

STATE OF NEW YORK

10030

IN ASSEMBLY

May 1, 2024

Introduced by M. of A. TANNOUSIS, REILLY, PIROZZOLO -- read once and referred to the Committee on Cities

AN ACT to incorporate the city of Staten Island; to enact a charter for the city of Staten Island; to provide a period of transition prior to the establishment of the city of Staten Island; to amend the education law, in relation to the establishment of the city school district of the city of Staten Island; to amend the education law, in relation to the transfer of the college of Staten Island of the city university of New York to the state university of New York; to amend the judiciary law, in relation to providing for the judiciary within the city of Staten Island; to amend the public housing law, the education law, the public authorities law and the private housing finance law, in relation to providing membership on certain authorities for the city of Staten Island; to amend the executive law, the elder law and the social services law, in relation to probation and social services within the city of Staten Island; to amend the county law, in relation to the treatment of the county of Richmond in similar fashion to counties within a city having a population of one million or more; to amend the election law, the state finance law and the surrogate's court procedure act, in relation to making conforming changes relating to the establishment of the city of Staten Island; to amend the general municipal law, in relation to the city of Staten Island industrial development agency; to amend the local emergency housing rent control act, the emergency tenant protection act of nineteen seventy-four, the general business law and the real property tax law, in relation to the continuation of existing housing regulations for the city of Staten Island; to amend the tax law, the state finance law, the public authorities law and the New York state financial emergency act for the city of New York, in relation to applicability of the authority of the financial control board; to amend the general city law, chapter 772 of the laws of 1966 relating to imposition of a city business tax and the tax law, in relation to providing authority for the city of Staten Island to continue presently applicable taxes within such city; to enact the administrative code of the city of Staten Island, in relation to procedures and administration of essential city services and the authority of such city to impose taxes; and making appropri-

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

LBD13972-01-4

ations to advance moneys for the establishment of the city of Staten Island and the city school district of the city of Staten Island

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

1		THE CITY OF STATEN ISLAND ACT
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38		Staten Island.
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40		revenues.
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42	14-001	Administrative code of the city of Staten Island.
43	15-001	Appropriations; transition government and establishment of
44		the city of Staten Island.
45	15-002	Appropriation; city school district of the city of Staten

1 Island.

2 16-001 Severability.

3 17-001 Effective date.

4 Section 1-001. Short title. This act shall be known and may be cited
5 as "The City of Staten Island Act".

6 § 1-002. Legislative history, findings and intent and statement of
7 purposes. 1. The legislature hereby finds, determines and declares:

8 (a) that Article IX, section 1 of the New York State Constitution
9 states that "effective local self-government and intergovernmental coop-
10 eration are purposes of the people of the state" and subdivision (a) of
11 section 2 of Article IX, further declares that "the legislature shall
12 provide for the creation and organization of local government;"

13 (b) that consistent with these constitutional provisions and in order
14 to provide for an effective republican form of government in accordance
15 with the constitution of the United States of America, the people of the
16 state of New York, represented in the senate and assembly, did enact
17 chapter 773 of the laws of 1989, as amended by chapter 17 of the laws of
18 1990, which authorized the borough of Staten Island, upon approval by
19 referendum to consider formally separating from its existing municipal
20 government, authorized the creation of a charter commission for the city
21 of Staten Island, authorized, upon approval of a subsequent referendum,
22 the adoption of a charter, and most importantly, required that within
23 three months of adoption of the charter by the voters of Staten Island,
24 the charter commission submit to the governor and the legislature,
25 proposed legislation enabling the borough of Staten Island to disengage
26 and separate from its existing municipal government, and that only upon
27 enactment of such enabling legislation, could the charter for the city
28 of Staten Island take effect;

29 (c) that the legislature, in requiring the subsequent enactment of
30 enabling legislation before a charter for the city of Staten Island
31 could take effect, reaffirmed its paramount constitutional authority to
32 distribute the powers of local government, as between city and county
33 governments, as it deems best;

34 (d) that preserving historical and natural boundaries, as well as the
35 integrity of political subdivisions of the state, and providing meaning-
36 ful representation of the smaller boroughs in the city of New York
37 affairs, are among those legitimate state interests and policies which
38 have been validated by the federal courts;

39 (e) that the people of the state of New York enacted chapter 773 of
40 the laws of 1989, as subsequently amended, to provide a process by which
41 the people of Staten Island could carefully study and consider the legal
42 disengagement and separation of the borough of Staten Island from the
43 city of New York as an acceptable means of implementing the substantial
44 state interest in providing effective local self-government for the
45 citizens of Staten Island; and

46 (f) that the issues of legal disengagement and separation of the
47 borough of Staten Island from the city of New York raise concerns of
48 statewide importance, not limited to Staten Island residents or New York
49 city residents.

50 2. The legislature further finds, determines and declares:

51 (a) that the New York State Constitution entitles the people of Staten
52 Island to "effective local self-government;"

53 (b) that the existing charter of the city of New York does not provide
54 meaningful representation to the borough of Staten Island, therefore
55 precluding "effective local self-government;"

1 (c) that given the constraints of the United States Supreme Court
2 articulated in Board of Estimate of the City of New York v. Beverly
3 Morris, 489 US 103 (1989), the only viable alternative to providing
4 "effective local self-government" is legal disengagement and separation
5 from the city of New York and the creation of the new city of Staten
6 Island;

7 (d) that such legal separation of Staten Island from the city of New
8 York is economically feasible, with minimal fiscal impact on the state
9 of New York;

10 (e) that the city of New York should have a meaningful role and the
11 opportunity to provide significant input in the process by which Staten
12 Island legally disengages and separates from the city of New York,
13 including participation in a transition period, but the city of New York
14 should not in the exercise of the aforesaid role, be permitted to unila-
15 terally prevent the legal disengagement and separation of Staten Island;
16 and

17 (f) that in connection with the process of legal disengagement and
18 separation, there is hereby specifically delegated to a group of repre-
19 sentatives from both the city of New York and the proposed city of
20 Staten Island the task of evaluating and accounting for the allocation
21 of all assets and liabilities, as well as the provision of municipal
22 services during the transition period, all of which shall be determined
23 in the context of the overall best interest of the state of New York.

24 3. The legislature further finds, determines and declares:

25 (a) that by virtue of the authority vested in the legislature by the
26 New York State Constitution to provide for the "creation and organiza-
27 tion of local governments" as well as for "effective local self-govern-
28 ment" and "intergovernmental cooperation," the interests of the people
29 of the state would be served and promoted by the separation and creation
30 of a new municipality to be called the city of Staten Island; and

31 (b) that in furtherance of such purposes, the recommendations of the
32 charter commission shall be implemented in connection with the creation
33 of the city of Staten Island.

34 4. The legislature further finds, determines and declares that the
35 establishment of the city of Staten Island is authorized by the New York
36 State Constitution, constitutes a state purpose for the benefit of the
37 people of the state of New York and therefore the city of Staten Island
38 Act is hereby enacted.

39 § 1-003. Definitions. As used in this act, the following terms shall
40 have the following meanings:

41 1. "Effective date of this charter" shall mean the first of November
42 next succeeding the date on which this act shall have become a law.

43 2. "Date of incorporation of the city of Staten Island" or "date of
44 incorporation" shall mean the date on which the city of Staten Island is
45 incorporated, the first of January next succeeding the date on which
46 this act shall have become a law.

47 3. "Date of establishment of the city of Staten Island" or "date of
48 establishment" shall mean the date on which the city of Staten Island is
49 first authorized to exercise full municipal authority, except for judi-
50 cial authority, over the citizens and territory of the city of Staten
51 Island, the first of July in the second year next succeeding the year in
52 which this act shall have become a law.

53 4. "Transition period" shall mean the period of time between the date
54 of incorporation and the first of July in the second year next succeed-
55 ing the year in which this act shall have become a law from and includ-
56 ing the date of incorporation until the date of establishment.

1 5. "Preceding municipality" shall mean the city government for the
 2 geographical area of the city of Staten Island existing immediately
 3 prior to the incorporation of the city of Staten Island and which shall
 4 exercise full municipal powers and duties for such area during the tran-
 5 sition period.

