STATE OF NEW YORK

3186--B

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sen. SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Budget and Revenue -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the tax law and the state finance law, in relation to the imposition of a pass-through entity tax

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 24-A to read as follows:

ARTICLE 24-A

PASS-THROUGH ENTITY TAX

Section 860. Definitions.

861. Pass-through entity tax election.

862. Imposition and rate of tax.

863. Pass-through entity tax credit.

864. Payment of estimated tax.

865. Filing of return and payment of tax.

866. Accounting periods and methods.

867. Procedural provisions.

§ 860. Definitions. For purposes of this article:

(a) Eligible partnership. Eligible partnership means any partnership as provided for in section 7701(a)(2) of the Internal Revenue Code. An eligible partnership includes any limited liability company treated as a partnership for federal income tax purposes that otherwise meets the requirements of this subdivision.

(b) Eligible S corporation. Eligible S corporation means any New York S corporation as defined pursuant to this chapter. An eligible S corporation includes any limited liability company treated as an S corpo-

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

LBD06379-06-1

ration for federal income tax purposes that otherwise meets the requirements of this subdivision.

(c) Electing partnership. Electing partnership means any eligible partnership that made a valid, timely election pursuant to section eight hundred sixty-one of this article.

(d) Electing S corporation. Electing S corporation means any eligible S corporation that made a valid, timely election pursuant to section eight hundred sixty-one of this article.

(e) Taxpayer. Taxpayer means any electing partnership or electing S corporation.

(f) Pass-through entity tax. Pass-through entity tax means the total tax imposed by this article on electing partnerships and electing S corporations.

(g) Pass-through adjusted net income (not less than zero). Pass-through adjusted net income (not less than zero) means:

(1) In the case of an electing partnership, the sum of (i) its separately and non-separately computed items, as described in section 702(a) of the Internal Revenue Code, to the extent earned directly by such partnership; (ii) taxes paid or incurred during the taxable year pursuant to this article by a partnership to the extent deducted in computing federal taxable income; (iii) taxes substantially similar to the tax imposed pursuant to this article paid or incurred during the taxable year to another state of the United States, a political subdivision of such state, or the District of Columbia to the extent deducted in computing federal taxable income; (iv) guaranteed payments paid by the partnership to its partners as described in section 707(c) of the Internal Revenue Code; and (v) the sum of any New York modifications under subsection (e) of section six hundred fifteen and section six hundred seventeen of this chapter.

(2) In the case of an electing S corporation, the sum of (i) its separately and non-separately computed items, as described in section 1366(a) of the Internal Revenue Code, whether earned by such S corporation or by a partnership of which the S corporation is a partner; (ii) taxes paid or incurred during the taxable year pursuant to this article by an S corporation to the extent deducted in computing federal ordinary income; (iii) taxes substantially similar to the tax imposed pursuant to this article paid or incurred during the taxable year to another state of the United States, a political subdivision of such state, or the District of Columbia to the extent deducted in computing federal taxable income; and (iv) the sum of any New York modifications under subsection (e) of section six hundred fifteen and section six hundred seventeen of this chapter.

(h) Partnership taxable income. Partnership taxable income of an electing partnership means the sum of (1) the product of (i) the electing partnership's pass-through adjusted net income (not less than zero), allocated to New York state pursuant to subdivision (b) of section eight hundred sixty-two of this article, and (ii) multiplied by the percentage of the profits interests of the electing partnership that are owned by partners or members who are subject to tax pursuant to article twenty-two of this chapter; and (2) the product of (i) the portion of the electing partnership's pass-through adjusted net income (not less than zero) that is not sourced or allocated to New York state, and (ii) multiplied by the percentage of the profits interests of the electing partnership that are owned by partners or members who are residents of New York state as defined in article twenty-two of this chapter. For purposes of determining partnership taxable income, an entity that is a

disregarded entity as described in section 301.7701-2(c)(2)(i) of internal revenue service regulations for federal income tax purposes is also disregarded in determining the percentage of the profits interest of the electing partnership that are owned by partners or members who are subject to tax pursuant to article twenty-two of this chapter or that are owned by partners or members who are residents of New York state. In addition, for purposes of determining partnership taxable income, the portion of a partnership interest treated as owned by the grantor of a trust or by another person pursuant to section 671 of the Internal Revenue Code shall be deemed owned by such grantor or other person for the purpose of determining whether that portion of the partnership is owned by a partner or member who is subject to tax pursuant to article twenty-two or is owned by a partner or member who is a resident of New York state as defined in article twenty-two of this chapter.

