required to be deducted and withheld during the calendar year nineteen hundred seventy-six, but such returns shall be required to be filed with the commissioner of taxation and finance at the times and in the manner provided for in subsection (a) of section ten of this local law, except the term "administrator" in such subsection shall be read as "commissioner of taxation and finance."

Sec. 8. Information statement for employee.--Every employer required to deduct and withhold tax under this local law from the wages of an employee, shall furnish to each such employee in respect of the wages paid by such employer to such employee during the calendar year on or before February fifteenth of the succeeding year, or, if his or her employment is terminated before the close of such calendar year, within thirty days from the date on which the last payment of the wages is made, a written statement as prescribed by the administrator showing the total amount of wages paid by the employer to the employee, the amount of wages paid for services performed within the city, the amount deducted and withheld as tax, and such other information as the administrator may prescribe.

Sec. 9. Credit for tax withheld.--Wages upon which tax is required to be withheld shall be taxable under this local law as if no withholding were required, but any amount of tax actually deducted and withheld under this local law in any calendar year shall be deemed to have been paid on behalf of the employee from whom withheld, and such employee shall be credited with having paid that amount of tax in such calendar year. For a taxable year of less than twelve months, the credit shall be made under regulations of the administrator.

Sec. 10. Employer's return and payment of withheld taxes.--(a) General.--On or after the first payroll period beginning forty-five days after the effective date of this local law, every employer required to deduct and withhold tax under this local law shall, for each calendar month, on or before the fifteenth day of the month following the close of such calendar month file a withholding return as prescribed by the administrator and pay over to the administrator or to the depository designated by the administrator, the taxes so required to be deducted and withheld, except that for the month of December in any year the returns shall be filed and the taxes paid on or before January thirty-first of the succeeding year. Where the aggregate amount required to be deducted and withheld by any employer under this local law and under any local law imposing a tax on personal income of residents of the city adopted by the city pursuant to authority granted by the general city law is less than twenty-five dollars in a calendar month and the aggregate of such taxes for the semi-annual period ending on June thirtieth and December thirty-first can reasonably be expected to be less than one hundred fifty dollars, the administrator may, by regulation, permit an employer to file a return on or before July thirty-first for the semi-annual period ending on June thirtieth and on or before January thirty-first for the semi-annual period ending on December thirty-first. The administrator may, if he or she believes such action necessary for the protection of the revenues, require any employer to make a return and pay to him the tax deducted and withheld at any time, or from time to time. Where the amount of wages paid by an employer is not sufficient under this local law and under any local law imposing a tax on personal income of residents of the city adopted by the city pursuant to authori-

ty granted by the general city law to require the withholding of tax from the wages of any of his or her employees, the administrator may, by regulation, permit such employer to file an annual return on or before February twenty-eighth of the following calendar year.

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

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

Sec. 11. Employer's liability for withheld taxes.--Every employer required to deduct and withhold the tax under this local law is hereby made liable for such tax. For purposes of assessment and collection, any amount required to be withheld and paid over to the administrator, and any additions to tax, penalties and interest with respect thereto shall be considered the tax of the employer. Any amount of tax actually deducted and withheld under this local law shall be held to be a special fund in trust for the city.

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

Sec. 12. Employer's failure to withhold.--If an employer fails to deduct and withhold the tax, as required, and thereafter the tax against which such tax may be credited is paid, the tax so required to be deducted and withheld shall not be collected from the employer, but the employer shall not be relieved from liability for any penalties, interest or additions to the tax otherwise applicable in respect of such failure to deduct and withhold.

Sec. 13. Returns and payment of tax.--On or before the fifteenth day of the fourth month following the close of the taxable year, every person subject to the tax shall make and file a return and any balance of the tax shown due on the face of such return shall be paid therewith. The administrator may, by regulation, provide for the filing of returns and payment of the tax at such other times as he or she deems necessary for the proper enforcement of this local law. The administrator may also provide by regulation that any return otherwise required to be made and filed under this local law by any nonresident individual need not be made and filed if such nonresident individual had, during the taxable year to which the return would relate, no net earnings from self-employment within the city. Any regulation allowing such waiver of return may provide for additional limitations on and conditions and prerequisites to the privilege of not filing a return.

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

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

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

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

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

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

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

§ 25-n. Administrative provisions. (a) General. Any local law adopted pursuant to this article shall also contain provisions necessary and appropriate for the collection and the administration of the tax herein authorized, except that with respect to any taxable year beginning in nineteen hundred seventy, until and including the thirty-first day of December, nineteen hundred seventy-one, any local law adopted pursuant to this article shall contain the same provisions as are contained in chapter nineteen of title eleven of the administrative code of the city of New York, but "administrator" shall be read "state tax commission"; "administrative agencies of the city" shall be read as "administrative agencies of the state"; "depositories or financial agents of the city" shall be read as "depositories or financial agents of the state"; "officers or employees of the department of finance of the city" shall be read "officers or employees of the state department of taxation and finance"; in sections 11-1934, 11-1936, 11-1939, and 11-1942 (except for the last sentence thereof) of chapter nineteen of title eleven of the administrative code of the city of New York "city" shall be read as "state"; "corporation counsel or other appropriate officer of the city" or "corporation counsel of the city" shall be read as "state attorney general"; and the words "it" or "its" shall apply instead of the pronouns used where the reference is to state tax commission. Provided, however, with respect to declarations of estimated tax and payments of such tax and the withholding tax requirements, until and including the thirty-first day of December, nineteen hundred seventy-one, any such

terms shall be so read with respect to any taxable year or other period beginning in nineteen hundred seventy-one.

