

STATE OF NEW YORK

7438

2021-2022 Regular Sessions

IN SENATE

October 14, 2021

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the economic development law and the public service law, in relation to limiting the use of fossil fuels in the research or production of energy for purposes of the excelsior jobs program; to amend the economic development law, in relation to prohibiting businesses engaged in the production, transmission, distribution, transportation or storage of fossil fuels from participation in the START-UP NY program; to amend the tax law, in relation to eliminating property that directly produces, transmits, distributes, transports or stores fossil fuels from qualifying tangible property for purposes of the investment tax credit and the Brownfield redevelopment tax credit; to amend the tax law, in relation to tax on sales of motor fuel and petroleum products and to make conforming changes; to amend the tax law, in relation to the definition of qualified rehabilitation expenditures for purposes of the tax credit for rehabilitation of historic properties; to amend the public authorities law, in relation to the definition of a qualified emerging technology company; to amend the tax law, in relation to the definition of manufacturer for purposes of the calculation of special tax benefits for qualified New York manufacturers; to repeal paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law relating to manufacturing gallonage for purposes of the imposition of certain taxes; to repeal subdivisions (i), (j), and (l) of section 301-c of the tax law relating to reimbursement; to repeal section 301-d of the tax law relating to a utility credit or reimbursement; to repeal subdivision (f) of section 301-e of the tax law relating to an aviation fuel business which services four or more cities; to repeal subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law relating to services rendered with respect to certain property; and to repeal paragraph 9 of subdivision (a) of section 1115 of the tax law relating to fuel sold to an airline for use in its airplanes

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

LBD13295-03-1

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Fossil Fuel Subsidy Elimination Act".

3 § 2. Subdivisions 17, 18, 21, and 22 of section 352 of the economic
4 development law, as amended by section 1 of part K of chapter 59 of the
5 laws of 2017, subdivision 18 as separately amended by section 1 of part
6 ZZ of chapter 59 of the laws of 2017, are amended to read as follows:

7 17. "Qualified investment" means an investment in tangible property
8 (including a building or a structural component of a building) owned by
9 a business enterprise which:

10 (a) is depreciable pursuant to section one hundred sixty-seven of the
11 internal revenue code;

12 (b) has a useful life of four years or more;

13 (c) is acquired by purchase as defined in section one hundred seven-
14 ty-nine (d) of the internal revenue code;

15 (d) does not directly produce, transmit, distribute, transport, or
16 store fossil fuels or directly utilize fossil fuels for the production
17 of on-site energy, including thermal energy, for any purpose. For the
18 purposes of this article, fossil fuel shall have the same definition as
19 in section 1-103 of the energy law;

20 (e) has a situs in this state; and

21 ~~[(e)]~~ (f) is placed in service in the state on or after the date the
22 certificate of eligibility is issued to the business enterprise.

23 18. "Regionally significant project" means (a) a manufacturer creating
24 at least ten net new jobs in the state and making significant capital
25 investment in the state; (b) a business creating at least ten net new
26 jobs in agriculture in the state and making significant capital invest-
27 ment in the state, (c) a financial services firm, distribution center,
28 or back office operation creating at least one hundred net new jobs in
29 the state and making significant capital investment in the state, (d) a
30 scientific research and development firm creating at least ten net new
31 jobs in the state, and making significant capital investment in the
32 state, (e) a life sciences company creating at least twenty net new jobs
33 in the state and making significant capital investment in the state or
34 (f) an entertainment company creating or obtaining at least two hundred
35 net new jobs in the state and making significant capital investment in
36 the state. Other businesses creating one hundred fifty or more net new
37 jobs in the state and making significant capital investment in the state
38 may be considered eligible as a regionally significant project by the
39 commissioner as well. A regionally significant project shall not be
40 engaged in the production, transmission, distribution, transportation,
41 storage, sale, purchase, or delivery of fossil fuels. The commissioner
42 shall promulgate regulations pursuant to section three hundred fifty-six
43 of this article to determine what additional criteria a business must
44 meet to be eligible as a regionally significant project, including, but
45 not limited to, whether a business exports a substantial portion of its
46 products or services outside of the state or outside of a metropolitan
47 statistical area or county within the state.

48 21. "Research and development expenditures" mean the expenses of the
49 business enterprise that are qualified research expenses under the
50 federal research and development credit under section forty-one of the
51 internal revenue code and are attributable to activities conducted in
52 the state. If the federal research and development credit has expired,
53 then the research and development expenditures shall be calculated as if

the federal research and development credit structure and definition in effect in federal tax year two thousand nine were still in effect. Research and development expenditures does not include any expenses for tangible personal property that directly produces, transmits, distributes, transports, or stores fossil fuels or directly utilizes fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

22. "Scientific research and development" means conducting research and experimental development in the physical, engineering, and life sciences, including but not limited to agriculture, electronics, environmental, biology, botany, biotechnology, computers, chemistry, food, fisheries, forests, geology, health, mathematics, medicine, oceanography, pharmacy, physics, veterinary, and other allied subjects. For the purposes of this article, scientific research and development does not include medical or veterinary laboratory testing facilities, or any research that contributes to the production, transmission, distribution, transportation, storage, sale, purchase, or delivery of fossil fuels.

§ 3. Subdivision 7 of section 355 of the economic development law, as added by section 4 of part G of chapter 61 of the laws of 2011, is amended to read as follows:

7. For availability of special excelsior jobs program rates governing the provision of ~~[gas or]~~ electric service, see subdivision twelve-d of section sixty-six of the public service law. Such special excelsior jobs program rates may remain available to participants as defined in this article for a period of up to ten years commencing in the first taxable year that the participant receives a certificate of tax credit, or the first taxable year listed on its preliminary schedule of benefits, whichever is later. Provided however, if a participant is removed from the excelsior jobs program pursuant to this article, the excelsior jobs program rates may be denied.