6 6. "Judiciary transition period" shall mean the period of time between
 7 the date of incorporation of the city of Staten Island and December
 8 thirty-first in the fifth year following such incorporation or until the
 9 provisions of article 5-C of the judiciary law are specifically super-
 10 seded by state law. At the conclusion of the judiciary transition peri-
 11 od, the city of Staten Island shall be authorized to exercise full judi-
 12 cial authority over the citizens and territory of the city of Staten
 13 Island.

14 § 1-004. Incorporation. The city of Staten Island is hereby incorpo-
 15 rated on the first of January next succeeding the date on which this act
 16 shall have become a law. The boundaries of such city shall be as
 17 described in section 1-02 of the charter of the city of Staten Island as
 18 set forth in section 2-001 of this act. During the transition period
 19 such city shall not have the powers or duties of a municipality except
 20 those which are provided for pursuant to this act to provide for the
 21 transition of government and the establishment of such city. During the
 22 transition period, the preceding municipality shall possess and exercise
 23 full municipal powers and duties for the area to become the city of
 24 Staten Island except for those powers and duties as may be provided by
 25 the provisions of this act. Powers and duties of the city of Staten
 26 Island not yet in effect shall remain with the preceding municipality
 27 until such time as those powers and duties are transferred to the city
 28 of Staten Island pursuant to the provisions of this act. Except as
 29 otherwise provided by this act, full powers and duties shall devolve to
 30 the city of Staten Island on the first of July in the second year next
 31 succeeding the date on which this act shall have become a law. The
 32 following powers, duties and functions regarding the judiciary during
 33 the judicial transition period and other matters as jointly determined
 34 by the city of Staten Island and the preceding municipality in accord-
 35 ance with the provisions as outlined elsewhere in this act, will be
 36 shared by both municipalities. The city of Staten Island shall be estab-
 37 lished on the first of July in the second year next succeeding the date
 38 on which this act shall have become a law, on which date the city of
 39 Staten Island shall possess full municipal powers and duties as are
 40 provided under law and the preceding municipality shall cease to possess
 41 municipal powers and duties regarding the city of Staten Island.

42 § 2-001. Charter of the city of Staten Island. The city charter of
 43 the city of Staten Island is enacted to read as follows:

44 Charter of the City of Staten Island

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8 CHARTER OF THE CITY OF STATEN ISLAND

9 Preamble

10 The People of Staten Island, exercising their right to propose a
11 government of their choosing through which all people can be effectively
12 represented, do hereby adopt this Charter.

13 The birth of a city, must, of necessity, take place in an aura of
14 excitement and great expectations. When it occurs at a time when society
15 is experiencing strong institutional challenges in a climate of skepti-
16 cism, it places heavy burdens on those responsible for leadership to
17 sustain a commitment by the people to live and function together as a
18 community.

19 The provision of a structure of governance at the local level is an
20 extraordinary and crucial responsibility. Sophocles wisely observed that
21 "the city is the people." The City of Staten Island must place a high
22 premium on assuring meaningful participation of its citizenry in the
23 governmental decisions affecting their lives.

24 We must respect the principles of equality and of the social dignity
25 of all of our residents and provide for the complete development of the
26 individual, promoting actions which favor the advancement of men and
27 women in realizing their fullest potential. We must embrace policies
28 that promote and give effectiveness to the rights of every person, with
29 particular attention to those who face special challenges, in striving
30 for a full life.

31 We must assert a policy of favoring equal opportunity employment for
32 all women and men. We must foster a culture that is peaceful and non-
33 violent and that safeguards the rights of all inhabitants to carry out
34 their lawful activities on Staten Island.

35 We should give strong supportive efforts for the conservation and
36 defense of the environment along with the advancement of the cultural
37 and natural values that sustain them. We consent to be governed by the
38 new municipality in the belief that a smaller, localized city government
39 may effectively and responsibly balance the needs of the people with the
40 cost of providing municipal services.

41 The City of Staten Island can serve as a model for the promotion of
42 the common welfare, the guarantor of individual liberties and the guard-
43 ian of the social, spiritual, economic and cultural concerns of its
44 inhabitants.

45 We believe this act of self determination to be in the best interests
46 of the people of Staten Island and the people of the City of New York
47 and we hope that together, as sister cities, we can work cooperatively
48 in efforts of regional concern and for the betterment of New York State.

49 Chapter 1

50 General Provisions

51 § 1-01. Incorporation.

52 The citizens of the State of New York from time to time inhabitants of
53 the territory in the County of Richmond, included in the boundaries set
54 forth in section 1-02 of this chapter, shall be known as the City of

1 Staten Island, and shall be a municipal corporation in perpetuity under
2 the name of "The City of Staten Island."

3 § 1-02. Boundaries.

4 The City of Staten Island shall consist of all the territory known as
5 Richmond county, which shall contain all that part of the state, bounded
6 on the north by the center line of the Kill Van Kull which center line
7 would extend easterly to the extension of the center line of North River
8 and Upper New York Bay, then on the east by the extension of the afore-
9 mentioned center line of Upper New York Bay running southerly through
10 the Narrows between Richmond county and Kings county and continuing
11 through Lower New York Bay to the Atlantic Ocean, and bounded on the
12 south east by the Atlantic Ocean to the boundary of the state of New
13 York and the state of New Jersey at Raritan Bay, and on the west follow-
14 ing the center line of the Kill Van Kull and the center line of the
15 Arthur Kill which is the boundary between the state of New York and the
16 state of New Jersey, including Staten Island, Island of Meadows, Pralls
17 Island, Hoffman Island, Swinburne Island, that part of Shooters Island
18 within the state of New York, and all other islands or parts thereof
19 situated within the aforescribed bounds.

20 Chapter 2

21 Powers of the City

22 § 2-01. Powers.

23 The city shall have and may exercise all powers necessary for local
24 self-government and any additional powers and authority which are now or
25 may be hereafter granted to it under the Constitution or laws of this
26 State, as fully and completely as though such powers were specifically
27 enumerated in this Charter and no enumerations of particular powers in
28 this Charter shall be held to be exclusive but shall be held to be in
29 addition to this general grant of powers.

30 § 2-02. Purposes.

31 All city powers shall be used to serve and advance the general
32 welfare, health, happiness, safety and aspirations of its inhabitants,
33 present and future, and to encourage their full participation in the
34 process of governance.

35 Chapter 3

36 Mayor

37 § 3-01. Executive power.

38 The executive power of the city shall be vested in and exercised by
39 the mayor as chief executive officer.

40 § 3-02. Election; term.

41 The mayor shall be elected at the first general election following the
42 effective date of this charter and every fourth year thereafter. The
43 mayor shall hold office for a term of four years commencing on the first
44 of January after each such election.

45 § 3-03. Qualifications.

46 The mayor shall be a citizen of the United States, a qualified elector
47 of the city, and shall have been a resident of the city for at least one
48 year immediately preceding his/her election.

49 § 3-04. Deputy mayor.

50 The mayor shall appoint and at pleasure remove a deputy mayor who
51 shall have such powers and duties as may be assigned by the mayor and
52 who shall act temporarily as mayor in case of the mayor's temporary
53 inability, absence or illness as is provided by this charter.

54 § 3-05. Removal of the mayor.

55 The mayor may be removed from office by the governor upon charges and
56 after service upon him or her of a copy of the charges and an opportu-

1 nity to be heard in his or her defense. Pending the preparation and
2 disposition of charges, the governor may suspend the mayor for a period
3 not exceeding thirty days.

4 § 3-06. Succession.

5 (a) In case of the suspension of the mayor from office, the mayor's
6 temporary inability to discharge the powers and duties of the office of
7 mayor by reason of sickness or otherwise, or the mayor's absence from
8 the city, the powers and duties of the office of mayor shall devolve
9 upon the deputy mayor or an acting mayor in case of a vacancy in the
10 office of deputy mayor pending a special election to fill the vacancy in
11 the office of mayor as provided in subdivision (c) of this section.
12 While so acting temporarily as mayor the deputy mayor or acting mayor
13 shall not exercise any power of appointment to or removal from office;
14 and shall not, until such suspension, inability or absence shall have
15 continued nine days, sign, approve or disapprove any local law or resolu-
16 tion, unless the period during which the mayor can act thereon would
17 expire during said nine days in which case the deputy mayor or acting
18 mayor in case of a vacancy in the office of deputy mayor shall have the
19 power to disapprove the same within forty-eight hours before the time to
20 act expires.

