

STATE OF NEW YORK

1680

2021-2022 Regular Sessions

IN SENATE

January 14, 2021

Introduced by Sens. SKOUFIS, MAY, SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue

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

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

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

ARTICLE 32

FRANCHISE TAX ON BANKING CORPORATIONS

Section 1450. General definitions.

1451. Imposition of tax.

1452. Banking corporation defined; exempt corporations.

1453. Computations of entire net income.

1453-A. Computation of alternative entire net income.

1454. Allocation.

1455. Computation of tax.

1455-A. Tax surcharge.

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

1456. Credits.

1460. Declarations of estimated tax.

1461. Payments of estimated tax.

1462. Returns.

1463. Payment of tax.

1466. Deposit and disposition of revenue.

1467. Secrecy required of officials; penalty for violation.

1468. Procedural provisions.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (h) The term "financial holding company" means a corporation that,
4 pursuant to subsection (1) of section 4 of the federal bank holding
5 company act of nineteen hundred fifty-six, as amended, has filed with
6 the federal reserve board a written declaration that the corporation
7 elects to be a financial holding company and whose election has not been
8 found to be ineffective by the federal reserve board.

9 § 1451. Imposition of tax. (a) For the privilege of exercising its
10 franchise or doing business in this state in a corporate or organized
11 capacity, a tax, computed under section fourteen hundred fifty-five of
12 this article, is hereby annually imposed on every banking corporation
13 for each of its taxable years, or any part thereof, beginning on or
14 after January first, nineteen hundred seventy-three.

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

31 (c)(1) A banking corporation is doing business in this state in a
32 corporate or organized capacity if (i) it has issued credit cards to one
33 thousand or more customers who have a mailing address within this state
34 as of the last day of its taxable year, (ii) it has merchant customer
35 contracts with merchants and the total number of locations covered by
36 those contracts equals one thousand or more locations in this state to
37 whom the banking corporation remitted payments for credit card trans-
38 actions during the taxable year, (iii) it has receipts of one million
39 dollars or more in the taxable year from its customers who have been
40 issued credit cards by the banking corporation and have a mailing
41 address within this state, (iv) it has receipts of one million dollars
42 or more arising from merchant customer contracts with merchants relating
43 to locations in this state, or (v) the sum of the number of customers
44 described in subparagraph (i) of this paragraph plus the number of
45 locations covered by its contracts described in subparagraph (ii) of
46 this paragraph equals one thousand or more, or the amount of its
47 receipts described in subparagraphs (iii) and (iv) of this paragraph
48 equals one million dollars or more. For purposes of this paragraph,
49 receipts from processing credit card transactions for merchants include
50 merchant discount fees received by the banking corporation.

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

53 § 1452. Banking corporation defined; exempt corporations. (a) For the
54 purpose of this article, a banking corporation means:

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

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

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

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

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

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

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

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

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

53 (b) Banking business defined. The words "banking business" as used in
54 this section mean such business as a corporation or association may be
55 created to do under article three, three-B, five, five-A, five-C, six or
56 ten of the banking law or any business which a corporation or associ-

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

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

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

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

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

52 (g) A banking corporation organized under the laws of a country, or
53 any political subdivision thereof, other than the United States shall
54 not be deemed to be doing business in this state under this article if
55 its activities in this state are limited solely to (1) investing or
56 trading in stocks and securities for its own account within the meaning

1 of clause (ii) of subparagraph (A) of paragraph (2) of subsection (b) of
2 section eight hundred sixty-four of the internal revenue code or (2)
3 investing or trading in commodities for its own account within the mean-
4 ing of clause (ii) of subparagraph (B) of paragraph (2) of subsection
5 (b) of section eight hundred sixty-four of the internal revenue code or
6 (3) any combination of activities described in paragraphs one and two of
7 this subsection.

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

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

54 (2) Notwithstanding anything to the contrary contained in this section
55 other than subsection (n) of this section, a corporation formed on or
56 after January first, two thousand and before January first, two thousand

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

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

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

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

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

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

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

49 An election under this paragraph may not be made by a corporation
50 described in paragraphs one through eight of subsection (a) of this
51 section or in subsection (e) of this section. In addition, an election
52 under this paragraph may not be made by a corporation that is a party to
53 a reorganization, as defined in subsection (a) of section 368 of the
54 internal revenue code of 1986, as amended, of a corporation described in
55 paragraph one of this subsection if both corporations were sixty-five
56 percent or more owned or controlled, directly or indirectly, by the same

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

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

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

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

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

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

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

55 (3) For purposes of this section, a financial subsidiary means a
56 corporation (i) sixty-five percent or more of whose voting stock is

1 owned or controlled, directly or indirectly by a banking corporation
2 described in paragraph one, two or three of subsection (a) of this
3 section and (ii) is described in section 5136A(q) of the revised stat-
4 utes of the United States or section 46 of the federal deposit insurance
5 act. For purposes of this article, the term "banking corporation" shall
6 include a corporation electing to be taxed under this article pursuant
7 to paragraph two of this subsection for so long as such election shall
8 be in effect.