§ 4. Subdivision 12-d of section 66 of the public service law, as added by section 8 of part G of chapter 61 of the laws of 2011, is amended to read as follows:

12-d. Notwithstanding any other provision of law, upon application of ~~[a gas or]~~ an electric corporation, the commission shall authorize such corporation to charge a special excelsior jobs program rate equal to the incremental cost of providing electric service to participants in the excelsior jobs program as defined in article seventeen of the economic development law.

§ 5. Subdivision 2 of section 433 of the economic development law, as added by section 1 of part A of chapter 68 of the laws of 2013, is amended to read as follows:

2. The following types of businesses are prohibited from participating in the START-UP NY program.

- (a) retail and wholesale businesses;
- (b) restaurants;
- (c) real estate brokers;
- (d) law firms;
- (e) medical or dental practices;
- (f) real estate management companies;
- (g) hospitality;
- (h) finance and financial services;
- (i) businesses providing personal services;
- (j) businesses providing business administrative or support services, unless such business has received permission from the commissioner to apply to participate in the START-UP NY program upon demonstration that

1 the business would create no fewer than one hundred net new jobs in the
2 tax-free NY area;

3 (k) accounting firms;

4 (l) businesses providing utilities; ~~[and]~~

5 (m) businesses engaged in the generation or distribution of electric-
6 ity, the distribution of natural gas, or the production of steam associ-
7 ated with the generation of electricity; and

8 (n) businesses engaged in the production, transmission, distribution,
9 transportation, or storage of fossil fuels as defined in section 1-103
10 of the energy law.

11 § 6. Subparagraph (i) of paragraph (b) of subdivision 1 of section
12 210-B of the tax law, as amended by section 2 of part P of chapter 59 of
13 the laws of 2017, is amended to read as follows:

14 (i) A credit shall be allowed under this subdivision with respect to
15 tangible personal property and other tangible property, including build-
16 ings and structural components of buildings, which are: depreciable
17 pursuant to section one hundred sixty-seven of the internal revenue
18 code, have a useful life of four years or more, are acquired by purchase
19 as defined in section one hundred seventy-nine (d) of the internal
20 revenue code, have a situs in this state and are (A) principally used by
21 the taxpayer in the production of goods by manufacturing, processing,
22 assembling, refining, mining, extracting, farming, agriculture, horti-
23 culture, floriculture, viticulture or commercial fishing, (B) industrial
24 waste treatment facilities or air pollution control facilities, used in
25 the taxpayer's trade or business, (C) research and development property,
26 or (D) principally used in the ordinary course of the taxpayer's trade
27 or business as a broker or dealer in connection with the purchase or
28 sale (which shall include but not be limited to the issuance, entering
29 into, assumption, offset, assignment, termination, or transfer) of
30 stocks, bonds or other securities as defined in section four hundred
31 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as
32 defined in section four hundred seventy-five (e) of the Internal Revenue
33 Code, (E) principally used in the ordinary course of the taxpayer's
34 trade or business of providing investment advisory services for a regu-
35 lated investment company as defined in section eight hundred fifty-one
36 of the Internal Revenue Code, or lending, loan arrangement or loan orig-
37 ination services to customers in connection with the purchase or sale
38 (which shall include but not be limited to the issuance, entering into,
39 assumption, offset, assignment, termination, or transfer) of securities
40 as defined in section four hundred seventy-five (c)(2) of the Internal
41 Revenue Code, (F) principally used in the ordinary course of the taxpay-
42 er's business as an exchange registered as a national securities
43 exchange within the meaning of sections 3(a)(1) and 6(a) of the Securi-
44 ties Exchange Act of 1934 or a board of trade as defined in subparagraph
45 one of paragraph (a) of section fourteen hundred ten of the not-for-pro-
46 fit corporation law or as an entity that is wholly owned by one or more
47 such national securities exchanges or boards of trade and that provides
48 automation or technical services thereto, or (G) principally used as a
49 qualified film production facility including qualified film production
50 facilities having a situs in an empire zone designated as such pursuant
51 to article eighteen-B of the general municipal law, where the taxpayer
52 is providing three or more services to any qualified film production
53 company using the facility, including such services as a studio lighting
54 grid, lighting and grip equipment, multi-line phone service, broadband
55 information technology access, industrial scale electrical capacity,
56 food services, security services, and heating, ventilation and air

conditioning. For purposes of clauses (D), (E) and (F) of this subparagraph, property purchased by a taxpayer affiliated with a regulated broker, dealer, registered investment advisor, national securities exchange or board of trade, is allowed a credit under this subdivision if the property is used by its affiliated regulated broker, dealer, registered investment advisor, national securities exchange or board of trade in accordance with this subdivision. For purposes of determining if the property is principally used in qualifying uses, the uses by the taxpayer described in clauses (D) and (E) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment advisor under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (D), (E) and (F) of this subparagraph unless the property is first placed in service before October first, two thousand fifteen and (i) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state or (ii) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (iii) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For purposes of clause (iii) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment advisor using the property. For purposes of clause (A) of this subparagraph, tangible personal property and other tangible property shall not include property principally used by the taxpayer in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains. For purposes of this subdivision, tangible personal property and other tangible property does not include property that directly produces, transmits, distributes, transports, or stores fossil fuels as defined in section 1-103 of the energy law, or directly utilizes fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 7. Subdivision (m) of section 301-a of the tax law, as added by section 20 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(m) Special rate adjustment for certain vessels. Notwithstanding any provision of this section to the contrary, the use of non-highway diesel motor fuel in the engine of a vessel to propel such vessel shall be subject to tax at the motor fuel and highway diesel motor fuel rate provided for in this section, and shall be subject to the provisions of section three hundred one-j of this article, including the adjustment set forth in paragraph ~~four~~ **three** of subdivision (a) of such section three hundred one-j. A credit or refund shall be available to the extent tax paid on gallorage used to propel any such vessel exceeds the amount of tax due based on the tax rate set forth herein. Provided, however, that the commissioner shall require such documentary proof to qualify for any credit or reimbursement provided hereunder as the commissioner deems appropriate.