21 (b) In case of a failure of a person elected as mayor to qualify, or a
22 vacancy in the office caused by the mayor's resignation, removal, death
23 or permanent inability to discharge the powers and duties of the office
24 of mayor, such powers shall devolve upon the deputy mayor or acting
25 mayor in case of a vacancy in the office of deputy mayor pending a
26 special election to fill the vacancy for the remainder of the unexpired
27 term in the office of mayor as provided in subdivision (c) of this
28 section, such special election to take place thirty days after the procla-
29 mation that such vacancy exists.

30 (c) Within seven days of the occurrence of a vacancy in the office of
31 mayor, the council shall proclaim the date for the special election to
32 fill the vacancy required by this subdivision and such election shall
33 take place thirty days after said proclamation. The council shall
34 provide notice of such proclamation to the city clerk and board of
35 elections and publish notice thereof, and the board of elections shall
36 mail notice of such election to all registered voters within the city
37 and shall conduct such special election thirty days after the proclama-
38 tion.

39 (d) A party nomination of a candidate for the special election to fill
40 a vacancy in the office of mayor for the remainder of the unexpired term
41 shall be made in the manner prescribed by the rules of the party.

42 (e) An independent nominating petition for the nomination of candi-
43 dates to fill the vacancy must be signed by registered voters numbering
44 five per centum of the total number of votes cast for governor at the
45 last gubernatorial election in the city of Staten Island, excluding
46 blank and void votes, except that not more than two thousand signatures
47 shall be required upon any such petition.

48 (f) Any vacancy in the office of mayor that occurs after July tenth
49 and on or before September nineteenth in any year shall be filled at the
50 general election held in such year.

51 (g) Any vacancy that occurs on or after September twentieth in any
52 year and not later than thirty-seven days before the first Tuesday in
53 December shall be filled at a special election to be held on the first
54 Tuesday in December in such year.

1 A person elected to fill a vacancy in the office of mayor at a special
2 election shall take office immediately upon qualification and fill the
3 vacancy for the remainder of the unexpired term.

4 § 3-07. Appointment and removal of officers and employees.

5 (a) The mayor shall appoint the heads of administrations, departments,
6 all commissioners, and all other officers not elected by the people
7 including a city clerk, except as otherwise provided in this charter or
8 by law.

9 (b) The mayor, whenever in his or her judgment the public interest
10 shall so require, may remove from office any public officer holding
11 office by appointment from a mayor of the city, except officers for
12 whose removal other provision is made by law. No public officer shall
13 hold his or her office for any specific term, except as otherwise
14 provided by law.

15 § 3-08. General Powers.

16 (a) The mayor, subject to this charter, shall exercise all the powers
17 vested in the city, except as otherwise provided by law.

18 (b) The mayor shall have the power:

19 1. to supervise, direct and control, subject to law, the administra-
20 tive services and departments of government;

21 2. to see that the ordinances of the city and laws of the city and
22 state are properly administered and enforced;

23 3. to prepare and submit to the council an annual report of his or her
24 work, which shall be made public and which shall include a summary of
25 agency service goals, performance measures and actual performance rela-
26 tive to goals for each service delivery program and an appendix of those
27 programs which provide abatements or reductions of taxes for businesses
28 in the city;

29 4. to prepare and submit a budget message and an expense budget and
30 capital budget annually to the council for its consideration and neces-
31 sary action in accordance with this charter and the city code;

32 5. to call special sessions of the council;

33 6. to approve or to veto acts of the council in the manner prescribed
34 by this charter;

35 7. to inquire into the conduct of any city department, agency, board
36 or commission, except elected officials and their offices; and to make
37 investigation as to municipal affairs and, for that purpose, may subpoe-
38 na witnesses, administer oaths and compel production of books, papers
39 and other evidence. Failure to obey such subpoena or to produce books,
40 papers or evidence as ordered under this section shall be punishable as
41 a misdemeanor;

42 8. to create or abolish bureaus, divisions or positions within the
43 executive office of the mayor or city departments as he or she may deem
44 necessary to fulfill mayoral duties;

45 9. to delegate to or withdraw from any member of said office, speci-
46 fied functions, powers and duties, except the mayor's power to act on
47 local laws or resolutions of the council or to appoint or remove offi-
48 cials;

49 10. to perform all such duties as may be presented for the mayor in
50 this charter, or other law, or by act of the council.

51 (c) Notwithstanding any other provision of law, the mayor shall have
52 the powers of a finance board under the local finance law and may exer-
53 cise such powers without regard to any provision of law prescribing the
54 voting strength required for a resolution or action of such finance
55 board, provided, however, that whenever the mayor determines that obli-
56 gations should be issued and the amount thereof, the mayor shall certify

1 such determination to the comptroller who shall thereupon determine the
2 nature and term of such obligations and shall arrange for the issuance
3 thereof.

4 Chapter 4
5 Common Council

6 § 4-01. Legislative power.

7 The legislative power of the city shall be vested in and exercised by
8 the common council, hereinafter referred to as the council, except as
9 otherwise provided by this charter.

10 § 4-02. Number, election and terms of office of council members.

11 (a) The council shall consist of fifteen members each elected from
12 separate council districts. Eight council members shall be elected from
13 districts denominated "A" districts and seven council members shall be
14 elected from districts denominated "B" districts. The eight council
15 members who represent "A" districts shall be elected at the general
16 election to be held in the years ending in seven, one and five. The
17 seven council members who represent "B" districts shall be elected at
18 the general election to be held in the years ending in seven, nine and
19 three.

20 (b) The boundaries and designations of the council districts shall be
21 drawn and specified pursuant to section 5 of chapter 773 of the laws of
22 1989 and shall remain in effect until altered or changed in accordance
23 with the provisions of this charter. Council members shall be elected at
24 the first general election following the effective date of this charter,
25 except as otherwise provided by transition provisions. The term of
26 office of a council member shall begin on January first following such
27 election and shall be for either a four-year or two-year period as
28 provided in subdivision (a) of this section or until a successor is duly
29 elected and qualified.

30 § 4-03. Qualifications.

31 Each council member shall be a citizen of the United States and shall
32 have been resident of the city for one year immediately preceding his or
33 her election and shall reside in the district from which elected while
34 serving as a council member. Removal of residence from the city or from
35 the council district following election or during the term of office
36 shall constitute immediate forfeiture of office and a vacancy shall
37 exist in the district from which the council member was elected.

38 § 4-04. Organization.

39 The council shall determine the rules of its own proceedings at the
40 first stated meeting of the council in each year. The council by majori-
41 ty vote of all its members shall elect one member as speaker and such
42 other officers as it deems appropriate.

43 § 4-05. Vacancy.

44 (a) The office of a council member shall become vacant upon the
45 member's death, resignation, removal from office or forfeiture of office
46 in any manner authorized by law. A council member shall forfeit that
47 office if the council member violates any express prohibition of this
48 charter or lacks at any time during the term of office for which he or
49 she was elected any qualification for the office prescribed by the char-
50 ter or by law.

51 (b) Within seven days of the occurrence of a vacancy in the council,
52 the mayor shall proclaim the date for a special election to fill the
53 vacancy required by this subdivision and such election shall take place
54 thirty days after said proclamation. The mayor shall provide notice of
55 such proclamation to the city clerk and board of elections and publish
56 notice thereof, and the board of elections shall mail notice of such

1 election to all registered voters within the district in which the
2 vacancy has occurred and shall conduct such special election thirty days
3 after the proclamation.

4 (c) A party nomination of a candidate for the special election to fill
5 a vacancy in the council for the remainder of the unexpired term shall
6 be made in the manner prescribed by the rules of the party.

7 (d) An independent nominating petition for the nomination of candi-
8 dates to fill the vacancy must be signed by voters numbering five per
9 centum of the total number of votes cast in the district for governor at
10 the last gubernatorial election in the city, excluding blank and void
11 votes, or as provided by the New York state election law.

12 (e) Any vacancy that occurs in the council after July tenth and on or
13 before September nineteenth in any year shall be filled at the general
14 election held in such year.