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

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

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

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

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

(1) Transitional provisions relating to the enactment and implementation of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything to the contrary contained in this section other than subsection (n) of this section, a corporation that was in existence before January first, two thousand six and was subject to tax under article nine-A of this chapter for its last taxable year beginning before January first, two thousand six, shall continue to be taxable under article nine-A for all taxable years beginning on or after January first, two thousand six and before January first, two thousand eight. The preceding sentence shall

1 not apply to any taxable year during which such corporation is a banking
2 corporation described in paragraphs one through eight of subsection (a)
3 of this section. Notwithstanding anything to the contrary contained in
4 this section other than subsection (n) of this section, a banking corpo-
5 ration that was in existence before January first, two thousand six and
6 was subject to tax under this article for its last taxable year begin-
7 ning before January first, two thousand six, shall continue to be taxa-
8 ble under this article for all taxable years beginning on or after Janu-
9 ary first, two thousand six and before January first, two thousand
10 eight. Provided, however, that nothing in this subsection shall prohibit
11 a corporation that elected pursuant to subsection (d) of this section to
12 be taxable under article nine-A of this chapter from revoking that
13 election in accordance with such subsection (d).

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

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

1 of section 368 of the internal revenue code of 1986, as amended, of a
2 corporation described in paragraph one of this subsection if both corpo-
3 rations were sixty-five percent or more owned or controlled, directly or
4 indirectly, by the same interests at the time of the reorganization.

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

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

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

55 For purposes of this paragraph, a corporation shall be considered to
56 be subject to tax under article nine-A of this chapter for a taxable

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

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

47 An election under this paragraph must be made by the taxpayer on or
48 before the due date for filing its return (determined with regard to
49 extensions of time for filing) for the applicable taxable year. The
50 election to be taxed under article nine-A of this chapter shall be made
51 by the taxpayer by filing the report required pursuant to section two
52 hundred eleven of this chapter and the election to be taxed under this
53 article shall be made by the taxpayer by filing the return required
54 pursuant to section fourteen hundred sixty-two of this article. Any
55 election made pursuant to this paragraph shall be irrevocable and shall
56 apply to each subsequent taxable year beginning on or after January

1 first, two thousand twelve and before January first, two thousand nine-
2 teen, provided that the stock ownership and activities requirements
3 described in subparagraph (i) of this paragraph are met or such corpo-
4 ration described in subparagraph (ii) of this paragraph continues as a
5 financial subsidiary.

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

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

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

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

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

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

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

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

53 (D) sixty-five percent or more of the voting stock of the corporation
54 becomes owned or controlled directly by a corporation that acquired the
55 stock in a transaction (or series of related transactions) that quali-
56 fies as a purchase within the meaning of paragraph three of subsection

(h) of section three hundred thirty-eight of the internal revenue code unless the corporation whose stock was acquired and the corporation acquiring the stock were, immediately prior to such purchase, members of the same affiliated group (as such term is defined in section fifteen hundred four of the internal revenue code without regard to the exclusions provided for in subsection (b) of such section); provided that any acquisition that was completed on or before January third, two thousand seven shall be treated for purposes of this subparagraph as an acquisition made before January first, two thousand seven; or

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

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

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

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

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

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

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

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

1 shall be excluded any amounts treated as dividends pursuant to section
2 seventy-eight of the internal revenue code and any amounts described in
3 paragraphs eleven and twelve of subsection (e) of this section;

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

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

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

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

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

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

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

53 (9) in the case of property placed in service in taxable years begin-
54 ning before nineteen hundred ninety-four, for taxable years beginning
55 after December thirty-first, nineteen hundred eighty-one, except with
56 respect to property subject to the provisions of section two hundred

eighty-F of the internal revenue code and property subject to the provisions of section one hundred sixty-eight of the internal revenue code which is placed in service in this state in taxable years beginning after December thirty-first, nineteen hundred eighty-four, the amount allowable as a deduction determined under section one hundred sixty-eight of the internal revenue code;

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

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

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

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

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

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

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

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

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

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

(iii) where both the cost and the fair market price or value on January first, nineteen hundred twenty-six, are less than the value real-

1 ized, the basis for computing gain shall be the cost or the fair market
2 price or value on such date, whichever is higher;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 eight as it was in effect for agreements entered into prior to January
2 first, nineteen hundred eighty-four,

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

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

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

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

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

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

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

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

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

55 (13) for taxable years beginning before January first, two thousand
56 ten, in the case of a taxpayer which recaptures its balance of the

1 reserve for losses on loans for federal income tax purposes pursuant to
2 section 585(c) of the internal revenue code, any amount which is
3 included in federal taxable income pursuant to section 585(c) of such
4 code,

5 (14) for taxable years beginning before January first, two thousand
6 ten, in the case of a taxpayer subject to the provisions of section
7 585(c) of the internal revenue code, any amount which is included in
8 federal taxable income as a result of a recovery of a loan.

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

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

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

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

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

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

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

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

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

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

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

(5) The ineligible funding amount shall be the amount, if any, determined by multiplying eligible net income by a fraction, the numerator of which is the average aggregate amount for the taxable year of all liabilities, including deposits, and other sources of funds of the international banking facility which were not owed to or received from foreign persons, and the denominator of which is the average aggregate amount for the taxable year of all liabilities, including deposits and other sources of funds of the international banking facility.

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

(A) The numerator shall be

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

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

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

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

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

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

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

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

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

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

(E) an international banking facility.