§ 8. Paragraph 3 of subdivision (f) and paragraph 4 of subdivision (g) of section 301-a of the tax law are REPEALED.

§ 9. Subdivisions (a) and (d) of section 301-b of the tax law, subdivision (a) as added by chapter 190 of the laws of 1990, paragraph 5 of subdivision (a) as amended by section 3 of part E of chapter 59 of the laws of 2012, paragraphs 6, 7 and 8 of subdivision (a) as added by section 4 of part W-1 of chapter 109 of the laws of 2006, and subdivision (d) as amended by section 21 of part K of chapter 61 of the laws of 2011, are amended to read as follows:

(a) Products. (1) ~~[Kerosene sold or used by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel so long as (i) such product has not been blended or mixed with any other product constituting diesel motor fuel or motor fuel or a residual petroleum product and (ii) such product is not used by the petroleum business as fuel to operate a motor vehicle or sold by such petroleum business to a consumer for use as fuel to operate a motor vehicle.]~~

~~(2) Kero-jet fuel (i) sold by a petroleum business which is registered under article twelve-A of this chapter as a distributor of diesel motor fuel to a consumer for use exclusively as jet aircraft fuel or to a petroleum business registered under such article twelve-A as a "distributor of kero-jet fuel only" where such fixed base operator is engaged solely in making or offering to make retail sales not in bulk of kero-jet fuel directly into the fuel tank of an airplane for the purpose of operating such airplane, (ii) used by a petroleum business, registered under article twelve-A of this chapter as a distributor of diesel motor fuel, exclusively as jet aircraft fuel, or (iii) sold at retail not in bulk by a petroleum business registered under article twelve-A of this chapter as a "distributor of kero-jet fuel only" where such fuel is delivered directly into the fuel tank of a jet airplane for use in the operation of such airplane.~~

~~(3)]~~ Aviation gasoline, meeting the specifications set forth in American Standard Testing Material Specification D910 or Military Specification MIL-G-5572, which is imported or caused to be imported into this state by a petroleum business which is registered under article twelve-A of this chapter as a distributor of motor fuel or produced, refined, manufactured or compounded in this state by such a petroleum business.

~~[(4) Residual petroleum product sold by a petroleum business registered under this article as a residual petroleum product business if such product is sold by such petroleum business to a consumer for use exclusively as bunker fuel for vessels or if such product is used by such petroleum business exclusively as bunker fuel in its own vessels.]~~

~~(5) Liquefied petroleum gases, such as butane, ethane or propane.~~

1 ~~(6)~~ (2) E85 imported or caused to be imported into this state or
2 produced, refined, manufactured or compounded in this state by a petro-
3 leum business registered under article twelve-A of this chapter, as a
4 distributor of motor fuel, and then sold by such petroleum business and
5 delivered to a filling station and placed in a storage tank of such
6 filling station for such E85 to be dispensed directly into a motor vehi-
7 cle for use in the operation of such vehicle.

8 ~~(7)~~ (i) Partial B20 exemption. B20 imported or caused to be imported
9 into this state or produced, refined, manufactured or compounded in this
10 state by a petroleum business registered under article twelve-A of this
11 chapter, as a distributor of diesel motor fuel, and then sold by such
12 petroleum business.

13 (ii) Calculation of partial exemption. The amount of the partial
14 exemption under this paragraph shall be determined by multiplying the
15 quantity of B20 times twenty percent of the applicable taxes otherwise
16 imposed by this article on such fuel.

17 ~~(8)~~ (3) CNG or hydrogen.

18 (d) Sales to consumers for heating purposes. ~~(1)~~ Total residential
19 heating exemption. Non-highway diesel motor fuel sold by a petroleum
20 business registered under article twelve-A of this chapter as a distrib-
21 utor of diesel motor fuel or residual petroleum product sold by a petro-
22 leum business registered under this article as a residual petroleum
23 product business to the consumer exclusively for residential heating
24 purposes only if such non-highway diesel motor fuel is delivered into a
25 storage tank which is not equipped with a hose or other apparatus by
26 which such fuel can be dispensed into the fuel tank of a motor vehicle
27 and such storage tank is attached to the heating unit burning such fuel.

28 ~~[(2) Partial non-residential heating exemption. (A) Non-highway diesel
29 motor fuel sold by a petroleum business registered under article
30 twelve-A of this chapter as a distributor of diesel motor fuel or resi-
31 dual petroleum product sold by a petroleum business registered under
32 this article as a residual petroleum product business to the consumer
33 exclusively for heating, other than residential heating purposes only if
34 such non-highway diesel motor fuel is delivered into a storage tank
35 which is not equipped with a hose or other apparatus by which such fuel
36 can be dispensed into the fuel tank of a motor vehicle and such storage
37 tank is attached to the heating unit burning such fuel (B) Calculation
38 of partial exemption. The partial exemption under this paragraph shall
39 be determined by multiplying the quantity of non-highway diesel motor
40 fuel and residual petroleum product eligible for the exemption times the
41 sum of the then current rate of the supplemental tax imposed by section
42 three hundred one-j of this article and forty six percent of the then
43 current rate of the tax imposed by section three hundred one-a of this
44 article, with respect to the specific non-highway diesel motor fuel or
45 residual petroleum product rate, as the case may be.]~~

46 § 10. The opening paragraph and paragraph 1 of subdivision (c) of
47 section 301-b of the tax law, as added by chapter 190 of the laws of
48 1990, are amended to read as follows:

49 Sales to ~~[New York state and]~~ the federal government. (1) Motor fuel
50 imported or caused to be imported into this state or produced, refined,
51 manufactured or compounded in this state by a petroleum business regis-
52 tered under article twelve-A of this chapter, as a distributor of motor
53 fuel, and then sold by such petroleum business to an organization
54 described in paragraph ~~[one or]~~ two of subdivision (a) of section eleven
55 hundred sixteen of this chapter where such motor fuel is used by such
56 organization for its own use or consumption.