15 (f) Any vacancy that occurs on or after September twentieth in any
16 year and not later than thirty-seven days before the first Tuesday in
17 December shall be filled at a special election to be held on the first
18 Tuesday in December in such year.

19 A person elected to fill a vacancy in the council at a special
20 election shall take office immediately upon qualification and fill the
21 vacancy for the remainder of the unexpired term.

22 § 4-06. Powers.

23 (a) All legislative power shall be vested in a council.

24 (b) The council shall have the following additional powers:

25 1. to employ or retain its own staff and consultants including a clerk
26 of the council;

27 2. to conduct investigations in accordance with the provisions of this
28 charter;

29 3. to designate an acting mayor within seventy-two hours of the occur-
30 rence of a vacancy in both the office of mayor and the office of deputy
31 mayor;

32 4. to approve appointments as provided in this charter, except as
33 otherwise mandated by law;

34 5. to exercise the power of removal as provided in this charter;

35 6. to override the veto of a mayor by a two-thirds vote of all the
36 members;

37 7. to disapprove within thirty days any proposed designation by the
38 department of city planning of a landmark, landmark site, interior land-
39 mark, scenic landmark or historic district, provided however, that in
40 the absence of any such disapproval the proposed designation shall
41 become effective thirty days after having been referred to the council
42 by the department of city planning;

43 8. to call a meeting at any time between the council and the mayor
44 jointly to discuss legislation or business of the city in general, and
45 by a two-thirds vote of all the members to compel the attendance of the
46 mayor at a council hearing; and

47 9. to exercise other powers conferred by this charter.

48 § 4-07. Clerk of the council.

49 (a) The council shall appoint a clerk who shall perform such duties as
50 may be prescribed by law. The clerk so appointed shall be the clerk of
51 the council and shall serve at the pleasure of the council. The clerk
52 shall attend the meetings of the council, keep a journal of its
53 proceedings and discharge such other duties as may be prescribed by this
54 charter or other law.

55 (b) The clerk shall keep each local law passed in a book provided for
56 that purpose, with proper indices, which book shall be deemed a public

1 record of such local laws, and each local law shall be attested by said
2 clerk. The clerk shall cause to be published all notices, advertising
3 matters or proceedings as required by the provisions of this charter or
4 by other law. It shall be the duty of the clerk to keep open for
5 inspection at all reasonable times the records and minutes of the
6 proceedings of the council.

7 § 4-08. Investigations.

8 The council shall have the power to investigate any matters within its
9 jurisdiction relating to the property, affairs, or government of the
10 city, or to any other powers of the council, or to the effectuation of
11 the purposes or provisions of this charter or any laws relating to the
12 city, and to incur expenses therefor which shall be a general city
13 charge in the absence of an appropriation. The council shall have the
14 power to require the attendance and examine and take testimony under
15 oath of such persons as it may deem necessary and to require the
16 production of books, accounts, papers and other evidence relative to the
17 inquiry kept by any person which may relate to such investigation or the
18 attendance of any person having knowledge of the subject matter of the
19 investigation.

20 § 4-09. Local laws.

21 (a) Except as otherwise provided by law, all legislative action by the
22 council shall be by local law. Every local law shall contain only one
23 subject. The title shall clearly refer to the subject matter.

24 (b) The council shall take no final action on any legislation until a
25 minimum of three days, exclusive of Sundays, has elapsed from the date
26 of its introduction, unless the mayor shall have certified as to the
27 necessity for its immediate passage and such local law be passed by the
28 affirmative vote of two-thirds of all the council members; provided
29 however that general plans, development plans and amendments and
30 revisions thereto shall not be so certified.

31 (c) Every local law passed by the council shall be certified by the
32 clerk of the council and shall be presented to the mayor for approval
33 prior to its effective date. The mayor shall sign the legislation within
34 ten days if approved, but, if not, shall return it to the council
35 together with a written statement of his or her objections. The council,
36 within thirty days may reconsider any legislation disapproved by the
37 mayor and may pass it by a two-thirds vote of all the members. If the
38 mayor fails to sign or return legislation to the council with reasons
39 for disapproval, it shall become law as of its effective date, thirty
40 days after submission to the mayor.

41 (d) No proposed local law or budget modification shall be voted on by
42 a council committee or the council unless it is accompanied by a fiscal
43 impact statement containing the following information:

44 1. the fiscal year in which the proposed law or modification would
45 first become effective and the first fiscal year in which the full
46 fiscal impact of the law or modification is expected to occur;

47 2. an estimate of the fiscal impact of the law or modification on the
48 revenues and expenditures of the city during the fiscal year in which
49 the law or modification is to first become effective, during the
50 succeeding fiscal year, and during the first fiscal year in which the
51 full fiscal impact of the law or modification is expected to occur; and

52 3. a list of sources of information used in its preparation.

53 (e) All agency heads shall promptly provide to any council committee
54 any information that it requests to assist it in preparing a fiscal
55 impact statement.

56 § 4-10. Districting commission.

1 (a) There shall be a districting commission consisting of seven
2 members appointed as provided in this section.

3 (b) Each member of the commission shall be a citizen of the United
4 States and shall have been a resident of the city for one year imme-
5 diately preceding his or her appointment.

6 (c) The majority leader in the council shall appoint three members of
7 the commission.

8 (d) The minority leader in the council shall appoint two members of
9 the commission.

10 (e) If only one political party has a council delegation, then the
11 chairpersons of the county committees of the political party with no
12 council delegation which, at the time of the last general election for
13 council preceding the time at which such appointments are required to be
14 made, had the second and third highest number of votes cast in that
15 election, shall each appoint one member of the commission.

16 (f) The mayor shall appoint two additional members who shall not be
17 members of the same political party.

18 (g) In the event of a vacancy by death, resignation or otherwise, a
19 new member enrolled in the same political party from which his or her
20 predecessor was selected shall be appointed in the same manner as the
21 member whose departure from the commission created the vacancy and shall
22 serve for the balance of the term remaining.

23 (h) The members of the commission shall elect one of the seven members
24 to serve as the chair of the commission.

25 § 4-11. Powers of the districting commission.

26 (a) Following each decennial census, the commission shall prepare a
27 plan for dividing the city into districts for the election of council
28 members.

29 (b) The commission shall submit its plan to the council for its final
30 adoption and such plan shall not be subject to any mayoral action in
31 order to become effective.

32 § 4-12. Community advisory boards.

33 (a) The common council is hereby authorized to create, by local law,
34 one or more community advisory board districts and corresponding commu-
35 nity advisory boards to consider the needs of such districts, and to
36 cooperate with, consult, assist and advise members of the common coun-
37 cil, as well as any public officer, agency, and local administrators of
38 such agencies, with respect to any matter relating to the welfare of the
39 residents of such districts.

40 (b) The number of community advisory boards and the number of members
41 appointed to serve on such board or boards shall be determined by the
42 common council as it deems appropriate.

43 (c) In addition, the boundary lines of the community advisory board
44 districts created hereunder shall be coterminous with the boundary lines
45 of one or more council districts so that no council district shall be
46 included in more than one community advisory board district.

47 (d) Members of the community advisory boards shall serve without
48 compensation and shall serve for not more than two (2) consecutive two-
49 year terms so as to maximize the opportunities for meaningful partic-
50 ipation in local government for all city residents, and to preserve the
51 spirit and long-standing tradition of excellent voluntarism on Staten
52 Island.

53 Chapter 5
54 Comptroller

55 § 5-01. Election; term.

1 The comptroller shall be elected by the electors of the city at the
2 same time and for the same term as this charter prescribes for the
3 mayor. The comptroller shall serve for a term of four years commencing
4 on the first of January following such election and until a successor is
5 elected and qualified.

6 § 5-02. Powers and duties.