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (ii) the amount which, when added to the amount determined under
55 subparagraph (A) of this paragraph, equals the amount by which twelve
56 percent of the total deposits or withdrawable accounts of depositors of

1 the taxpayer at the close of such year exceeds the sum of its surplus,
2 undivided profits and reserves at the beginning of such year (taking
3 into account any portion thereof attributable to the period before the
4 first taxable year beginning after December thirty-first, nineteen
5 hundred fifty-one).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 eighty-seven, the last taxable year beginning before nineteen hundred
2 eighty-eight.

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

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

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

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

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

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

54 (j) (1) In the case of property placed in service prior to January
55 first, nineteen hundred seventy-three, for which the taxpayer properly
56 adopted a different method of computing depreciation under section two

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

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

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

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

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

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

1 article in any taxable year or years with respect to the depreciation of
2 any such property shall not exceed its cost or other basis.

3 (2) Such deduction shall be allowed only with respect to tangible
4 property which is depreciable pursuant to section one hundred sixty-sev-
5 en of the internal revenue code, having a situs in this state and used
6 in the taxpayer's business, (i) constructed, reconstructed or erected
7 after December thirty-first, nineteen hundred sixty-three, pursuant to a
8 contract which was, on or before December thirty-first, nineteen hundred
9 sixty-seven, and at all times thereafter, binding on the taxpayer or,
10 property, the physical construction, reconstruction or erection of which
11 began on or before December thirty-first, nineteen hundred sixty-seven
12 or which began after such date pursuant to an order placed on or before
13 December thirty-first, nineteen hundred sixty-seven, and then only with
14 respect to that portion of the basis thereof which is properly attribut-
15 able to such construction, reconstruction or erection after December
16 thirty-first, nineteen hundred sixty-three, or (ii) acquired after
17 December thirty-first, nineteen hundred sixty-three, pursuant to a
18 contract which was, on or before December thirty-first, nineteen hundred
19 sixty-seven, and at all times thereafter, binding on the taxpayer or
20 pursuant to an order placed on or before December thirty-first, nineteen
21 hundred sixty-seven, by purchase as defined in section one hundred
22 seventy-nine (d) of the internal revenue code, if the original use of
23 such property commenced with the taxpayer, commenced in this state and
24 commenced after December thirty-first, nineteen hundred sixty-three, or
25 (iii) acquired, constructed, reconstructed, or erected subsequent to
26 December thirty-first nineteen hundred sixty-seven, if such acquisition,
27 construction, reconstruction or erection is pursuant to a plan of the
28 taxpayer which was in existence December thirty-first, nineteen hundred
29 sixty-seven and not thereafter substantially modified, and such acquisi-
30 tion, construction, reconstruction or erection would qualify under the
31 rules in paragraphs four, five or six of subsection (h) of section
32 forty-eight of the internal revenue code provided all references in such
33 paragraphs four, five and six to the dates October nine, nineteen
34 hundred sixty-six, and October ten, nineteen hundred sixty-six, shall be
35 read as December thirty-first, nineteen hundred sixty-seven. A taxpayer
36 shall be allowed a deduction under clauses (i), (ii) or (iii) of this
37 paragraph only if the tangible property shall be delivered or the
38 construction, reconstruction or erection shall be completed on or before
39 December thirty-first, nineteen hundred sixty-nine, except in the case
40 of tangible property which is acquired, constructed, reconstructed or
41 erected pursuant to a contract which was, on or before December thirty-
42 first, nineteen hundred sixty-seven, and at all times thereafter, bind-
43 ing on the taxpayer. Provided, however, for any taxable year beginning
44 on or after January first, nineteen hundred sixty-eight, a taxpayer
45 shall not be allowed a deduction under paragraph one of this subsection
46 with respect to tangible personal property leased by it to any other
47 person or corporation. For purposes of the preceding sentence, any
48 contract or agreement to lease or rent or for a license to use such
49 property shall be considered a lease. With respect to property which the
50 taxpayer uses itself for purposes other than leasing for part of a taxa-
51 ble year and leases for a part of a taxable year, the taxpayer shall be
52 allowed a deduction under paragraph one of this subsection in proportion
53 to the part of the year it uses such property.

54 (3) If the deduction allowable for any taxable year pursuant to this
55 subsection exceeds the portion of the taxpayer's entire net income allo-
56 cated to this state for such year, the excess may be carried over to the

1 following taxable year or years and may be deducted from the portion of
2 the taxpayer's entire net income allocated to this state for such year
3 or years.

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

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

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

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

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

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

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

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

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

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

26 (n) The tax commission may, whenever necessary in order properly to
27 reflect the entire net income of any taxpayer, determine the year or
28 period in which any item of income or deduction shall be included, with-
29 out regard to the method of accounting employed by the taxpayer.

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

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

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

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

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

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

45 (A) where the QSSS is a taxpayer,

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

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

52 (B) where the QSSS is not a taxpayer,

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

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

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

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

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

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

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

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

33 (7) QSSS inclusion election. The election under clause (i) of subpara-
34 graph (B) of paragraph two of this subsection shall be effective for the
35 taxable year for which made and for all succeeding taxable years of the
36 corporation until such election is terminated. An election or termi-
37 nation shall be made on such form and in such manner as the commissioner
38 may prescribe by regulation or instruction.