§ 11. The opening paragraph and subdivisions (a) and (b) of section 301-c of the tax law, the opening paragraph as amended by section 5 of part W-1 of chapter 109 of the laws of 2006, subdivision (a) as amended by section 23 of part K of chapter 61 of the laws of 2011, and subdivision (b) as amended by chapter 330 of the laws of 1991, are amended to read as follows:

A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h), [~~(j)~~, ~~(k)~~, ~~(n)~~ or ~~(e)~~] (i), (k) or (l) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g)[~~, (i), (l)~~] or [~~(m)~~] (j) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

(a) [~~Non-highway Diesel motor fuel used for heating purposes. (1)~~] Total residential heating reimbursement. Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for residential heating purposes but only where (i) such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner is authorized, in the event that the commissioner determines that it would not threaten the integrity of the administration and enforcement of the tax imposed by this article, to provide a reimbursement with respect to a retail sale to a consumer for residential heating purposes of less than ten gallons of non-highway diesel motor fuel provided such fuel is not dispensed into the tank of a motor vehicle.

~~[(2) Partial non-residential heating reimbursement. (A) Non-highway Diesel motor fuel purchased in this state and sold by such purchaser to a consumer for use exclusively for heating, other than for residential heating purposes, but only where (i) such non-highway diesel motor fuel is delivered into a storage tank which is not equipped with a hose or other apparatus by which such non-highway Diesel motor fuel can be dispensed into the fuel tank of a motor vehicle and such storage tank is attached to the heating unit burning such non-highway Diesel motor fuel, (ii) the tax imposed pursuant to this article has been paid with respect to such non-highway diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser, and (iii) such purchaser possesses documentary proof satisfactory to the commissioner evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article.~~

~~(B) Calculation of partial reimbursement. Notwithstanding any other provision of this article, the amount of the reimbursement under this paragraph shall be determined by multiplying the quantity of non-highway diesel motor fuel eligible for the reimbursement times the sum of the then current rate of the supplemental tax imposed by section three hundred one-j of this article and forty-six percent of the then current rate of the tax imposed by section three hundred one-a of this article, with respect to the non-highway diesel motor fuel rate, as the case may be.]~~

(b) Sales to ~~[New York state and]~~ the federal government. Motor fuel and diesel motor fuel purchased in this state and sold by such purchaser in this state to an organization described in paragraph ~~[one or]~~ two of subdivision (a) of section eleven hundred sixteen of this chapter where (i) such motor fuel or diesel motor fuel is for such organization's own use or consumption, (ii) the tax imposed pursuant to this article has been paid with respect to such motor fuel or diesel motor fuel and the entire amount of such tax has been absorbed by such purchaser and, (iii) such purchaser possesses documentary proof satisfactory to the commissioner of taxation and finance evidencing the absorption by it of the entire amount of the tax imposed pursuant to this article. Provided, however, that the commissioner ~~[of taxation and finance]~~ shall require such documentary proof to qualify for any reimbursement of tax provided by this section as the commissioner deems appropriate, including the expansion of any certification required pursuant to section two hundred eighty-five-a or two hundred eighty-five-b of this chapter to cover the taxes imposed pursuant to this article.

§ 11-a. The opening paragraph of section 301-c of the tax law, as amended by chapter 468 of the laws of 2000, is amended to read as follows:

A subsequent purchaser shall be eligible for reimbursement of tax with respect to the following gallonage, subsequently sold by such purchaser in accordance with subdivision (a), (b), (e), (h) ~~[, (j)]~~ or ~~[(k)]~~ (i) of this section or used by such purchaser in accordance with subdivision (c), (d), (f), (g) ~~[, (i), (l)]~~ or ~~[(m)]~~ (j) of this section, which gallonage has been included in the measure of the tax imposed by this article on a petroleum business:

§ 12. Subdivisions (i), (j) and (l) of section 301-c of the tax law are REPEALED.

§ 13. Subdivisions (k), (m), (n), (o) and (p) of section 301-c of the tax law are relettered subdivisions (i), (j), (k), (l) and (m).

§ 14. Section 301-d of the tax law is REPEALED.

§ 15. Subdivision (f) of section 301-e is REPEALED.

§ 16. Subdivision (a) of section 301-j of the tax law, as amended by chapter 309 of the laws of 1996, paragraphs 1, 2, 3 and 4 as amended by section 29 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(a) Imposition of tax. (1) In addition to the taxes imposed by sections three hundred one-a and three hundred one-e of this article, there is hereby imposed upon every petroleum business subject to tax imposed under section three hundred one-a of this article and every aviation fuel business subject to the aviation gasoline component of the tax imposed under section three hundred one-e of this article, a supplemental monthly tax for each or any part of a taxable month at a rate of six and eight-tenths cents per gallon with respect to the products included in each component of the taxes imposed by such section three hundred one-a and the aviation gasoline component of the tax imposed by such section three hundred one-e of this article.

(2) ~~[(3)]~~ ~~[Provided, however, "commercial gallonage," as such term is defined in subdivision (k) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.~~

~~(3)]~~ Provided, further, "railroad diesel," as such term is defined in subdivision (l) of section three hundred of this article, shall be exempt from the measure of the tax imposed under this section.

~~[(4)]~~ (3) Provided, further, a separate per gallon rate shall apply with respect to highway diesel motor fuel. Such rate shall be determined

1 by taking the adjusted rate per gallon of tax imposed under paragraph
2 one of this subdivision as adjusted in accordance with paragraph ~~[five]~~
3 four of this subdivision and subtracting therefrom one and three-quar-
4 ters cents. Commencing January first, two thousand twelve, and each
5 January thereafter, the per gallon rate applicable to highway diesel
6 motor fuel shall be the adjusted rate under paragraph one of this subdivi-
7 sion as adjusted in accordance with paragraph ~~[five]~~ four of this
8 subdivision which commences on such date minus one and three-quarters
9 cents. The resulting rate under this paragraph shall be expressed in
10 hundredths of a cent.