7 (a) The comptroller shall have the following powers and duties:

8 1. to advise the mayor and the council on the financial condition of
9 the city or any phase thereof;

10 2. to make recommendations, comments and criticisms in regard to the
11 operations, fiscal policies and financial transactions of the city as he
12 or she may deem advisable;

13 3. to audit and investigate all matters relating to or affecting the
14 finances of the city, including without limitation the performance of
15 contracts and the receipt and expenditure of city funds, and for such
16 purpose shall have the power to require the attendance and examine and
17 take the testimony under oath of such persons as the comptroller may
18 deem necessary;

19 4. to submit an annual report to the mayor and the council showing
20 revenues, receipts and expenditures, the sources from which the revenues
21 and funds are derived and how they have been disbursed;

22 5. to inspect, revise and prescribe the form of reports and accounts
23 of the agencies, trusts, the council and units of government;

24 6. to audit all agencies, trusts, the council and units of government
25 whenever the comptroller decides it is necessary or is directed to
26 conduct such an audit either by the mayor or by the council. The comp-
27 troller shall be entitled to obtain access to agency records required by
28 law to be kept confidential, other than records which are protected by
29 the privileges for attorney-client communications, attorney work
30 products, or material prepared for litigation, upon a representation by
31 the comptroller that necessary and appropriate steps will be taken to
32 protect the confidentiality of such records.

33 (b) The comptroller shall establish a regular auditing cycle to ensure
34 that one or more of the programs or activities of each city agency, or
35 one or more aspects of each agency's operations, is audited at least
36 once every four years. The audits conducted by the comptroller shall
37 comply with generally accepted government auditing standards. In accord-
38 ance with such standards, and before any draft or final audit or audit
39 report, or portion thereof, may be made public, the comptroller shall
40 send a copy of the draft audit or audit report to the head of the audit-
41 ed agency and provide the agency, in writing, with a reasonable deadline
42 for its review and response. The comptroller shall include copies of any
43 such agency response in any draft or final audit or audit report, or
44 portion thereof, which is made public. The comptroller shall send copies
45 of all final audits and audit reports to the mayor and the council.

46 (c) The comptroller shall establish for his or her office and for all
47 city agencies a uniform system of accounting and reporting based on
48 generally accepted accounting principles.

49 (d) The comptroller shall perform such other functions and duties as
50 may be required by other provisions of this charter or by law.

51 § 5-03. Qualifications.

52 The comptroller shall be a citizen of the United States, a qualified
53 elector of the city, and shall have been a resident of the city for at
54 least one year immediately preceding his or her election.

55 § 5-04. Deputy comptroller.

1 The comptroller shall appoint and at pleasure remove a deputy comp-
2 troller who in case of a vacancy in the office or in case of the illness
3 or inability of the comptroller to act shall have the same powers and
4 perform the same duties as the comptroller. The qualifications of the
5 nominee for the position of deputy comptroller shall be submitted to the
6 council by the comptroller and the nominee may be requested to appear in
7 person before the council to respond to questions concerning those qual-
8 ifications.

9 § 5-05. Vacancy.

10 (a) Any vacancy in the office of comptroller shall be filled by
11 special election in accordance with the provisions of this charter. In
12 the event of a vacancy in the office of the comptroller or whenever by
13 reason of sickness, absence from the city or suspension from office, the
14 comptroller shall be prevented from attending to the duties of the
15 office, the deputy comptroller shall act as comptroller.

16 (b) Within seven days of the occurrence of a vacancy in the office of
17 comptroller, the mayor shall proclaim the date for the special election
18 required by this subdivision and such election shall take place thirty
19 days after said proclamation. The mayor shall provide notice of such
20 proclamation to the city clerk and board of elections and publish notice
21 thereof, and the board of elections shall mail notice of such election
22 to all registered voters within the city and shall conduct such special
23 election thirty days after the proclamation.

24 (c) A party nomination of a candidate for the special election to fill
25 a vacancy in the office of comptroller for the remainder of the unex-
26 pired term shall be made in the manner prescribed by the rules of the
27 party.

28 (d) An independent nominating petition for the nomination of candi-
29 dates to fill the vacancy must be signed by registered voters numbering
30 five per centum of the total number of votes cast for governor at the
31 last gubernatorial election in the city, excluding blank and void votes,
32 except that not more than two thousand signatures shall be required upon
33 any such petition.

34 (e) Any vacancy in the office of comptroller that occurs after July
35 tenth and on or before September nineteenth in any year shall be filled
36 at the general election held in such year.

37 (f) Any vacancy that occurs on or after September twentieth in any
38 year and not later than thirty-seven days before the first Tuesday in
39 December shall be filled at a special election to be held on the first
40 Tuesday in December in such year.

41 A person elected to fill a vacancy in the office of comptroller at a
42 special election shall take office immediately upon qualification and
43 fill the vacancy for the remainder of the unexpired term.

44 Chapter 6

45 The Budgetary Process:

46 Expense and Capital

47 § 6-01. Budgetary responsibilities of the mayor.

48 (a) The mayor shall annually prepare and submit to the council prelim-
49 inary and executive budgets, each of which shall present a complete
50 financial plan for the city and its agencies for the ensuing fiscal year
51 and the three succeeding fiscal years. Each such budget shall consist of
52 three parts: the expense budget, which shall set forth proposed appro-
53 priations for the operating expenses of the city including debt service,
54 and interfund transfers; the capital budget and program, which shall set
55 forth proposed appropriations for capital projects; and the revenue

1 budget, which shall set forth the estimated and anticipated revenues and
2 receipts of the city, as well as any other anticipated sources and uses
3 of funds.

4 (b) The mayor shall appoint the director of the budget who shall
5 assist the mayor in the preparation and the administration of the budg-
6 et. The director shall perform all such duties in regard to the budget
7 and related matters as the mayor may direct. The director shall have the
8 power personally or through representatives, to survey each agency for
9 the purpose of ascertaining its budgetary requirements. The director may
10 require any agency, or any officer or employee, to furnish data and
11 information and to answer inquiries pertinent to the exercise of any of
12 the director's duties in regard to the budget and related matters.

13 § 6-02. Spending pursuant to appropriations.

14 (a) No money, except for grants or gifts from private entities, shall
15 be paid from any fund under the management of the city, or any fund
16 under the management of any agency or officer of the city, or any other
17 entity the majority of the members of whose board are city officials or
18 are appointed directly or indirectly by city officials, except in
19 pursuance of an appropriation by the council or other specific legal
20 authorization provided, however, that:

21 1. if at any time the council shall fail to make an appropriation for
22 the payment of debt service on any debts of the city as they fall due,
23 or for the payments to the several sinking funds, the officer responsi-
24 ble for the collection of taxes shall set apart, from the first revenues
25 thereafter received applicable to the general fund of the city, a sum
26 sufficient to pay such amounts and shall so apply such sum; and

27 2. money, the ownership and equitable title of which belongs to an
28 individual, corporation, organization or government other than the city
29 and which is being held by any agency or officer of the city pending
30 transfer of such money to such individual, corporation, organization or
31 government in accordance with the terms and conditions pursuant to which
32 it was placed in the custody of such agency or officer, may be trans-
33 ferred to such individual, corporation, organization or government by
34 such agency or officer without an appropriation by law provided such
35 transfers are made in accordance with such terms and conditions; and

36 3. money or other financial resources may only be transferred from one
37 fund to another without specific statutory authorization for such a
38 transfer if that money or those other financial resources are being
39 loaned temporarily to such other fund and an accurate accounting and
40 reporting of the balance of financial resources in each fund and of the
41 amount due by each fund to each other fund is made at the end of each
42 month; and

43 4. grants or gifts from private entities exempt from the requirements
44 of this section, and expenditures of such funds, shall be subject to
45 disclosure, at least annually, by the responsible agency, officer or
46 entity in a form and containing such information as the mayor shall
47 prescribe for this purpose by rule.

48 (b) The head of each agency of the city, and each entity the majority
49 of the members of whose board are city officials or individuals
50 appointed directly or indirectly by city officials, shall, on or before
51 the fifteenth of October in each year, submit to the mayor and the coun-
52 cil, in such form as the mayor shall prescribe, a statement of the
53 sources, amounts and disposition of all money received by such agency or
54 entity, or by a unit or officer of such agency during the preceding
55 fiscal year, other than money appropriated for the use of such agency or
56 entity by the council, or money paid by such agency or entity into the

1 city treasury and reported in the annual report of the comptroller for
2 such fiscal year. The mayor shall ensure that copies of such statements
3 are available for public inspection, and shall designate a city officer
4 to maintain copies of such statements for such purpose.

5 § 6-03. Fiscal year.