(i) S corporation taxable income. S corporation taxable income of an electing S corporation means the sum of (1) the product of (i) the electing S corporation's pass-through adjusted net income (not less than zero) allocated to New York state pursuant to subdivision (c) of section eight hundred sixty-two of this article, and (ii) multiplied by the percentage of the pro rata shares of the electing S corporation that are owned by individuals, trusts, and estates who are subject to tax pursuant to article twenty-two of this chapter; and (2) the product of (i) the portion of the electing S corporation's pass-through adjusted net income (not less than zero) that is not allocated to New York state pursuant to subdivision (c) of section eight hundred sixty-two of this article, and (ii) multiplied by the percentage of the pro rata shares of the electing S corporation that are owned by individuals, trusts, and estates who are residents of New York state as defined in article twenty-two of this chapter. For purposes of determining S corporation taxable income, an entity that is a disregarded entity as described in regulation section 301.7701-2(c)(2)(i) for federal income tax purposes is also disregarded in determining the percentage of the profits interest of the electing S corporation that are owned by shareholders who are subject to tax pursuant to article twenty-two of this chapter or that are owned by shareholders who are residents of New York state pursuant to the provisions of article twenty-two of this chapter. In addition, for purposes of determining S corporation taxable income, the portion of an S corporation interest treated as owned by the grantor of a trust or by another person pursuant to section 671 of the Internal Revenue Code shall be deemed owned by such grantor or other person for the purpose of determining whether that portion of the S corporation is owned by a shareholder who is subject to tax pursuant to article twenty-two or is owned by a shareholder who is a resident of New York state as defined in article twenty-two of this chapter.

§ 861. Pass-through entity tax election. (a) Any eligible partnership or eligible S corporation doing business within this state shall be allowed to make an annual election to be taxed pursuant to this article.

(b) In order to be effective, the annual election must be made (1) if the entity is an S corporation, by any officer, manager or shareholder of the S corporation who is authorized under the law of the state where the corporation is incorporated or under the S corporation's organizational documents to make the election and who represents to having such authorization under penalty of perjury; or (2) if the entity is not an S corporation, by any member, partner, owner, or other individual with authority to bind the entity or sign returns pursuant to section six hundred fifty-three of this chapter.

(c) The annual election shall be made in such manner as the commissioner may prescribe by regulation. An election pursuant to this subsection shall be effective for the affected pass-through entity only for the taxable year for which such election is made. An election under subsection (a) of this section may be made at any time during the preceding taxable year of the pass-through entity or at any time during the taxable year of the pass-through entity and on or before the fifteenth day of the third month of such taxable year. If an election under subsection (a) of this section is made for any taxable year of the pass-through entity and such election is made after the fifteenth day of the third month of such taxable year and on or before the fifteenth day of the third month of the following taxable year, such election shall be treated as made for the following taxable year. Provided, however, in a tax year beginning on or after January first, two thousand twenty-one but before June fifteenth, two thousand twenty-one, the pass-through entity may make such election at any time prior to June fifteenth, two thousand twenty-one.

(d) (1) Termination of election. An election pursuant to this section shall be terminated whenever, at any time during the taxable year, the taxpayer ceases to be an eligible partnership or eligible S corporation.

(2) Effective date of termination. The termination of an election is effective immediately upon the taxpayer ceasing to be an eligible partnership or eligible S corporation and no tax will be due pursuant to this article for the taxable year. Provided, however, in a tax year beginning on or after January first, two thousand twenty-one but before June fifteenth, two thousand twenty-one, the pass-through entity may make such election at any time prior to June fifteenth, two thousand twenty-one.

(3) Abatement of penalties. If a termination occurs pursuant to this subdivision solely because a partner, member or shareholder of an otherwise eligible partnership or eligible S corporation died during the taxable year and the successor to the decedent's interest in the partnership or S corporation is an entity that will result in the partnership or the S corporation not being an eligible partnership or S corporation, no addition to tax will be imposed pursuant to subsection (c) of section six hundred eighty-five of this chapter on the partners, members and shareholders of such partnership or S corporation solely for underpayment of estimated personal income tax as a result of the termination of the election made pursuant to this article.