11 ~~[(5)]~~ (4) Except as herein provided, the tax imposed under this
12 section shall be calculated in the same respective manner as the taxes
13 imposed by section three hundred one-a and section three hundred one-e
14 of this article. Except ~~[for section three hundred one-d and except]~~ as
15 otherwise provided in this section, all the provisions of this article
16 applicable to the taxes imposed by sections three hundred one-a and
17 three hundred one-e of this article, shall apply with respect to the
18 supplemental tax imposed by this section to the same extent as if it
19 were respectively imposed by such sections.

20 § 17. Subparagraph (A) of paragraph 2 of subsection (a) of section 606
21 of the tax law, as amended by section 3 of part P of chapter 59 of the
22 laws of 2017, is amended to read as follows:

23 (A) A credit shall be allowed under this subsection with respect to
24 tangible personal property and other tangible property, including build-
25 ings and structural components of buildings, which are: depreciable
26 pursuant to section one hundred sixty-seven of the internal revenue
27 code, have a useful life of four years or more, are acquired by purchase
28 as defined in section one hundred seventy-nine (d) of the internal
29 revenue code, have a situs in this state and are (i) principally used by
30 the taxpayer in the production of goods by manufacturing, processing,
31 assembling, refining, mining, extracting, farming, agriculture, horti-
32 culture, floriculture, viticulture or commercial fishing, (ii) indus-
33 trial waste treatment facilities or air pollution control facilities,
34 used in the taxpayer's trade or business, (iii) research and development
35 property, (iv) principally used in the ordinary course of the taxpayer's
36 trade or business as a broker or dealer in connection with the purchase
37 or sale (which shall include but not be limited to the issuance, enter-
38 ing into, assumption, offset, assignment, termination, or transfer) of
39 stocks, bonds or other securities as defined in section four hundred
40 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as
41 defined in section 475(e) of the Internal Revenue Code, (v) principally
42 used in the ordinary course of the taxpayer's trade or business of
43 providing investment advisory services for a regulated investment compa-
44 ny as defined in section eight hundred fifty-one of the Internal Revenue
45 Code, or lending, loan arrangement or loan origination services to
46 customers in connection with the purchase or sale (which shall include
47 but not be limited to the issuance, entering into, assumption, offset,
48 assignment, termination, or transfer) of securities as defined in
49 section four hundred seventy-five (c)(2) of the Internal Revenue Code,
50 or (vi) principally used as a qualified film production facility includ-
51 ing qualified film production facilities having a situs in an empire
52 zone designated as such pursuant to article eighteen-B of the general
53 municipal law, where the taxpayer is providing three or more services to
54 any qualified film production company using the facility, including such
55 services as a studio lighting grid, lighting and grip equipment, multi-
56 line phone service, broadband information technology access, industrial

scale electrical capacity, food services, security services, and heating, ventilation and air conditioning. For purposes of clauses (iv) and (v) of this subparagraph, 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 clauses (iv) and (v) of this subparagraph may be aggregated. In addition, the uses by the taxpayer, its affiliated regulated broker, dealer and registered investment adviser under either or both of those clauses may be aggregated. Provided, however, a taxpayer shall not be allowed the credit provided by clauses (iv) and (v) of this subparagraph unless (I) eighty percent or more of the employees performing the administrative and support functions resulting from or related to the qualifying uses of such equipment are located in this state, or (II) the average number of employees that perform the administrative and support functions resulting from or related to the qualifying uses of such equipment and are located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety-five percent of the average number of employees that perform these functions and are located in this state during the thirty-six months immediately preceding the year for which the credit is claimed, or (III) the number of employees located in this state during the taxable year for which the credit is claimed is equal to or greater than ninety percent of the number of employees located in this state on December thirty-first, nineteen hundred ninety-eight or, if the taxpayer was not a calendar year taxpayer in nineteen hundred ninety-eight, the last day of its first taxable year ending after December thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes subject to tax in this state after the taxable year beginning in nineteen hundred ninety-eight, then the taxpayer is not required to satisfy the employment test provided in the preceding sentence of this subparagraph for its first taxable year. For the purposes of clause (III) of this subparagraph the employment test will be based on the number of employees located in this state on the last day of the first taxable year the taxpayer is subject to tax in this state. If the uses of the property must be aggregated to determine whether the property is principally used in qualifying uses, then either each affiliate using the property must satisfy this employment test or this employment test must be satisfied through the aggregation of the employees of the taxpayer, its affiliated regulated broker, dealer, and registered investment adviser using the property. For purposes of clause (i) of this subparagraph, tangible personal property and other tangible property shall not include property principally used by the taxpayer in the production or distribution of electricity, natural gas after extraction from wells, steam, or water delivered through pipes and mains. For purposes of this subsection, tangible personal property and other tangible property does not include property that directly produces, transmits, distributes, transports, or stores fossil fuels as defined in section 1-103 of the energy law, or directly utilizes fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 18. Paragraph 3 of subdivision (b) of section 21 of the tax law, as amended by chapter 420 of the laws of 2006, clause (i) of subparagraph (B) as amended by section 22 of part BB of chapter 56 of the laws of 2015, is amended to read as follows:

(3) Qualified tangible property. "Qualified tangible property" is property described in either subparagraph (A) or (B) and subparagraph (C) of this paragraph which:

(A) (i) is depreciable pursuant to section one hundred sixty-seven of the internal revenue code,

(ii) has a useful life of four years or more,

(iii) has been acquired by purchase as defined in section one hundred seventy-nine (d) of the internal revenue code,

(iv) has a situs on a qualified site in this state, and

(v) is principally used by the taxpayer for industrial, commercial, recreational or environmental conservation purposes (including the commercial development of residential housing); or

(B) (i) is, or when occupied becomes, part of a dwelling whose primary ownership structure is covered under either article nine-B of the real property law or meets the requirements of section 216 (b)(1) of the Internal Revenue Code or is part of an affordable housing project as defined in subdivision twenty-nine of section 27-1405 of the environmental conservation law, where units are sold as single family homes or multiple family dwellings;