6 The fiscal year of the city shall commence on July first in each year
7 and shall terminate at midnight on the ensuing June thirtieth.

8 § 6-04. Budgetary process and timeline.

9 Except where noted otherwise, each step should be taken not later than
10 the dates indicated below.

11 (a) Ten-year capital strategy.

12 1. Draft: November first in each even-numbered year.

13 2. Report and hearing on the first draft: January sixteenth in each
14 odd numbered year.

15 3. Mayor's issuance: April twenty-sixth in each odd numbered year.

16 4. Comparison of adopted budget and ten-year capital strategy: thirty
17 days after the budget is adopted in each year.

18 (b) Revenue estimation report of the comptroller and mayor.

19 1. The comptroller shall certify to the mayor the actual revenues for
20 the previous fiscal year: October thirty-first.

21 2. The mayor shall report comparing actual revenues to estimated
22 revenues in the budget as adopted for the previous fiscal year: November
23 fifteenth.

24 (c) Departmental estimates and the mayor's preliminary budget public
25 hearings: such date as the mayor may direct.

26 (d) Report of the comptroller on capital debt and obligations: Decem-
27 ber first.

28 (e) Report of the comptroller on the state of the city's finances to
29 the council: December fifteenth.

30 (f) Preliminary certificate of the mayor on capital debt and obli-
31 gations to the council and comptroller: January sixteenth. At any time
32 up to the submission of the executive capital budget to the council, the
33 mayor may amend such preliminary certificate.

34 (g) Preliminary budget submitted to the council: January sixteenth.

35 (h) Finance commissioner's estimate of assessed valuation, and state-
36 ment of taxes due and uncollected submitted to the mayor and council:
37 February fifteenth.

38 (i) Comptroller's statement of debt service: March first.

39 (j) The council's operating budget. March tenth: the council shall
40 approve and submit to the mayor estimates of its financial needs for the
41 ensuing fiscal year.

42 (k) Council committees' preliminary budget hearings on:

43 1. program objectives and fiscal implications of preliminary budget,
44 draft ten year capital strategy, city planning director's report on the
45 draft strategy, and the status of capital projects and expense appropri-
46 ations previously authorized; and

47 2. recommendations for any changes in the unit of appropriation struc-
48 ture, or any change in the memorandum of understanding of the terms and
49 conditions regarding such units of appropriations; and

50 3. the council's findings and the net effect of the changes recom-
51 mended on the preliminary capital budget shall not exceed the maximum
52 amount set forth in the preliminary certificate: March twenty-fifth.

53 (l) Executive budget, the four-year financial plan and budget message
54 with any accompanying reports and schedules submission for the ensuing
55 fiscal year: April twenty-sixth.

1 (m) Proposed local laws and home rule requests necessary to implement
2 the recommendations made in the executive budget: as soon after April
3 twenty-sixth as is practicable.

4 (n) Executive budget hearings: the council shall hold public hearings
5 on the budget as presented by the mayor between May sixth and twenty-
6 fifth.

7 (o) Amendment and adoption of the executive budget: by June fifth.

8 1. The council may alter the contents of the budget within the total
9 revenues estimated by the mayor and the maximum debt for capital, except
10 for the amounts set aside for the repayment of debt.

11 2. The budget when adopted by the council shall become effective imme-
12 diately, except appropriations for the council or appropriations added
13 to the mayor's executive budget by the council or any changes in terms
14 and conditions or in the memorandum of understanding regarding such
15 terms and conditions shall be subject to the mayor's veto.

16 3. If an expense budget has not been adopted by the fifth of June, the
17 expense budget and tax rate adopted as modified for the current fiscal
18 year shall be deemed to have been extended for the new fiscal year until
19 such time as a new expense budget has been adopted.

20 4. If a capital budget and a capital program have not been adopted by
21 the fifth of June the unutilized portion of all prior capital appropri-
22 ations shall be deemed reappropriated.

23 (p) Veto of the mayor.

24 1. The mayor, not later than the fifth day after the council has acted
25 upon the budget or capital program submitted with the executive budget,
26 may disapprove:

27 (i) any increase or addition to any such bill or program;

28 (ii) any change in any term or condition of the budget;

29 (iii) any change in a memorandum of understanding regarding the terms
30 and conditions; or

31 (iv) any item, term, condition, or provision of a memorandum included
32 in the budget. The mayor's objections shall be returned in writing to
33 the council by such date.

34 2. The council by a two-thirds vote of all the members may override
35 any disapproval of the mayor; however, if no action by the council is
36 taken within ten days of such disapproval, the expense budget shall be
37 deemed adopted as modified by the mayor's disapprovals.

38 (q) Statement of the amount of the budget and estimate by the mayor.

39 1. The mayor shall submit to the council, immediately upon the
40 adoption of a budget, a statement of the amount of the budget as
41 approved by the council for the ensuing fiscal year and the mayor shall
42 prepare and submit to the council not later than the fifth of June an
43 estimate of the probable amount of:

44 (i) receipts into the city treasury during the ensuing fiscal year
45 from all the sources of revenue of the general fund; and

46 (ii) all receipts other than those of the general fund and taxes on
47 real property. The mayor may include in the statement of the amount of
48 the budget as approved by the council a confirmation of such amount, and
49 thereby waive mayoral veto power.

50 2. If, as a result of the exercise of the mayor's veto, the amount of
51 the budget for the ensuing fiscal year differs from the amount of the
52 budget approved by the council, not later than two days after the budget
53 is finally adopted the mayor shall prepare and submit to the council a
54 statement setting forth the amount of the budget for the ensuing fiscal
55 year, and the council shall, if necessary, fix new annual tax rates.

1 3. The mayor, prior to establishing the final estimate of revenues for
2 the ensuing fiscal year as required by this section, shall consider any
3 alternative estimate of revenues and which is accompanied by a statement
4 of the methodologies and assumptions upon which such estimate is based
5 in such detail as is necessary to facilitate official and public under-
6 standing of such estimates.

7 4. Any person or organization may, prior to May fifteenth, submit to
8 the mayor an official alternative estimate of revenues for consideration
9 by the mayor. Such estimate shall be in a form prescribed by the mayor.

10 (r) Fixing of tax rates.

11 1. The council shall fix the annual tax rates immediately upon the
12 approval of the budget. The council shall deduct the total amount of
13 receipts as estimated by the mayor from the amount of the budget, for
14 the ensuing fiscal year, and shall cause to be raised by tax on real
15 property such sum as shall be as nearly as possible but not less than,
16 the balance so arrived at, by fixing tax rates in cents and thousandths
17 of a cent upon each dollar of assessed valuation. The tax rates shall be
18 such as to produce a balanced budget within generally accepted account-
19 ing principles for municipalities.

20 2. If a budget has not been adopted by the fifth of June, the tax
21 rates adopted for the current fiscal year shall be deemed to have been
22 extended for the new fiscal year until such time as a new budget is
23 adopted.

24 3. In the event the mayor exercises the veto power, the council shall,
25 if necessary, fix new annual rates not later than the date the budget is
26 finally adopted, in accordance with the requirements of paragraph one of
27 subdivision (s) of this section.

28 (s) Completing the assessment rolls and fixing of tax rates.

29 Notwithstanding the provisions of the above subdivisions or any other
30 provisions of law to the contrary:

31 1. if the city council has not fixed the tax rates for the ensuing
32 fiscal year on or before the fifth of June, the commissioner of finance
33 shall be authorized to complete the assessment rolls using estimated
34 rates and to collect the sums therein mentioned according to law. The
35 estimated rates shall equal the tax rates for the current fiscal year;

36 2. if, subsequent to the fifth of June, the council shall, fix the tax
37 rates for the ensuing fiscal year at percentages differing from the
38 estimated rates, real estate tax payments shall nevertheless be payable
39 in accordance with paragraph one of this subdivision at the estimated
40 rates. However, in such event, prior to the first of January in such
41 fiscal year, the commissioner of finance shall cause the completed
42 assessment rolls to be revised to reflect the tax rates fixed by the
43 council, and an amended bill for the installment or installments for
44 such fiscal year due and payable on or after the first of January shall
45 be submitted to each taxpayer in which whatever adjustment may be
46 required as a result of the estimated bill previously submitted to the
47 taxpayer shall be reflected.