§ 862. Imposition and rate of tax. (a) General. A tax is hereby imposed for each taxable year on the partnership taxable income of every electing partnership doing business within this state and on the S corporation taxable income of every electing S corporation doing business within this state. This tax shall be in addition to any other taxes imposed and shall be at the rate of six and eighty-five hundredths percent if the sum of an entity's partners, members or shareholders share of distributive proceeds attributed to the pass-through entity is less than five million dollars and eight and eighty-two hundredths percent if the sum of an entity's partners, members or shareholders share of distributive proceeds attributed to the pass-through entity is five million dollars or more for each taxable year beginning on or after January first, two thousand twenty-one.

(b) Allocation to New York by an electing partnership. In determining the amount of partnership taxable income, the adjusted net income of the electing partnership shall be allocated to this state pursuant to the principles of article twenty-two of this chapter.

(c) Allocation to New York by an electing S corporation. In determining the amount of S corporation taxable income, the adjusted net income of the electing S corporation shall be allocated to this state by multiplying the adjusted net income of the electing S corporation by the business apportionment factor of the electing S corporation as calculated pursuant to section two hundred ten-A of this chapter.

§ 863. Pass-through entity tax credit. A partner or member in an electing partnership or a shareholder of an electing S corporation, which partner, member or shareholder's federal taxable income includes separately and non-separately computed items from the electing partnership as described in section 702(a) of the Internal Revenue Code or from the electing S corporation as described in section 1366(a) of the Internal Revenue Code and is subject to tax under article twenty-two of this chapter shall be allowed a credit against the tax imposed pursuant to article twenty-two of this chapter, computed pursuant to the provisions of subsection (kkk) of section six hundred six of this chapter.

§ 864. Payment of estimated tax. (a) Definition of estimated tax. Estimated tax means the amount that an electing partnership or electing S corporation estimates to be the tax imposed by section eight hundred sixty-two of this article for the current taxable year.

(b) General. The estimated tax shall be paid as follows for an electing partnership and an electing S corporation that reports on a calendar year basis:

(1) The estimated tax shall be paid in four equal installments on March fifteenth, June fifteenth, September fifteenth and December fifteenth.

(2) The amount of any required installment shall be twenty-five percent of the required annual payment.

(3) The required annual payment is the lesser of: (A) ninety percent of the tax shown on the return for the taxable year; or (B) one hundred percent of the tax shown on the return of the electing partnership or electing S corporation for the preceding taxable year.

(c) Application to short taxable year. This section shall apply to a taxable year of less than twelve months and to a taxable year for which an election is made before June fifteenth, two thousand twenty-one, in accordance with procedures established by the commissioner.

(d) Fiscal year. This section shall apply to a taxable year other than a calendar year by the substitution of the months of such fiscal year for the corresponding months specified in this section.

(e) Installments paid in advance. An electing partnership or electing S corporation may elect to pay any installment of its estimated tax prior to the date prescribed for the payment thereof.

§ 865. Filing of return and payment of tax. (a) General. On or before the fifteenth day of the third month following the close of the taxable year, each electing partnership and each electing S corporation must file a return for the taxable year reporting the information required pursuant to this article.

(b) Certification of eligibility. Every return filed pursuant to subdivision (a) of this section shall include, in a format as prescribed by the commissioner, a certification by an individual authorized to act on behalf of the electing partnership or electing S corporation that the taxpayer:

(1) made a timely, valid election to be subject to tax pursuant to this article;

(2) was at all times during the taxable year eligible to make such an election, unless such return includes a notification of termination as provided for in subdivision (c) of this section; and

(3) that all statements contained therein are true.

(c) Notification of termination. If an election is terminated during the taxable year pursuant to subdivision (e) of section eight hundred sixty-one of this article, the electing partnership or electing S corporation is required to file a return pursuant to subdivision (a) of this section notifying the commissioner of such termination. Such notification will be considered a claim for a credit or refund of an overpayment of pass-through entity tax of any estimated payments made pursuant to this article for the taxable year containing the date of termination.