(ii) has been acquired by purchase (as defined in section one hundred seventy-nine (d) of the Internal Revenue Code);

(iii) has a situs on a qualified site in this state; and

(iv) for purposes of this subparagraph only, and notwithstanding any other section of law to the contrary, property qualifying under this subparagraph shall be deemed to be qualified tangible property for the purposes of paragraph one of subdivision (d) of this section; and in addition, for the purposes of this subdivision only, property qualifying under this subparagraph shall be deemed to have been placed in service for the purposes of paragraph three of subdivision (a) of this section when a certificate of occupancy is issued for such property; and

(C) does not directly produce, transmit, distribute, transport, or store fossil fuels as defined in section 1-103 of the energy law, or directly utilize fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 19. Subdivision 26 of section 210-B of the tax law is amended by adding a new paragraph (g) to read as follows:

(g) For purposes of this subdivision, "qualified rehabilitation expenditures" does not include expenditures for property that directly produces, transmits, distributes, transports, or stores fossil fuels as defined in section 1-103 of the energy law, or directly utilizes fossil fuels for the production of on-site energy, including thermal energy, for any purpose.

§ 20. Subparagraphs (ix) and (x) of paragraph 3 and paragraph 5 of subdivision (c) of section 1105 of the tax law, subparagraph (ix) of paragraph 3 as added by chapter 395 of the laws of 1998, subparagraph (x) of paragraph 3 as added by section 1 of part FF of chapter 407 of the laws of 1999, and paragraph 5 as amended by chapter 321 of the laws of 2005, are amended to read as follows:

(ix) ~~[such services rendered with respect to tangible property used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting.~~

~~(x)~~ such services rendered with respect to property described in paragraph twelve-a of subdivision (a) of section eleven hundred fifteen of this article.

(5) Maintaining, servicing or repairing real property, property or land, as such terms are defined in the real property tax law, whether the services are performed in or outside of a building, as distinguished from adding to or improving such real property, property or land, by a capital improvement as such term capital improvement is defined in paragraph nine of subdivision (b) of section eleven hundred one of this article, but excluding (i) services rendered by an individual who is not in a regular trade or business offering his services to the public, (ii) ~~[services rendered directly with respect to real property, property or land used or consumed directly and predominantly in the production for sale of gas or oil by manufacturing, processing, generating, assembling, refining, mining, or extracting, (iii)]~~ services rendered with respect to real property, property or land used or consumed predominantly either in the production of tangible personal property, for sale, by farming or in a commercial horse boarding operation, or in both and ~~[(iv)]~~ (iii) services of removal of waste material from a facility regulated as a transfer station or construction and demolition debris processing facility by the department of environmental conservation, provided that the waste material to be removed was not generated by the facility.

§ 21. Subparagraph (xi) of paragraph 3 of subdivision (c) of section 1105 of the tax law is REPEALED.

§ 22. Paragraph 9 of subdivision (a) of section 1115 of the tax law is REPEALED.

§ 23. Paragraph (ii) of subdivision (b) of section 1115 of the tax law, as amended by section 30 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(ii) ~~[Gas, electricity]~~ Electricity, refrigeration and steam, and ~~[gas,]~~ electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in research and development in the experimental or laboratory sense shall be exempt from the tax imposed under subdivision (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article. Such research and development shall not be deemed to include the ordinary testing or inspection of materials or products for quality control, efficiency surveys, management studies, consumer surveys, advertising, promotions or research in connection with literary, historical or similar projects.

§ 24. Paragraph 1 of subdivision (c) of section 1115 of the tax law, as amended by section 7 of part B of chapter 63 of the laws of 2000, is amended to read as follows:

(1) ~~[Fuel, gas, electricity]~~ Electricity, refrigeration and steam, and ~~[gas,]~~ electric, refrigeration and steam service of whatever nature for use or consumption directly and exclusively in the production of tangible personal property, ~~[gas,]~~ electricity, refrigeration or steam, for sale, by manufacturing, processing, assembling, generating, refining, mining or extracting shall be exempt from the taxes imposed under subdivisions (a) and (b) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten of this article.

§ 25. Subdivision (j) of section 1115 of the tax law, as amended by section 41 of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel, ~~[-except]~~

~~that the exemptions provided in paragraphs nine and forty two of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel,~~

CNG, hydrogen and E85, provided, however, the exemption allowed for E85 shall be subject to the additional requirements provided in section eleven hundred two of this article with respect to E85. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

§ 25-a. Subdivision (j) of section 1115 of the tax law, as amended by section 41-a of part K of chapter 61 of the laws of 2011, is amended to read as follows:

(j) The exemptions provided in this section shall not apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article nor to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to receipts from sales and uses of motor fuel or diesel motor fuel~~[, except that the exemption provided in paragraph nine of subdivision (a) of this section shall apply to the tax required to be prepaid pursuant to the provisions of section eleven hundred two of this article and to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article with respect to sales and uses of kero-jet fuel]~~. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel but only if all of such fuel is consumed other than on the public highways of this state. The exemption provided in subdivision (c) of this section shall apply to sales and uses of non-highway diesel motor fuel for use or consumption either in the production for sale of tangible personal property by farming or in a commercial horse boarding operation, or in both but only if all of such fuel is consumed other than on the public highways of this state (except for the use of the public highways to reach adjacent farmlands or adjacent lands used in a commercial horse boarding operation, or both).

§ 26. Subdivision (s) of section 1115 of the tax law, as added by chapter 201 of the laws of 1995, is relettered subdivision (p).