48 (t) Appropriation, certification and publication.

49 Not later than the day after the budget is finally adopted the budget
50 and the several amounts therein specified as appropriations or units of
51 appropriation shall be and become appropriated to the several purposes
52 therein named. The budget shall thereupon be filed in the offices of the
53 comptroller and the city clerk, and shall be published forthwith.

54 (u) Council completion of assessment rolls.

55 At such annual meeting to adopt the budget the council shall cause to
56 be set down in the assessment rolls, opposite to the several sums set

1 down as the valuation of real property, the respective sums, in dollars
2 and cents, to be paid as tax thereon, rejecting the fractions of a cent.
3 It shall also cause to be added and set down the aggregate valuations of
4 the real property, and shall transmit to the comptroller of the state by
5 mail a certificate of such aggregate valuation.

6 (v) Collection of real property tax.

7 1. Immediately upon the completion of the assessment rolls, the city
8 clerk shall produce the proper warrants authorizing and requiring the
9 commissioner to collect the several sums therein mentioned according to
10 law. Such warrants need be signed only by the speaker of the council and
11 countersigned by the city clerk. Immediately thereafter and on or
12 before the thirtieth of June, the assessment rolls of the city as
13 corrected according to law and finally completed, or a fair copy there-
14 of, shall be delivered by the speaker to the commissioner with the prop-
15 er warrants, so signed and counter signed, annexed thereto. At the same
16 time the speaker shall notify the comptroller of the amount of taxes in
17 each book of the assessment rolls so delivered.

18 2. The commissioner upon receiving the assessment rolls and warrants
19 shall immediately cause the assessment rolls and warrants to be filed
20 with the city clerk.

21 (w) Mayor's financial plan update: thirty days after budget adopted.

22 § 6-05. Format of expense budget departmental estimates, preliminary
23 expense budget, and executive expense budget.

24 (a) The expense budget departmental estimates, the preliminary expense
25 budget, and the executive expense budget for each year shall consist of
26 proposed units of appropriation for personal service and proposed units
27 of appropriation for other than personal service for the ensuing fiscal
28 year.

29 (b) Each agency head, for the departmental estimates, and the mayor,
30 for the executive budget, shall submit:

31 1. a statement of the impact of the proposed units of appropriation on
32 the level of services to be provided during the ensuing fiscal year; and

33 2. for each community within the city as identified in the council's
34 hearings on local and neighborhood budget needs, a written response to
35 each of the expense budget priorities included in the committee's recom-
36 mendations of budget priorities submitted in accordance with provisions
37 of this charter, including the disposition of each such priority and a
38 meaningful explanation of any disapprovals contained in such estimates
39 or budget.

40 (c) Each proposed unit of appropriation shall represent the amount
41 requested for personal service or for other than personal service for a
42 particular program, purpose, or activity within an agency, department,
43 organization or institution; provided, however, that a single unit of
44 appropriation for personal service or a single unit of appropriation for
45 other than personal service may represent the amount requested for more
46 than one particular program, purpose, or activity for an agency, depart-
47 ment, organization or institution if the council has adopted, on the
48 recommendation of the mayor, or if the council has adopted on its own
49 initiative and the mayor has approved, a resolution setting forth the
50 names, and a statement of the programmatic objectives, of each program,
51 purpose, or activity for an agency, department, organization, or insti-
52 tution to be included in such a single unit of appropriation. Copies of
53 such resolutions must be included as an appendix to any preliminary
54 budget, executive budget, and adopted budget to which they apply. If,
55 in accordance with such a resolution, a proposed unit of appropriation
56 for other than personal service shall represent the total amount

1 requested for other than personal service for more than one proposed
2 unit of appropriation for personal service, the amount of such unit of
3 appropriation for other than personal service which is allocable to each
4 unit of appropriation for personal service shall be set forth for infor-
5 mational purposes at the end of each such unit of appropriation for
6 personal service. If, in accordance with such a resolution, a proposed
7 unit of appropriation for personal service shall represent the total
8 amount requested for personal service for more than one proposed unit of
9 appropriation for other than personal service, the amount of such unit
10 of appropriation for personal service which is allocable to each unit of
11 appropriation for other than personal service shall be set forth for
12 informational purposes at the end of each such unit of appropriation for
13 other than personal service.

14 (d) Each proposed unit of appropriation contained in the departmental
15 estimates, the preliminary expense budget and the executive expense
16 budget shall be accompanied by a statement of the programmatic objec-
17 tives of the program, purpose, activity for the agency, department,
18 organization or institution involved.

19 (e) Each proposed unit of appropriation contained in the departmental
20 estimates and the executive budget shall be supported by line items
21 showing how the total amount of such unit is determined.

22 (f) The departmental estimates shall be in such form and contain such
23 further information as may be required by the mayor or by law. Such
24 departmental estimates shall be public records and which shall at all
25 reasonable times be open to public inspection.

26 (g) For each city agency that has local service districts within
27 communities as defined by local law, where practicable, shall contain a
28 statement of proposed direct expenditures in meaningful categories of
29 information, in each such service district.

30 § 6-06. Preliminary expense budget.

31 The preliminary expense budget shall contain proposed expenditures and
32 a forecast of revenues for the ensuing fiscal year, including, for each
33 tax revenue source which represents five percent or more of the total
34 forecast of tax revenues, a detailed statement of the methodology and
35 assumptions used to determine the forecast of revenues estimated to be
36 received from such source in sufficient detail to facilitate official
37 and public understanding of the manner in which such forecasts are made,
38 shall indicate proposed units of appropriations for personal service and
39 for other than personal service, shall include a financial plan covering
40 estimates of expenditures and revenues for the four ensuing fiscal years
41 in such years, shall include the departmental estimates of agency
42 expenditures for the ensuing fiscal year together with proposed sources
43 of revenue for each unit of appropriation specified therein and shall
44 present a plan to ensure balance between the expense and revenue budgets
45 during the ensuing fiscal year.

46 § 6-07. Contents of the executive expense budget.

47 (a) There shall be included in the budget:

48 1. Units of appropriation, prepared according to this chapter, in such
49 amounts and upon such terms and conditions as may be determined by the
50 mayor. Such appropriations shall include:

51 (i) the amounts required by law to be appropriated to the several
52 sinking funds as certified by the comptroller;

53 (ii) the amount required to pay the interest and principal of city
54 obligations as certified by the comptroller;

55 (iii) an amount, as certified by the comptroller, equal to the average
56 of all expenditures during each of the five preceding fiscal years for

1 the payment of the expense of the removal of snow and ice, exclusive of
2 salaries and wages of regular employees of the city except for overtime
3 work and for work on Sundays and holidays, and exclusive of the purchase
4 of equipment;

5 (iv) the several amounts which are payable from sources other than the
6 real estate tax levy, provided however that amounts appropriated pursu-
7 ant to chapter nine of this charter which are allocable to a particular
8 program, purpose, activity or institution, shall be included for infor-
9 mational purposes only;

10 (v) such other amounts as may be required by law;

11 (vi) such amounts as shall be determined in the manner provided in
12 this chapter to be necessary to pay the expenses of conducting the busi-
13 ness of the city for the ensuing fiscal year and for other lawful public
14 purposes; and

15 (vii) a reserve for unanticipated contingencies.

16 2. An identification of the proposed appropriations, being proposed by
17 agency and project type and, within project type, by personal service
18 and other than personal service, for the maintenance of all major
19 portions of the capital plant, as such terms are defined in section 6-16
20 of this chapter.

21 3. The terms and conditions under which appropriations shall be admin-
22 istered.

23 (b) All such units of appropriation and other amounts shall be set
24 forth without deduction of revenues from any source except as otherwise
25 provided by law.