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

49 (1) A qualified investment is stock of a corporation or an interest,
50 other than as a creditor, in a partnership or limited liability company
51 that was acquired by the taxpayer as provided in Internal Revenue Code §
52 1202(c)(1)(B), except that the reference to the term "stock" in such
53 section shall be read as "investment," or by the taxpayer from a person
54 who had acquired such stock or interest in such a manner.

55 (2) A qualified emerging technology investment is a qualified invest-
56 ment, that was held by the taxpayer for at least thirty-six months, in a

1 company defined in paragraph (c) of subdivision one of section thirty-
2 one hundred two-e of the public authorities law or an investment in a
3 partnership or limited liability company that is taxed as a partnership
4 to the extent that such partnership or limited liability company invests
5 in qualified emerging technology companies.

6 (3) For purposes of determining whether the nonrecognition of gain
7 under this subsection applies to a qualified emerging technologies
8 investment that is sold, the taxpayer's holding period for such invest-
9 ment and the qualified emerging technologies investment that is
10 purchased shall be determined without regard to Internal Revenue Code §
11 1223.

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

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

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

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

52 (C) Royalty payments. Royalty payments are payments directly connected
53 to the acquisition, use, maintenance or management, ownership, sale,
54 exchange, or any other disposition of licenses, trademarks, copyrights,
55 trade names, trade dress, service marks, mask works, trade secrets,
56 patents and any other similar types of intangible assets as determined

1 by the commissioner, and include amounts allowable as interest
2 deductions under section one hundred sixty-three of the internal revenue
3 code to the extent such amounts are directly or indirectly for, related
4 to or in connection with the acquisition, use, maintenance or manage-
5 ment, ownership, sale, exchange or disposition of such intangible
6 assets.

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

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

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

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

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

1 imposed by this state; and (V) the royalty payment was paid, accrued or
2 incurred pursuant to a transaction that was undertaken for a valid busi-
3 ness purpose and using terms that reflect an arm's length relationship.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The taxpayer shall ascertain the percentage which eighty percent of the total wages, salaries and other personal service compensation during the taxable year of employees within the state, except wages, salaries and other personal service compensation of general executive officers, bears to the total wages, salaries and other personal service

1 compensation during the taxable year of all the taxpayer's employees
2 within and without the state, except wages, salaries and other personal
3 service compensation of general executive officers.

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

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

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

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

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

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

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

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

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

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

55 (E) The portion of total net gains and other income from trading
56 activities (including but not limited to foreign exchange, options and

1 financial futures), and from investment activities which is attributed
2 within the state shall be ascertained by multiplying such total net
3 gains and other income by a fraction the numerator of which is the aver-
4 age value of trading assets and investment assets attributable to this
5 state and the denominator of which is the average value of all trading
6 and investment assets. A trading asset or investment asset is attribut-
7 able to this state if the greater portion of income producing activity
8 related to the trading asset or investment asset occurred within the
9 state.

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

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

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

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

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

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

55 (iv) For purposes of this subparagraph, the term "management services"
56 means the rendering of investment advice to an investment company,

1 making determinations as to when sales and purchases of securities are
2 to be made on behalf of an investment company, or the selling or
3 purchasing of securities constituting assets of an investment company,
4 and related activities, but only where such activity or activities are
5 performed pursuant to a contract with the investment company entered
6 into pursuant to section 15(a) of the federal investment company act of
7 nineteen hundred forty, as amended.

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

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

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

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

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

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

46 (5) For purposes of this section:

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

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

(6) If it shall appear to the tax commission that the allocation percentage determined in subsection (b), (c), or (d) of this section does not properly reflect the activity, business, income or assets of a taxpayer within the state, the tax commission shall be authorized in its discretion to adjust it by (1) excluding one or more of the factors therein, (2) including one or more other factors, or (3) any other similar or different method calculated to effect a fair and proper allocation of the income or assets reasonably attributable to the state.

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

(b) Allocation of entire net income.

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

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

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

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

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

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

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

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

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

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

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

(2) (A) In lieu of the modification provided for in subsection (f) of section fourteen hundred fifty-three of this article, (relating to a

1 modification for the adjusted eligible net income of an international
2 banking facility), a taxpayer may, in the manner prescribed by the tax
3 commission, elect to modify on an annual basis its income allocation
4 percentage in the manner described in clauses (i), (ii) and (iii) of
5 this subparagraph:

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

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

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

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

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

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

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

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

1 international banking facility) the taxpayer shall make the modifica-
2 tions described in such paragraph, and (C) for taxable years beginning
3 on or after January first, two thousand eight, when an election has been
4 made pursuant to paragraph two of subsection (b) of this section (relat-
5 ing to an international banking facility) the taxpayer shall make the
6 modifications described in clause (ii) of subparagraph (A) of such para-
7 graph.