(d) Information on return. Each electing partnership and electing S corporation shall report on such return:

(1) The balance of any tax shown on such return, not previously paid as installments of estimated tax, shall be paid with such return;

(2) Identifying information of all partners, members and/or shareholders eligible to receive a credit pursuant to section eight hundred sixty-three of this article and such partner's, member's and/or shareholder's distributive or pro rata share of the pass-through entity tax imposed on the electing partnership or S corporation; and

(3) Any other information as required by the commissioner.

(e) Information provided to partners. Each electing partnership subject to tax under this article shall report to each partner or member its distributive share of:

(1) the partnership taxable income of the electing partnership;

(2) the pass-through entity tax imposed on the electing partnership; and

(3) any other information as required by the commissioner.

(f) Information provided to shareholders. Each electing S corporation subject to tax under this article shall report to each shareholder its pro rata share of:

(1) the S corporation taxable income of the electing S corporation;

(2) the pass-through entity tax imposed on the electing S corporation; and

(3) any other information as required by the commissioner.

§ 866. Accounting periods and methods. (a) Accounting periods. An electing partnership's or electing S corporation's taxable year pursuant to this article shall be the same as the electing partnership's or electing S corporation's taxable year for federal income tax purposes.

(b) Accounting methods. An electing partnership's or electing S corporation's method of accounting pursuant to this article shall be the same as the electing partnership's or electing S corporation's method of accounting for federal income tax purposes.

(c) Change of accounting period or method. (1) If an electing partnership's or electing S corporation's taxable year or method of accounting is changed for federal income tax purposes, the taxable year or method of accounting for purposes of this article shall be similarly changed.

(2) If an electing partnership's or electing S corporation's method of accounting is changed, any additional tax that results from adjustments determined to be necessary solely by reason of such change shall not be greater than if such adjustments were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the entity used the method of accounting from which the change is made.

§ 867. Procedural provisions. (a) General. All provisions of article twenty-two of this chapter will apply to the provisions of this article in the same manner and with the same force and effect as if the language of article twenty-two of this chapter had been incorporated in full into this article and had been specifically adjusted for and expressly referred to the tax imposed by this article, except to the extent that any provision is either inconsistent with a provision of this article or is not relevant to this article. Notwithstanding the preceding sentence, no credit against tax in article twenty-two of this chapter can be used to offset the tax due pursuant to this article.

(b) Cross Article filings. Notwithstanding any other provisions of this article:

(1) The commissioner may require the filing of one return which, in addition to the return provided for in section eight hundred sixty-five of this article, may also include any of the returns required to be filed by a taxpayer pursuant to the provisions of subsection (c) of section six hundred fifty-eight or article nine-A of this chapter.

(2) Where such return is required, the commissioner may also require the payment with it of a single amount which shall equal the total of the amounts (total taxes less any credits or refunds) that would have been required to be paid with the returns pursuant to the provisions of this article and the provisions of article twenty-two of this chapter or the provisions of article nine-A of this chapter, whichever is applicable.

(3) Notwithstanding any other law to the contrary, the commissioner may require that all forms or returns pursuant to this article must be filed electronically and all payments of tax must be paid electronically.

(c) Deposit and disposition of revenue. All taxes, interest, penalties, and fees collected or received by the commissioner pursuant to this article shall be deposited and disposed of pursuant to the provisions of section one hundred seventy-one-a of this chapter.

(d) Secrecy provision. All the provisions of paragraphs one and two of subsection (e) of section six hundred ninety-seven of this chapter will apply to the provisions of this article. Notwithstanding any provisions of this chapter to the contrary, the commissioner may disclose information and returns regarding the calculation and payment of the tax imposed by this article and any credit calculated on taxes paid pursuant to this article by an electing partnership or electing S corporation to a partner, member or shareholder of such entity.

§ 2. Section 606 of the tax law is amended by adding a new subsection (kkk) to read as follows:

(kkk) Credit for pass-through entity tax. (1) A taxpayer partner or member of an electing partnership and a taxpayer shareholder of an electing S corporation subject to tax under article twenty-four-A of this chapter shall be entitled to a credit against the tax imposed by this article as provided in this subsection. For purposes of this subsection, the terms "electing partnership," "electing S corporation," and "pass-through entity tax" shall have the same meanings as used in article twenty-four-A of this chapter.