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

(i) Any final determination of the amount of any tax payable hereunder shall be reviewable for error, illegality or unconstitutionality or any other reason whatsoever by a proceeding under article seventy-eight of the civil practice law and rules if application therefor is made to the supreme court within four months after the giving of the notice of such final determination, provided, however, that any such proceeding under article seventy-eight of the civil practice law and rules shall not be instituted unless (A) the amount of any tax sought to be reviewed, with such interest and penalties thereon as may be provided for by local law or regulation, shall be first deposited and there is filed an undertaking, issued by a surety company authorized to transact business in this state and approved by the superintendent of financial services of this state as to solvency and responsibility, in such amount as a justice of the supreme court shall approve to the effect that if such proceeding be dismissed or the tax confirmed the petitioner will pay all costs and charges which may accrue in the prosecution of such proceeding or (B) at the option of the petitioner such undertaking may be in a sum sufficient to cover the taxes, interest and penalties stated in such determination plus the costs and charges which may accrue against it in the prosecution of the proceeding, in which event the petitioner shall not be required to pay such taxes, interest or penalties as a condition precedent to the application.

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

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

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

Whenever there is made a sale, transfer or assignment in bulk of any part or the whole of a stock of merchandise or of fixtures, or merchandise and of fixtures pertaining to the conducting of the business of the

seller, transferrer or assignor, otherwise than in the ordinary course of trade and in the regular prosecution of said business, the purchaser, transferee or assignee shall at least ten days before taking possession of such merchandise, fixtures, or merchandise and fixtures, or paying therefor, notify the administrator by registered mail of the proposed sale and of the price, terms and conditions thereof, whether or not the seller, transferrer or assignor, has represented to, or informed the purchaser, transferee or assignee, that it owes any tax pursuant to this local law, whether or not the purchaser, transferee or assignee has knowledge that such taxes are owing, and whether or not any such taxes are in fact owing.

Whenever the purchaser, transferee or assignee shall fail to give the notice to the administrator required by the preceding paragraph, or whenever the administrator shall inform the purchaser, transferee or assignee that a possible claim for such tax or taxes exists, any sums of money, property or choses in action, or other consideration, which the purchaser, transferee or assignee is required to transfer over to the seller, transferrer or assignor shall be subject to a first priority right and lien for any such taxes theretofore or thereafter determined to be due from the seller, transferrer or assignor to the city, and the purchaser, transferee or assignee is forbidden to transfer to the seller, transferrer or assignor any such sums of money, property or choses in action to the extent of the amount of the city's claim. For failure to comply with the provisions of this subdivision the purchaser, transferee or assignee, in addition to being subject to liabilities and remedies imposed under any provisions of law, shall be personally liable for the payment to the city of any such taxes, theretofore or thereafter determined to be due to the city from the seller, transferrer or assignor and such liability may be assessed and enforced in the same manner as the liability for tax is imposed under this local law.

(d) Delegation of functions.--The local law may provide that the administrator of the tax imposed, as defined in the local law, may delegate his or her powers and functions under the local law to one of his or her deputies or to any employee or employees of his or her department and authorize banks or trust companies which are depositories or financial agents of the city to receive and give a receipt for any tax imposed under the local law.

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

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

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

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

§ 5. The real property tax law is amended by adding a new section 556-a to read as follows:

§ 556-a. Credit against city earnings taxes. 1. Any person who is required to pay a city earnings tax pursuant to article two-E of the general city law shall be given a real property tax credit against real property taxation and special ad valorem levies in an amount equal to the amount of such city earnings tax actually paid by the person.

2. Such credit may be transferred from a tenant to an owner in lieu of all, or a portion of, rental payments due to the owner. The owner may then use such credit to lower his or her real property tax liability on the rental property.

3. The commissioner shall establish the proper procedure for transferring any real property credits pursuant to this section, and shall create all appropriate paperwork to be signed and/or filed by the tenant and property owner.

§ 6. The tax authorized by this act shall allow a dollar-for-dollar tax credit for commuters which shall be applied to their local real property tax bill at their local tax assessor's office.

§ 7. All local tax assessors and real property offices which subscribe to New York state municipal law, are subject to New York state subpoenas and participate in the New York state STAR program shall be entitled to full reimbursement of funds dispersed.

§ 8. A metropolitan transit authority (MTA) infrastructure bank shall be created to fund capital improvements to the MTA system-wide with the ability for the MTA infrastructure bank to issue both taxable and non-taxable revenue bonds in the municipal marketplace.

Net revenues generated from nonresident earnings tax collected by the New York state tax department to be directed to the MTA infrastructure bank biannually to coordinate with bonded debt service obligations.

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

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