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

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

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

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

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

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

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

53 (iv) For taxable years beginning on or after January first, nineteen
54 hundred eighty-five, a taxpayer (whether or not a qualified institution
55 as defined in subparagraph (B) of paragraph five of subsection (f) of
56 section four hundred six of the federal national housing act, as

1 amended, or as defined in paragraph two of subsection (i) of section
2 thirteen of the federal deposit insurance act, as amended) shall not be
3 subject to the provisions of this paragraph for that portion of the
4 taxable year in which it had outstanding net worth certificates issued
5 in accordance with paragraph five of subsection (f) of section four
6 hundred six of the federal national housing act, as amended, or issued
7 in accordance with subsection (i) of section thirteen of the federal
8 deposit insurance act, as amended.

9 (v) For the purposes of this article:

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

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

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

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

53 (3) Two hundred fifty dollars.

54 (c) New York S corporations. (1) General. In the case of a New York S
55 corporation, the tax imposed by section fourteen hundred fifty-one of
56 this article shall be the higher of (i) the amount prescribed in

1 subsection (a) of this section reduced by the article twenty-two tax
2 equivalent or (ii) the amount prescribed in paragraph three of
3 subsection (b) of this section.

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

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

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

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

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

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

(d) Insofar as subsection (a) of this section establishes a rate of fifteen percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety and before July first, nineteen hundred ninety-four and until such rate is superseded, a rate of ten percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-four and before July first, nineteen hundred ninety-five and until such rate is superseded, a rate of five percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-five and before July first, nineteen hundred ninety-six and until such rate is superseded, and a rate of zero percent in the case of taxable years ending after June thirtieth, nineteen hundred ninety-six and before July first, nineteen hundred ninety-seven, the transition from such rate of

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

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

53 (b) If the tax imposed under section fourteen hundred fifty-one of
54 this article is derived from business activity carried on both within
55 and without the metropolitan commuter transportation district, the
56 portion of the tax attributable to business activity carried on in the

1 metropolitan commuter transportation district shall be determined in
2 accordance with rules and regulations promulgated by the tax commission.

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

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

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

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

1 bank an amount in excess of the amount due from such bank for taxes
2 payable to the state under this article for the taxable year for which
3 such credit is given. In computing such tax credit for the servicing of
4 mortgages on one-family to four-family residential structures, the bank
5 shall be entitled to no credit for the collection of curtailments or
6 payments in discharge of any such mortgage. For the purposes of this
7 section, (1) a "curtailment" shall mean amounts paid by mortgagors (i)
8 in excess of the monthly constant due during the month of collection and
9 (ii) in reduction of the unpaid principal balance of the mortgage; in
10 the absence of clear evidence to the contrary, amounts paid in excess of
11 the monthly constant due during the month of collection shall be deemed
12 to be in reduction of the unpaid principal balance of the mortgage; and
13 (2) "monthly constant" shall mean the amount of principal and interest
14 which is due and payable according to the mortgage documents on each
15 periodic payment date.

16 (b) Eligible business facility credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (7) If a business facility owned or operated by a taxpayer shall be an
2 eligible business facility for only part of a taxable year, the credit
3 allowed by this subdivision shall be prorated according to the period
4 such facility was an eligible business facility, and if the total of the
5 eligible property values shall have changed during any taxable year, a
6 pro-rata adjustment shall be made in computing such credit.

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

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

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

1 respect to a mortgage of real property principally improved or to be
2 improved by one or more structures containing in the aggregate not more
3 than six residential dwelling units, each dwelling unit having its own
4 separate cooking facilities, where the real property is located in the
5 county of Erie and where the mortgage is recorded on or after May first,
6 nineteen hundred eighty-seven.

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

17 (d) Empire zone capital credit.

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

50 (2) The credit and carryover of such credit allowed under this
51 subsection for any taxable year shall not, in the aggregate, reduce the
52 tax due for such year to less than the minimum tax fixed by subsection
53 (b) of section fourteen hundred fifty-five of this article. However, if
54 the amount of credit or carryovers of such credit, or both, allowed
55 under this subsection for any taxable year reduces the tax to such
56 amount, or if any part of the credit or carryovers of such credit may

1 not be deducted from the tax otherwise due by reason of the final
2 sentence of this paragraph, any amount of credit or carryovers of such
3 credit thus not deductible in such taxable year may be carried over to
4 the following year or years and may be deducted from the tax for such
5 year or years. In addition, the amount of such credit, and carryovers of
6 such credit to the taxable year, deducted from the tax otherwise due may
7 not, in the aggregate, exceed fifty percent of the tax imposed under
8 section fourteen hundred fifty-five of this article computed without
9 regard to any credit provided for under this article.

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

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

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

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

36 (C) The required portion of the credit originally allowed shall be the
37 product of (i) the portion of such credit attributable to the property
38 disposed of or the payment or contribution recovered and (ii) the appli-
39 cable percentage.

40 (D) The applicable percentage shall be:

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

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

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

50 (5) If the designation of an area as an empire zone is no longer in
51 effect because the designations of all empire zones pursuant to article
52 eighteen-B of the general municipal law have expired, a taxpayer that
53 has made a contribution of money on or before the day immediately
54 preceding the day the empire zones expired to a community development
55 project approved by the commissioner of economic development shall be
56 deemed eligible to claim the empire zone capital credit under subpara-

graph (C) of paragraph one of this subsection for additional contributions made prior to April first, two thousand fourteen and certified by the commissioner of economic development to that community development project as payment of a commitment made by the taxpayer to that community development project before the empire zones expired.