(2) The credit shall be equal to (A) the product of:

(i) the taxpayer's percentage of the interest in the electing partnership or pro rata share of the electing S corporation that are owned by partners, members or shareholders who are subject to the tax imposed by this article as determined pursuant to the provisions of subsections (h) and (i) of section eight hundred sixty of this chapter;

(ii) ninety-two percent; and

(iii) the pass-through entity tax paid with respect to income that is sourced or allocated to New York state by the electing partnership or electing S corporation for the taxable year; and

(B) for a taxpayer that is a resident, the product of: (i) the taxpayer's percentage of the interests in the electing S corporation or electing partnership that are owned by residents of New York state as determined pursuant to the provisions of subdivisions (h) and (i) of section eight hundred sixty of this chapter; (ii) ninety-two percent; and (iii) the pass-through entity tax paid with respect to income that is not sourced or allocated to New York state by the electing partnership or the electing S corporation.

(3) If a taxpayer is a partner, member or shareholder in multiple electing partnerships and/or electing S corporations subject to tax pursuant to article twenty-four-A of this chapter, the taxpayer's credit shall be the sum of such credits calculated pursuant to paragraph two of this subsection with regard to each entity in which the taxpayer has a direct ownership interest.

(4) If the amount of the credit allowable pursuant to this subsection for any taxable year exceeds the tax due for such year pursuant to this article, the excess shall be treated as an overpayment, to be credited or refunded, without interest.

§ 3. Section 620 of the tax law, as amended by chapter 2 of the laws of 1962, subsection (a) as amended and paragraph 3 of subsection (b) as added by chapter 274 of the laws of 1987, and subsection (d) as added by chapter 166 of the laws of 1991, is amended to read as follows:

§ 620. Credit for income tax of another state. (a) General. A resident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed on such resident for the taxable year by another state of the United States, a political subdivision of such state, the District of Columbia or a province of Canada, upon income both derived therefrom and subject to tax under this article. The term "income tax imposed" in the previous sentence shall not include the portion of such tax (determined in the manner provided for in section six hundred twenty-A) which is imposed upon the ordinary income portion (or part thereof) of a lump sum distribution which is subject to the separate tax imposed by section [~~six hundred one-C~~] six hundred three.

(b) Pass-through entity taxes. (1) A resident shall be allowed a credit against the tax otherwise due pursuant to this article for any pass-through entity tax substantially similar to the tax imposed pursuant to article twenty-four-A of this chapter imposed on the income of a partnership or S corporation of which the resident is a partner, member or shareholder for the taxable year by another state of the United States, a political subdivision of such state, or the District of Columbia upon income both derived therefrom and subject to tax under this article.

(2) Such credit shall be equal to the product of:

(A) the taxpayer's profit percentage of the partnership or pro rata share of the S corporation;

(B) ninety-two percent; and

(C) the pass-through entity tax paid by the partnership or S corporation to such other state, political subdivision of such other state or the District of Columbia.

(3) However, such credit will be allowed on tax paid only if:

(A) the state of the United States, political subdivision of such state, or the District of Columbia imposing such tax also imposes an

income tax substantially similar to the tax imposed under article twenty-four-A of this chapter; and

(B) in the case of taxes paid by an S corporation, such S corporation was treated as a New York S corporation.

(c) Limitations. (1) The credit under this section shall not exceed the percentage of the tax otherwise due under this article determined by dividing the portion of the taxpayer's New York income subject to taxation by such other jurisdiction by the total amount of the taxpayer's New York income.

(2) The credit under this section shall not reduce the tax otherwise due under this article to an amount less than would have been due if the income subject to taxation by such other jurisdiction were excluded from the taxpayer's New York income.

(3) In the case of a taxpayer who elects to claim the foreign tax credit for federal income tax purposes, the credit under this section for income tax imposed by a province of Canada shall be allowed for that portion of the provincial tax not claimed for federal purposes for the taxable year or a preceding taxable year, provided however, to the extent the provincial tax is claimed for federal purposes for a succeeding taxable year, the credit under this section must be added back in such succeeding taxable year. The provincial tax shall be deemed to be claimed last for federal income tax purposes and for purposes of this subsection.