§ 27. Subdivision (w) of section 1115 of the tax law, as added by section 32 of part Y of chapter 63 of the laws of 2000, is amended to read as follows:

(w) Receipts from the sale of ~~[gas or]~~ electricity or ~~[gas or]~~ electric service of whatever nature and consideration given or contracted to be given for, or for the use of, ~~[gas or]~~ electricity or ~~[gas or]~~ electric service of whatever nature purchased for use or consumption directly and exclusively to provide ~~[gas or]~~ electric service of whatever nature consisting of operating ~~[a gas pipeline or gas distribution line or]~~ an electric transmission or distribution line ~~[and ensuring the necessary working pressure in an underground gas storage facility]~~ shall

1 be exempt from sales and compensating use taxes imposed by this article.
2 Such exempt ~~[gas-or]~~ electricity or ~~[gas-or]~~ electric service of whatever
3 nature shall include, but shall not be limited to, such ~~[gas-or]~~
4 electricity or ~~[gas-or]~~ electric service of whatever nature used or
5 consumed directly and exclusively to (1) ~~[ensure necessary working pressure in a gas pipeline used to transport, transmit or distribute gas,~~
6 ~~(2) operate compressors used to transport, transmit or distribute gas~~
7 ~~through such a gas pipeline or distribution line or used to ensure~~
8 ~~necessary working pressure in such a storage facility, (3) operate heaters~~
9 ~~to prevent gas in such a pipeline or distribution line from freezing,~~
10 ~~(4) operate equipment which removes impurities and moisture from~~
11 ~~gas in such a pipeline or distribution line, (5)]~~ operate substations
12 and equipment related to electric transmission and distribution lines
13 such as transformers, capacitors, meters, switches, communication
14 devices and heating and cooling equipment, and ~~[(6)]~~ (2) ensure the
15 reliability of electricity or electric service transmitted or distributed
16 through such lines, for example, by operating reserve capacity
17 machinery and equipment.

18
19 § 28. Subdivision (k) of section 300 of the tax law, as amended by
20 section 17 of part K of chapter 61 of the laws of 2011, is amended to
21 read as follows:

22 (k) "Commercial gallonage" means gallonage (1) which is non-highway
23 diesel motor fuel or residual petroleum product, (2) ~~[which is included~~
24 ~~in the full measure of the non-highway diesel motor fuel component or~~
25 ~~the residual petroleum product component of the tax imposed under~~
26 ~~section three hundred one-a of this article, (3)]~~ which does not (and
27 will not) qualify (A) ~~[for the utility credit or reimbursement provided~~
28 ~~for in section three hundred one-d of this article, (B)]~~ as "manufacturing
29 gallonage", as such term is defined in subdivision (m) of this
30 section, ~~[(C)]~~ or (B) for the not-for-profit organization exemption
31 provided for in subdivision (h) of section three hundred one-b of this
32 article, ~~[or (D) for the heating exemption provided for in paragraph two~~
33 ~~of subdivision (d) of section three hundred one-b of this article or the~~
34 ~~heating reimbursement provided for in paragraph two of subdivision (a)~~
35 ~~of section three hundred one-c of this article,]~~ and ~~[(4)]~~ (3) which
36 will not be used nor has been used in the fuel tank connecting with the
37 engine of a vessel. No gallonage shall qualify as "commercial gallonage"
38 where such gallonage is eligible for the ~~[(i) utility credit or~~
39 ~~reimbursement under such section three hundred one-d of this article,~~
40 ~~(ii) "manufacturing exemption" under paragraph three of subdivision (f)~~
41 ~~of section three hundred one-a of this article, (iii)]~~ not-for-profit
42 organization exemption under subdivision (h) of section three hundred
43 one-b of this article~~[, or (iv) heating exemption provided for in paragraph~~
44 ~~two of subdivision (d) of section three hundred one-b of this~~
45 ~~article or the heating reimbursement provided for in paragraph two of~~
46 ~~subdivision (a) of section three hundred one-c of this article]~~. The
47 commissioner shall require such documentary proof to substantiate the
48 classification of product as "commercial gallonage" as the commissioner
49 deems appropriate.

50 § 29. Paragraph 1 of subdivision (f) of section 301-b of the tax law,
51 as amended by section 21 of part K of chapter 61 of the laws of 2011, is
52 amended to read as follows:

53 (1) Residual petroleum product and non-highway diesel motor fuel sold
54 to an electric corporation, ~~[as described in subdivision (a) of section~~
55 ~~three hundred one-d of this article,]~~ as defined in subdivision thirteen
56 of section two of the public service law, subject to the supervision of

1 the department of public service, which is registered with the depart-
2 ment as a petroleum business tax direct pay permittee, and used by such
3 electric corporation to fuel generators for the purpose of manufacturing
4 or producing electricity where such electric corporation provides a copy
5 of a direct pay permit authorized and issued by the commissioner, to the
6 petroleum business making such sale. If so registered, such corporation
7 shall be a taxpayer under this article and (i) such electric corporation
8 shall file a return monthly and pay the applicable tax under this arti-
9 cle, after the application of allowable credits, on all such purchases
10 directly to the commissioner, (ii) such electric corporation shall be
11 subject to all of the provisions of this article relating to the respon-
12 sibilities and liabilities of taxpayers under this article with respect
13 to such residual petroleum product and non-highway diesel motor fuel.

14 § 30. Subdivision (y) of section 1511 of the tax law, as added by
15 chapter 472 of the laws of 2010, is amended by adding a new paragraph 7
16 to read as follows:

17 (7) For purposes of this subsection, "qualified rehabilitation expend-
18 itures" does not include expenditures for property that directly produc-
19 es, transmits, distributes, transports, or stores fossil fuels as
20 defined in section 1-103 of the energy law, or directly utilizes fossil
21 fuels for the production of on-site energy, including thermal energy,
22 for any purpose.