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

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

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

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

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

(3) The credit provided for herein shall be allowed only where the average number of individuals, excluding general executive officers, employed full-time by the taxpayer in (A) (i) the state and (ii) the

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

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

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

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

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

55 (D) If a taxpayer is certified in an empire zone designated under
56 subdivision (a) or (d) of section nine hundred fifty-eight of the gener-

1 al municipal law, the dollar amounts specified under subparagraph (A) or
2 (B) of this paragraph shall be increased by five hundred dollars for
3 each qualifying individual under such subparagraph who received, during
4 the taxable year, wages in excess of forty thousand dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (3) Amount of credit. Except as provided in paragraph four of this
54 subsection, the amount of credit shall be thirty-five percent of the
55 first six thousand dollars in qualified first-year wages earned by each
56 qualified employee. "Qualified first-year wages" means wages paid or

1 incurred by the taxpayer during the taxable year to qualified employees
2 which are attributable, with respect to any such employee, to services
3 rendered during the one-year period beginning with the day the employee
4 begins work for the taxpayer.

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

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

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

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

45 (h) Credits for New York S corporations. Notwithstanding the
46 provisions of this section, no carryover of credit allowable in a New
47 York C year shall be deducted from the tax otherwise due under this
48 article in a New York S year, and no credit allowable in a New York S
49 year, or carryover of such credit, shall be deducted from the tax
50 imposed by this article. However, a New York S year shall be treated as
51 a taxable year for purposes of determining the number of taxable years
52 to which a credit may be carried over under this section. Notwithstand-
53 ing the first sentence of this subsection, however, the credit for the
54 special additional mortgage recording tax shall be allowed as provided
55 in subsection (c) of this section, and the carryover of any such credit

1 shall be determined without regard to whether the credit is carried from
2 a New York C year to a New York S year or vice-versa.

3 (i) Investment tax credit (ITC). (1) A taxpayer shall be allowed a
4 credit, to be computed as hereinafter provided, against the tax imposed
5 by this article. Provided, however, a taxpayer shall not be allowed such
6 credit provided by this paragraph unless (i) eighty percent or more of
7 the employees performing the administrative and support functions
8 resulting from or related to the qualifying uses of such equipment are
9 located in this state, or (ii) the average number of employees that
10 perform the administrative and support functions resulting from or
11 related to the qualifying uses of such equipment and are located in this
12 state during the taxable year for which the credit is claimed is equal
13 to or greater than ninety-five percent of the average number of employ-
14 ees that perform these functions and are located in this state during
15 the thirty-six months immediately preceding the year for which the cred-
16 it is claimed, or (iii) the number of employees located in this state
17 during the taxable year for which the credit is claimed is equal to or
18 greater than ninety percent of the number of employees located in this
19 state on December thirty-first, nineteen hundred ninety-eight or, if the
20 taxpayer was not a calendar year taxpayer in nineteen hundred ninety-
21 eight, the last day of its first taxable year ending after December
22 thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes
23 subject to tax in this state after the taxable year beginning in nine-
24 teen hundred ninety-eight, then the taxpayer is not required to satisfy
25 the employment test provided in the preceding sentence of this subpara-
26 graph for its first taxable year. For the purposes of subparagraph (iii)
27 of this paragraph the employment test will be based on the number of
28 employees located in this state on the last day of the first taxable
29 year the taxpayer is subject to tax in this state. If the uses of the
30 property must be aggregated to determine whether the property is princi-
31 pally used in qualifying uses, then either each affiliate using the
32 property must satisfy this employment test or this employment test must
33 be satisfied through the aggregation of the employees of the taxpayer,
34 its affiliated regulated broker, dealer, and registered investment
35 adviser using the property. The amount of the credit shall be the
36 percent provided for herein below of the investment credit base. The
37 investment credit base is the cost or other basis for federal income tax
38 purposes of tangible personal property and other tangible property,
39 including buildings and structural components of buildings, described in
40 paragraph two of this subsection, less the amount of the nonqualified
41 nonrecourse financing with respect to such property to the extent such
42 financing would be excludible from the credit base pursuant to section
43 46(c)(8) of the Internal Revenue Code (treating such property as section
44 thirty-eight property irrespective of whether or not it in fact consti-
45 tutes section thirty-eight property). If, at the close of a taxable
46 year following the taxable year in which such property was placed in
47 service, there is a net decrease in the amount of nonqualified nonrec-
48 ourse financing with respect to such property, such net decrease shall
49 be treated as if it were the cost or other basis of property described
50 in paragraph two of this subsection acquired, constructed, reconstructed
51 or erected during the year of the decrease in the amount of nonqualified
52 nonrecourse financing. In the case of a combined report the term invest-
53 ment credit base shall mean the sum of the investment credit base of
54 each corporation included on such report. The percentage to be used to
55 compute the credit allowed pursuant to this subsection shall be

56 For taxable years beginning after

1997 five percent with respect to the first three hundred fifty million dollars of the investment credit base, and four percent with respect to the investment credit base in excess of three hundred fifty million dollars.