[~~(c)~~] **(d)** Definition. For purposes of this section New York income means:

(1) the New York adjusted gross income of an individual, or

(2) the amount of the income of an estate or trust, determined as if the estate or trust were an individual computing his New York adjusted gross income under section six hundred twelve.

[~~(d) S corporation shareholders. In the case of a shareholder of an S corporation, the term "income tax" in subsection (a) of this section shall not include any such tax imposed upon or payable by the corporation, but shall include any such tax with respect to the income of the corporation imposed upon or payable by the shareholder, without regard to whether an election independent of the federal S election was required to effect such imposition upon the shareholder.~~]

§ 4. Subdivision 1 of section 171-a of the tax law, as amended by chapter 92 of the laws of 2021, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-B, twenty-D, twenty-one, twenty-two, twenty-four, **twenty-four-a,** twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the

possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this article, (ii) and except that the comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated

spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

§ 5. Subdivision 1 of section 171-a of the tax law, as amended by section 4 of part XX of chapter 59 of the laws of 2019, is amended to read as follows:

1. All taxes, interest, penalties and fees collected or received by the commissioner or the commissioner's duly authorized agent under articles nine (except section one hundred eighty-two-a thereof and except as otherwise provided in section two hundred five thereof), nine-A, twelve-A (except as otherwise provided in section two hundred eighty-four-d thereof), thirteen, thirteen-A (except as otherwise provided in section three hundred twelve thereof), eighteen, nineteen, twenty (except as otherwise provided in section four hundred eighty-two thereof), twenty-D, twenty-one, twenty-two, twenty-four, **twenty-four-a,** twenty-six, twenty-eight (except as otherwise provided in section eleven hundred two or eleven hundred three thereof), twenty-eight-A, twenty-nine-B, thirty-one (except as otherwise provided in section fourteen hundred twenty-one thereof), thirty-three and thirty-three-A of this chapter shall be deposited daily in one account with such responsible banks, banking houses or trust companies as may be designated by the comptroller, to the credit of the comptroller. Such an account may be established in one or more of such depositories. Such deposits shall be kept separate and apart from all other money in the possession of the comptroller. The comptroller shall require adequate security from all such depositories. Of the total revenue collected or received under such articles of this chapter, the comptroller shall retain in the comptroller's hands such amount as the commissioner may determine to be necessary for refunds or reimbursements under such articles of this chapter out of which amount the comptroller shall pay any refunds or reimbursements to which taxpayers shall be entitled under the provisions of such articles of this chapter. The commissioner and the comptroller shall maintain a system of accounts showing the amount of revenue collected or received from each of the taxes imposed by such articles. The comptroller, after reserving the amount to pay such refunds or reimbursements, shall, on or before the tenth day of each month, pay into the state treasury to the credit of the general fund all revenue deposited under this section during the preceding calendar month and remaining to the comptroller's credit on the last day of such preceding month, (i) except that the comptroller shall pay to the state department of social services that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against past-due support pursuant to subdivision six of section one hundred seventy-one-c of this article, (ii) and except that the