23 § 31. Paragraph (c) of subdivision 1 of section 3102-e of the public
24 authorities law, as added by section 31 of part A of chapter 56 of the
25 laws of 1998, is amended to read as follows:

26 (c) "Qualified emerging technology company" shall mean a company
27 located in New York state: (1) whose primary products or services are
28 classified as emerging technologies and whose total annual product sales
29 are ten million dollars or less; or (2) a company which has research and
30 development activities in New York state and whose ratio of research and
31 development funds to net sales equals or exceeds the average ratio for
32 all surveyed companies classified as determined by the National Science
33 Foundation in the most recent published results from its Survey of
34 Industry Research and Development, or any comparable successor survey as
35 determined by the department, and whose total annual product sales are
36 ten million dollars or less. Qualified emerging technology company shall
37 not include a company engaged in the production, transmission, distrib-
38 ution, transportation, or storage of fossil fuels as defined in section
39 1-103 of the energy law.

40 The definition of "research and development funds" shall be the same
41 as that used by the National Science Foundation in the aforementioned
42 survey.

43 § 32. Subparagraph (vi) of paragraph (a) of subdivision 1 of section
44 210 of the tax law, as amended by section 1 of part D of chapter 59 of
45 the laws of 2019, is amended to read as follows:

46 (vi) for taxable years beginning on or after January first, two thou-
47 sand fourteen, the amount prescribed by this paragraph for a taxpayer
48 that is a qualified New York manufacturer, shall be computed at the rate
49 of zero percent of the taxpayer's business income base. The term
50 "manufacturer" shall mean a taxpayer that during the taxable year is
51 principally engaged in the production of goods by manufacturing, proc-
52 essing, assembling, refining, mining, extracting, farming, agriculture,
53 horticulture, floriculture, viticulture or commercial fishing. However,
54 the generation and distribution of electricity, the distribution of
55 natural gas, ~~and~~ the production of steam associated with the gener-
56 ation of electricity, and the production, transmission, distribution,

transportation, or storage of fossil fuels as defined in section 1-103 of the energy law shall not be qualifying activities for a manufacturer under this subparagraph. Moreover, in the case of a combined report, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this paragraph, or any combination thereof. A taxpayer or, in the case of a combined report, a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer that has property in New York that is described in clause (A) of subparagraph (i) of paragraph (b) of subdivision one of section two hundred ten-B of this article and either (I) the adjusted basis of such property for New York state tax purposes at the close of the taxable year is at least one million dollars or (II) all of its real and personal property is located in New York. A taxpayer or, in the case of a combined report, a combined group, that does not satisfy the principally engaged test may be a qualified New York manufacturer if the taxpayer or the combined group employs during the taxable year at least two thousand five hundred employees in manufacturing in New York and the taxpayer or the combined group has property in the state used in manufacturing, the adjusted basis of which for New York state tax purposes at the close of the taxable year is at least one hundred million dollars.

§ 33. Subparagraph 2 of paragraph (b) of subdivision 1 of section 210 of the tax law, as amended by section 2 of part D of chapter 59 of the laws of 2019, is amended to read as follows:

(2) For purposes of subparagraph one of this paragraph, the term "manufacturer" shall mean a taxpayer that during the taxable year is principally engaged in the production of goods by manufacturing, processing, assembling, refining, mining, extracting, farming, agriculture, horticulture, floriculture, viticulture or commercial fishing; provided, however, the production, transmission, distribution, transportation, or storage of fossil fuels as defined in section 1-103 of the energy law shall not be qualifying activities for a manufacturer under this subparagraph. Moreover, for purposes of computing the capital base in a combined report, the combined group shall be considered a "manufacturer" for purposes of this subparagraph only if the combined group during the taxable year is principally engaged in the activities set forth in this subparagraph, or any combination thereof. A taxpayer or, in the case of a combined report, a combined group shall be "principally engaged" in activities described above if, during the taxable year, more than fifty percent of the gross receipts of the taxpayer or combined group, respectively, are derived from receipts from the sale of goods produced by such activities. In computing a combined group's gross receipts, intercorporate receipts shall be eliminated. A "qualified New York manufacturer" is a manufacturer that has property in New York that is described in clause (A) of subparagraph (i) of paragraph (b) of subdivision one of section two hundred ten-B of this article and either (i) the adjusted basis of that property for New York state tax purposes at the close of the taxable year is at least one million dollars or (ii) all of its real and personal property is located in New York. In addition, a "qualified New York manufacturer" means a taxpayer that is defined as a qualified

1 emerging technology company under paragraph (c) of subdivision one of
2 section thirty-one hundred two-e of the public authorities law regard-
3 less of the ten million dollar limitation expressed in subparagraph one
4 of such paragraph. A taxpayer or, in the case of a combined report, a
5 combined group, that does not satisfy the principally engaged test may
6 be a qualified New York manufacturer if the taxpayer or the combined
7 group employs during the taxable year at least two thousand five hundred
8 employees in manufacturing in New York and the taxpayer or the combined
9 group has property in the state used in manufacturing, the adjusted
10 basis of which for New York state tax purposes at the close of the taxa-
11 ble year is at least one hundred million dollars.

12 § 34. This act shall take effect immediately and shall apply to taxa-
13 ble years commencing on or after the first of January next succeeding
14 the date on which it shall have become a law; provided, however, that:

15 (a) the amendments to paragraphs 6, 7 and 8 of subdivision (a) of
16 section 301-b made by section nine of this act shall not affect the
17 repeal of such paragraphs and shall be deemed repealed therewith;

18 (b) the amendments to the opening paragraph of section 301-c of the
19 tax law made by section eleven of this act shall be subject to the expi-
20 ration and reversion of such paragraph pursuant to section 19 of part
21 W-1 of chapter 109 of the laws of 2006, as amended, when upon such date
22 the provisions of section eleven-a of this act shall take effect;

23 (c) the amendments to subdivisions (k) and (l) of section 301-c made
24 by section thirteen of this act shall not affect the repeal of such
25 subdivisions and shall be deemed repealed therewith; and

26 (d) the amendments to subdivision (j) of section 1115 of the tax law
27 made by section twenty-five of this act shall be subject to the expira-
28 tion and reversion of such subdivision pursuant to section 19 of part
29 W-1 of chapter 109 of the laws of 2006, as amended, when upon such date
30 the provisions of section twenty-five-a of this act shall take effect.