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

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

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

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

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

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

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

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

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

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

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

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

54 (F) If, as of the close of the taxable year, there is a net increase
55 with respect to the taxpayer in the amount of nonqualified nonrecourse
56 financing (within the meaning of section 46(c)(8) of the Internal Reven-

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

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

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

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

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

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

1 attacks. The amount required to be recaptured shall be augmented as
2 required pursuant to subparagraph (E) of paragraph seven of this
3 subsection by using an interest rate equal to two times the rate of
4 interest specified in such subparagraph seven applicable for the taxable
5 year in which the recapture occurs.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 shall have the same meaning as set forth in paragraphs two and three,
2 respectively, of subdivision (a) of section twenty-two of this chapter.

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

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

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

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

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

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

52 (2) Qualified fuel cell electric generating equipment expenditures.
53 (A) Qualified fuel cell electric generating equipment expenditures are
54 the costs, incurred on or after July first, two thousand five, associ-
55 ated with the purchase of on-site electricity generation units utilizing
56 proton exchange membrane fuel cells, providing a rated baseload capacity

1 of no less than one kilowatt and no more than one hundred kilowatts of
2 electricity, which are located in this state at the time the qualified
3 fuel cell electric generating equipment is placed in service.

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

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

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

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

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

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

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

55 (B) If the taxpayer is a partner in a partnership or a shareholder of
56 a New York S corporation, then the credit caps imposed in subparagraph

1 (A) of this paragraph shall be applied at the entity level, so that the
2 aggregate credit allowed to all the partners or shareholders of each
3 such entity in the taxable year does not exceed the credit cap that is
4 applicable in that taxable year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 one hundred thousand dollars. The amount must be paid with the return
2 required to be filed for the preceding taxable year or with an applica-
3 tion for an extension of the time for filing the return. If the preced-
4 ing year's tax under section fourteen hundred fifty-one of this article
5 exceeded one thousand dollars and the taxpayer is subject to the tax
6 surcharge imposed by section fourteen hundred fifty-five-B of this arti-
7 cle, the taxpayer must also pay with the tax surcharge return required
8 to be filed for the preceding taxable year, or with an application for
9 an extension of the time for filing the return, an amount equal to (i)
10 twenty-five percent of the tax surcharge imposed for the preceding year
11 if the preceding year's tax was equal to or less than one hundred thou-
12 sand dollars, or (ii) forty percent of the tax surcharge imposed for the
13 preceding year if the preceding year's tax exceeded one hundred thousand
14 dollars.

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

20 (1) If the declaration is filed on or before June fifteenth, the esti-
21 imated tax or estimated tax surcharge shown thereon, after applying ther-
22 eto the amount, if any, paid during the same taxable year pursuant to
23 subsection (a) of this section, shall be paid in three equal install-
24 ments. One of such installments shall be paid at the time of the filing
25 of the declaration, one shall be paid on the following September
26 fifteenth, and one on the following December fifteenth.

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

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

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

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

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

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

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

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

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

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

51 (i) Extension of time. The commissioner of taxation and finance may
52 grant a reasonable extension of time, not to exceed six months, for
53 payment of any installment of estimated tax or estimated tax surcharge
54 required pursuant to this section, on such terms and conditions as he
55 may require, including the furnishing of a bond or other security by the
56 taxpayer in an amount not exceeding twice the amount for which any

1 extension of time for payment is granted, provided, however, that inter-
2 est at the underpayment rate set by the commissioner pursuant to section
3 one thousand ninety-six of this chapter, or if no rate is set, at the
4 rate of six per centum per annum for the period of the extension shall
5 be charged and collected on the amount for which any extension of time
6 for payment is granted under this subsection.

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

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

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

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

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

46 (e) If the amount of taxable income or alternative minimum taxable
47 income for any year of any taxpayer (including any taxpayer which has
48 elected to be taxed under subchapter s of chapter one of the internal
49 revenue code) as returned to the United States treasury department is
50 changed or corrected by the commissioner of internal revenue or other
51 officer of the United States or other competent authority, such taxpayer
52 shall report such change or corrected taxable income or alternative
53 minimum taxable income within ninety days (or one hundred twenty days,
54 in the case of a taxpayer making a combined return under this article
55 for such year) after the final determination of such change or
56 correction or as required by the commissioner, and shall concede the

1 accuracy of such determination or state wherein it is erroneous. Any
2 taxpayer filing an amended return with such department shall also file
3 within ninety days (or one hundred twenty days, in the case of a taxpay-
4 er making a combined return under this article for such year) thereafter
5 an amended return with the commissioner which shall contain such infor-
6 mation as the commissioner shall require. The allowance of a tentative
7 carryback adjustment based upon a net capital loss carryback pursuant to
8 section sixty-four hundred eleven of the internal revenue code, shall be
9 treated as a final determination for purposes of this subsection.

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

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

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

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

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

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

49 (B) whose voting stock is sixty-five percent or more owned or
50 controlled, directly or indirectly, by a banking corporation or a bank
51 holding company, may be required or permitted to make a return on a
52 combined basis under this article covering itself and such corporations
53 described in clause (A) or (B) and shall set forth such information as
54 the tax commission may require; provided, however, that no combined
55 return shall be required or permitted unless the tax commission deems
56 such report necessary in order to properly reflect the tax liability

1 under this article of any one or more of such banking corporations or
2 bank holding companies.