comptroller shall pay to the New York state higher education services corporation and the state university of New York or the city university of New York respectively that amount of overpayments of tax imposed by article twenty-two of this chapter and the interest on such amount which is certified to the comptroller by the commissioner as the amount to be credited against the amount of defaults in repayment of guaranteed student loans and state university loans or city university loans pursuant to subdivision five of section one hundred seventy-one-d and subdivision six of section one hundred seventy-one-e of this article, (iii) and except further that, notwithstanding any law, the comptroller shall credit to the revenue arrearage account, pursuant to section ninety-one-a of the state finance law, that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter, and any interest thereon, which is certified to the comptroller by the commissioner as the amount to be credited against a past-due legally enforceable debt owed to a state agency pursuant to paragraph (a) of subdivision six of section one hundred seventy-one-f of this article, provided, however, he shall credit to the special offset fiduciary account, pursuant to section ninety-one-c of the state finance law, any such amount creditable as a liability as set forth in paragraph (b) of subdivision six of section one hundred seventy-one-f of this article, (iv) and except further that the comptroller shall pay to the city of New York that amount of overpayment of tax imposed by article nine, nine-A, twenty-two, thirty, thirty-A, thirty-B or thirty-three of this chapter and any interest thereon that is certified to the comptroller by the commissioner as the amount to be credited against city of New York tax warrant judgment debt pursuant to section one hundred seventy-one-l of this article, (v) and except further that the comptroller shall pay to a non-obligated spouse that amount of overpayment of tax imposed by article twenty-two of this chapter and the interest on such amount which has been credited pursuant to section one hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one hundred seventy-one-f or one hundred seventy-one-l of this article and which is certified to the comptroller by the commissioner as the amount due such non-obligated spouse pursuant to paragraph six of subsection (b) of section six hundred fifty-one of this chapter; and (vi) the comptroller shall deduct a like amount which the comptroller shall pay into the treasury to the credit of the general fund from amounts subsequently payable to the department of social services, the state university of New York, the city university of New York, or the higher education services corporation, or the revenue arrearage account or special offset fiduciary account pursuant to section ninety-one-a or ninety-one-c of the state finance law, as the case may be, whichever had been credited the amount originally withheld from such overpayment, and (vii) with respect to amounts originally withheld from such overpayment pursuant to section one hundred seventy-one-l of this article and paid to the city of New York, the comptroller shall collect a like amount from the city of New York.

§ 6. Subdivisions 2, 3 and paragraph (a) of subdivision 5 of section 92-z of the state finance law, as amended by section 5 of part MM of chapter 59 of the laws of 2018, are amended to read as follows:

2. Such fund shall consist of (a) fifty percent of receipts from the imposition of personal income taxes pursuant to article twenty-two of the tax law, less such amounts as the commissioner of taxation and finance may determine to be necessary for refunds, [~~and~~] (b) fifty percent of receipts from the imposition of employer compensation expense

taxes pursuant to article twenty-four of the tax law, less such amounts as the commissioner of taxation and finance may determine to be necessary for refunds**, and (c) fifty percent of receipts from the imposition of the pass-through entity taxes pursuant to article twenty-four-A of the tax law, less such amounts as the commission of taxation and finance may determine to be necessary for refunds**.

3. (a) Beginning on the first day of each month, the comptroller shall deposit all of the receipts collected pursuant to section six hundred seventy-one of the tax law in the revenue bond tax fund until the amount of monthly receipts anticipated to be deposited pursuant to the certificate required in paragraph (b) of subdivision five of this section are met. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the state comptroller the amounts specified in paragraph (a) of subdivision two of this section relating to the preceding month and, in addition, no later than March thirty-first of each fiscal year the commissioner of taxation and finance shall certify such amounts relating to the last month of such fiscal year. The amounts so certified shall be deposited by the state comptroller in the revenue bond tax fund.

(b) Beginning on the first day of each month, the comptroller shall deposit all of the receipts collected pursuant to section eight hundred fifty-four of the tax law in the revenue bond tax fund until the amount of monthly receipts anticipated to be deposited pursuant to the certificate required in paragraph (b) of subdivision five of this section are met. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the state comptroller the amounts specified in paragraph (b) of subdivision two of this section relating to the preceding month and, in addition, no later than March thirty-first of each fiscal year the commissioner of taxation and finance shall certify such amounts relating to the last month of such fiscal year. The amounts so certified shall be deposited by the state comptroller in the revenue bond tax fund.

(c) Beginning on the first day of each month, the comptroller shall deposit all of the receipts collected pursuant to sections eight hundred sixty-four and eight hundred sixty-five of the tax law in the revenue bond tax fund until the amount of monthly receipts anticipated to be deposited pursuant to the certificate required in paragraph (b) of subdivision five of this section are met. On or before the twelfth day of each month, the commissioner of taxation and finance shall certify to the state comptroller the amounts specified in paragraph (c) of subdivision two of this section relating to the preceding month and, in addition, no later than March thirty-first of each fiscal year the commissioner of taxation and finance shall certify such amounts relating to the last month of such fiscal year. The amounts so certified shall be deposited by the state comptroller in the revenue bond tax fund.

(a) The state comptroller shall from time to time, but in no event later than the fifteenth day of each month (other than the last month of the fiscal year) and no later than the thirty-first day of the last month of each fiscal year, pay over and distribute to the credit of the general fund of the state treasury all moneys in the revenue bond tax fund, if any, in excess of the aggregate amount required to be set aside for the payment of cash requirements pursuant to paragraph (b) of this subdivision, provided that an appropriation has been made to pay all amounts specified in any certificate or certificates delivered by the director of the budget pursuant to paragraph (b) of this subdivision as being required by each authorized issuer as such term is defined in

section sixty-eight-a of this chapter for the payment of cash requirements of such issuers for such fiscal year. Subject to the rights of holders of debt of the state, in no event shall the state comptroller pay over and distribute any moneys on deposit in the revenue bond tax fund to any person other than an authorized issuer pursuant to such certificate or certificates (i) unless and until the aggregate of all cash requirements certified to the state comptroller as required by such authorized issuers to be set aside pursuant to paragraph (b) of this subdivision for such fiscal year shall have been appropriated to such authorized issuers in accordance with the schedule specified in the certificate or certificates filed by the director of the budget or (ii) if, after having been so certified and appropriated, any payment required to be made pursuant to paragraph (b) of this subdivision has not been made to the authorized issuers which was required to have been made pursuant to such certificate or certificates; provided, however, that no person, including such authorized issuers or the holders of revenue bonds, shall have any lien on moneys on deposit in the revenue bond tax fund. Any agreement entered into pursuant to section sixty-eight-c of this chapter related to any payment authorized by this section shall be executory only to the extent of such revenues available to the state in such fund. Notwithstanding subdivisions two and three of this section, in the event the aggregate of all cash requirements certified to the state comptroller as required by such authorized issuers to be set aside pursuant to paragraph (b) of this subdivision for the fiscal year beginning on April first shall not have been appropriated to such authorized issuers in accordance with the schedule specified in the certificate or certificates filed by the director of the budget or, (ii) if, having been so certified and appropriated, any payment required to be made pursuant to paragraph (b) of this subdivision has not been made pursuant to such certificate or certificates, all receipts collected pursuant to section six hundred seventy-one of the tax law**,** [~~**and**~~] section eight hundred fifty-four of the tax law**, section eight hundred sixty-four of the tax law, and section eight hundred sixty-five of the tax law** shall be deposited in the revenue bond tax fund until the greater of forty percent of the aggregate of the receipts from the imposition of (A) the personal income tax imposed by article twenty-two of the tax law**,** [~~**and**~~] (B) the employer compensation expense tax imposed by article twenty-four of the tax law**, and (C) the pass-through entity tax imposed by article twenty-four-A of the tax law** for the fiscal year beginning on April first and as specified in the certificate or certificates filed by the director of the budget pursuant to this paragraph or a total of twelve billion dollars has been deposited in the revenue bond tax fund. Notwithstanding any other provision of law, if the state has appropriated and paid to the authorized issuers the amounts necessary for the authorized issuers to meet their requirements for the current fiscal year pursuant to the certificate or certificates submitted by the director of the budget pursuant to paragraph (b) of this section, the state comptroller shall, on the last day of each fiscal year, pay to the general fund of the state all sums remaining in the revenue bond tax fund on such date except such amounts as the director of the budget may certify are needed to meet the cash requirements of authorized issuers during the subsequent fiscal year.

§ 7. Subdivision 5 of section 68-c of the state finance law, as amended by section 6 of part MM of chapter 59 of the laws of 2018, is amended to read as follows:

5. Nothing contained in this article shall be deemed to restrict the right of the state to amend, repeal, modify or otherwise alter statutes imposing or relating to the taxes imposed pursuant to article twenty-two, [~~and~~] article twenty-four, and article twenty-four-A of the tax law. The authorized issuers shall not include within any resolution, contract or agreement with holders of the revenue bonds issued under this article any provision which provides that a default occurs as a result of the state exercising its right to amend, repeal, modify or otherwise alter the taxes imposed pursuant to article twenty-two, [~~and~~] article twenty-four, and article twenty-four-A of the tax law.

§ 8. This act shall take effect immediately and shall apply to all taxable years beginning on or after January 1, 2021; provided, however, that the amendments to subdivision 1 of section 171-a of the tax law made by section four of this act shall not affect the expiration and reversion of such subdivision pursuant to chapter 90 of the laws of 2014, as amended, when upon such date the provisions of section five of this act shall take effect.