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

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

1 year unless the permission of the commissioner has been obtained to file
2 on a combined basis for such subsequent taxable year.

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

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

1 financing services, and communications services, but will not include
2 accounting, legal or personnel services.

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

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

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

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

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

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

54 (G) If the banking corporation or bank holding company that directly
55 or indirectly owns or controls over fifty percent of the voting stock of
56 the captive REIT or captive RIC and is the closest controlling stock-

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

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

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

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

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

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

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

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

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

52 (4) (i) In no event shall an item of income or expense of a corpo-
53 ration organized under the laws of a country other than the United
54 States be included in a combined return unless it is includible in
55 entire net income or alternative entire net income, as the case may be,

1 nor shall an asset of such a corporation be included in a combined
2 return unless it is included in taxable assets.

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

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

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

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

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

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

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

1 (2) such tax, or the balance thereof, imposed on any taxpayer which
2 ceased to exercise its franchise or to be subject to the tax imposed by
3 this article shall be payable to the tax commission at the time the
4 return is required to be filed, provided such tax of a domestic corpo-
5 ration which continues to possess its franchise shall be subject to
6 adjustment as the circumstances may require; all other taxes of any such
7 taxpayer, which pursuant to the foregoing provisions of this subsection
8 would otherwise be payable subsequent to the time such return is
9 required to be filed, shall nevertheless be payable at such time.

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

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

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

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

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

36 § 1467. Secrecy required of officials; penalty for violation. (a)
37 Except in accordance with the proper judicial order or as otherwise
38 provided by law, it shall be unlawful for the commissioner of taxation
39 and finance, any officer or employee of the department of taxation and
40 finance, or any person who, pursuant to this section, is permitted to
41 inspect any return, or any person engaged or retained by such department
42 on an independent contract basis, or any person who in any manner may
43 acquire knowledge of the contents of a return filed pursuant to this
44 article, to divulge or make known in any manner the amount of income or
45 any particulars set forth or disclosed in any return required under this
46 article. The officers charged with the custody of such returns shall not
47 be required to produce any of them or evidence of anything contained in
48 them in any action or proceedings in any court, except on behalf of the
49 state or the commissioner of taxation and finance in an action or
50 proceeding under the provisions of this chapter or in any other action
51 or proceeding involving the collection of a tax due under this chapter
52 to which the state or the commissioner of taxation and finance is a
53 party or a claimant or on behalf of any party in an action or proceeding
54 under the provisions of this article when the returns or facts shown
55 thereby are directly involved in such action or proceeding, in any of
56 which events the court may require the production of and may admit in

1 evidence so much of said returns or the facts shown thereby as are
2 pertinent to the action or proceeding and no more. The commissioner of
3 taxation and finance may, nevertheless, publish a copy or a summary of
4 any determination or decision rendered after the hearing provided for in
5 section one thousand eighty-nine of this chapter. Nothing herein shall
6 be construed to prohibit the delivery to a taxpayer or its duly author-
7 ized representative of a certified copy of any return filed in
8 connection with its tax nor to prohibit the publication of statistics so
9 classified as to prevent the identification of particular returns and
10 the items thereof, or the inspection by the attorney-general or other
11 legal representatives of the state of the return of any taxpayer which
12 shall bring action to set aside or review the tax based thereon, or
13 against which an action or proceeding under this chapter has been recom-
14 mended by the commissioner of taxation and finance or the attorney-gen-
15 eral or has been instituted; or the inspection of the returns of any
16 taxpayer by the comptroller or duly designated officer or employee of
17 the state department of audit and control for purposes of the audit of a
18 refund of any tax paid by such taxpayer under this article, or the
19 disclosing to a state agency, pursuant to section one hundred seventy-
20 one-f of this chapter, of the amount of an overpayment and interest
21 thereon certified to the comptroller to be credited against a past-due
22 legally enforceable debt owed to such agency and of the name and iden-
23 tification number of the taxpayer who made such overpayment, or the
24 disclosing to the commissioner of finance of the city of New York,
25 pursuant to section one hundred seventy-one-l of this chapter, of the
26 amount of an overpayment and interest thereon certified to the comp-
27 troller to be credited against a city of New York tax warrant judgment
28 debt and of the name and identification number of the taxpayer who made
29 such overpayment. Returns shall be preserved for three years and there-
30 after until the commissioner of taxation and finance orders them to be
31 destroyed.

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

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

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

1 commissioner of taxation and finance by the secretary of the treasury or
2 his delegates provided the laws of the United States grant substantially
3 similar powers to the secretary of the treasury or his delegates. Where
4 the commissioner of taxation and finance has so authorized use of
5 returns or other information in such actions or proceedings, officers
6 and employees of the department of taxation and finance may testify in
7 such actions or proceedings in respect to such returns or other tax
8 information.

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

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

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

1 § 1468. Procedural provisions. The provisions of article twenty-seven
2 of this chapter shall apply to the provisions of this article in the
3 same manner and with the same force and effect as if the language of
4 such article twenty-seven had been incorporated in full into this arti-
5 cle and had expressly referred to the tax under this article, except to
6 the extent that any such provision is either inconsistent with a
7 provision of this article or is not relevant to this article.

8 § 2. This act shall take effect immediately and shall apply to taxable
9 years starting January 1, 2022.