26 (c) The budget message, which shall not be deemed a part of the budg-
27 et, shall include:

28 1. an explanation;

29 2. itemized information and supporting schedules;

30 3. recommendations for any changes in revenue sources and fiscal oper-
31 ations;

32 4. an itemized statement of the actual revenues and receipts and
33 accruals of the general fund and of all other revenue sources;

34 5. a listing of the sources and amounts of all revenues and other
35 monies of a nonrecurring nature;

36 6. a four-year financial plan, containing:

37 (i) for each agency, for all existing programs, forecasts of expendi-
38 tures for the ensuing fiscal year and the succeeding three fiscal years
39 at existing levels of service;

40 (ii) forecasts of revenue by source from existing sources of revenue
41 for the ensuing fiscal year and the succeeding three fiscal years; and

42 (iii) for each new or expanded program, an indication of when such
43 program is projected to be fully implemented and a forecast of the annu-
44 al recurring costs for such program or program expansion after it is
45 fully implemented;

46 7. for each agency, a comparison of the proposed appropriations for
47 the ensuing fiscal year;

48 8. an explanation of principal changes in performance goals and indi-
49 cators;

50 9. an itemized statement, covering the city's entire capital plant,
51 except for those portions of the capital plant which have been committed
52 to the care and control of the board of education;

53 10. a presentation of the maintenance activities proposed by the mayor
54 to be completed during the ensuing fiscal year;

55 11. a statement of any substantive changes in the methodology and
56 assumptions used to determine the revenue estimates;

1 12. a statement of the implications for the orderly development of the
2 city; and

3 13. a certificate setting forth the maximum amount of debt and
4 reserves.

5 § 6-08. Adoption of expense budget and memorandum of understanding.

6 Adoption of expense budget with regard to a memorandum of understand-
7 ing contained in the terms and conditions.

8 (a) The council may increase, decrease, add or omit any amount in the
9 expense budget as submitted by the mayor, or change any terms and condi-
10 tions of the amount in that category, as stipulated in this chapter; the
11 mayor may disapprove any increase or addition to the amounts in the
12 categories, or any change in any term and condition of the budget, as
13 stipulated in this chapter, the mayor's disapproval may be overridden by
14 a two-thirds vote of all of the members of the council. As part of these
15 procedures the final adopted budget shall have within its terms and
16 conditions a memorandum of understanding, the final format and/or the
17 actual character of which shall be determined jointly by the actions of
18 the council and mayor consistent with the provisions for adopting a
19 local law. Such memorandum of understanding may include the provisions
20 by which the executive may have to schedule the timing and amounts of
21 expenditure or delay of expenditure and in what ways those expenditures
22 may be scheduled or delayed and if agreed to through the normal
23 provisions of adopting the budget, the priority of re-scheduling and or
24 delaying those appropriated expenditures or any part thereof those units
25 of appropriations. These details of the memorandum of understanding are
26 not to preclude or substitute for normal budget modification procedures
27 as detailed below; they are intended to deal with those circumstances
28 not covered by budget modification and/or normal impoundment procedures
29 as detailed below.

30 (b) All spending for services shall be in accordance with the terms
31 and conditions of the expense budget as adopted; provided, however, that
32 during any fiscal year the mayor shall notify the council of any
33 proposed modification of such a term or condition, at least thirty days
34 before the intended effective date of the modification in the term or
35 condition. These provisions are not to affect, hinder or substitute for
36 the normal procedures regarding budget modification or impoundment as
37 stipulated elsewhere in this chapter.

38 § 6-09. Appropriations for goods, services or construction.

39 Appropriations for the procurement of goods, services or construction
40 or the provision of services, utilities, or facilities by a department
41 responsible for general services for other agencies and institutions in
42 accordance with the authority of a department responsible for general
43 services under the provisions of this charter shall be made to a depart-
44 ment responsible for general services but shall be segregated under the
45 name of the agency or institution for which they are intended and shall
46 be considered and accounted for as appropriated for such agency or
47 institution. Nothing herein contained shall prevent the designation of
48 part of such appropriations as a general stores account or under other
49 appropriate designation to enable a department responsible for general
50 services to maintain a stock in anticipation of requirements or to
51 provide services, utilities or facilities for joint use by more than one
52 agency or institution.

53 § 6-10. Expense budget administration.

54 (a) Except as otherwise provided by law, no unit of appropriation
55 shall be available for expenditure by any city agency until schedules
56 fixing positions and salaries and setting forth other expenses within

1 the units of appropriation are established pursuant to the adopted budg-
2 et, the administration of which is subject to the provisions of this
3 chapter, the state civil service law, and other applicable law.

4 (b) The mayor shall establish and may modify for each agency:

5 1. quarterly spending allotments for each unit of appropriation and

6 2. aggregate position and salary limits for each unit of appropri-
7 ation, which shall be made available for public review upon adequate
8 notice. No agency shall expend any sum in excess of such quarterly
9 spending allotments, or exceed aggregate position and salary limits. The
10 mayor may set aside specified sums as necessary reserves which shall not
11 be included in the quarterly spending allotments until released by the
12 mayor. Each agency shall administer all monies appropriated or available
13 for programs and purposes of the agency in accordance with quarterly
14 allotment plans proposed by the agency and approved or modified by the
15 mayor. Each such plan shall set forth by units of appropriation for the
16 quarter of the fiscal year during which it is to remain in effect:

17 (i) rates of expenditures for personal services and other than
18 personal services;

19 (ii) ceilings on the total number of uniformed, civilian and pedagog-
20 ical employees; and

21 (iii) the total amount of funds to be spent or committed by the agency
22 during such quarter.

23 (c) The mayor shall keep informed during the course of each fiscal
24 year, of the progress of expenditures and the receipt of revenues, and
25 it shall be the duty of all agencies, when requested by the mayor, to
26 supply all information needed for this purpose.

27 (d) The mayor may assume direct responsibility for the administration
28 of the schedule required to be filed by the agency head pursuant to
29 subdivision (a) of this section when in the mayor's judgment the fiscal
30 condition of the city so requires or when an agency:

31 1. is expending funds in excess of the quarterly spending allotments;

32 2. is otherwise not complying with spending allotments or aggregate
33 position and salary limits; or

34 3. is not maintaining adequate accounts pursuant to requirements of
35 this charter.

36 (e) Whenever the mayor determines, pursuant to the provisions of this
37 charter or other relevant statutes, that the full amount of any appro-
38 priation should not be available for expenditure during the fiscal year,
39 the mayor shall notify the council of such determination and the impli-
40 cations and consequences of those impoundments for service levels and
41 programmatic goals affected. The mayor shall respond in writing to a
42 request by the council for an explanation of why an appropriation should
43 not be expended.

44 (f) The head of each agency shall establish the procedure by which
45 charges and liabilities may be incurred on behalf of the agency. Such
46 procedures shall ensure that no officer or employee, on behalf of or in
47 the name of the agency, shall incur a liability or an expense for any
48 purpose in excess of the amount appropriated or otherwise authorized
49 therefor, and no charge, claim or liability shall exist or arise against
50 the city for any sum in excess of the amount appropriated or otherwise
51 authorized for the particular purpose.

52 § 6-11. Budget modification.

53 (a) Subject to the quarterly spending allotments and aggregate posi-
54 tion and salary limits established pursuant to applicable provisions of
55 this charter, of the state civil service law and of other law, changes
56 in schedules, within units of appropriation, may be made by the head of

1 each agency. Any such changes shall be reported to the mayor and the
2 comptroller not more than ten days after the effective date thereof, and
3 shall be made available for public review upon adequate notice.

4 (b) The mayor during any fiscal year may transfer part or all of any
5 unit of appropriation to another unit of appropriation, except that when
6 any such transfer:

7 1. shall be from one agency to another; or

8 2. shall result in any unit of appropriation having been increased or
9 decreased by more than five per centum or fifty thousand dollars, which-
10 ever is greater, from the budget as adopted for such unit of appropri-
11 ation, the mayor shall notify the council of the proposed action. Within
12 thirty days after the first stated meeting of the council following the
13 receipt of such notice, the council may disapprove the proposed action.
14 Written notice of any transfer pursuant to this subdivision shall be
15 given to the comptroller and shall be published as soon as possible
16 after such transfer.

17 (c) The provisions of this section shall not be deemed to authorize
18 any transfer from appropriations required by law.

19 (d) The council may during any fiscal year transfer part or all of any
20 unit of appropriation within the council appropriation to any other
21 council unit of appropriation for any of its programs or projects or for
22 any other purpose, solely by adoption of a council resolution. Each such
23 transfer shall be published and written notice thereof shall be given to
24 the mayor and to the comptroller not less than ten days before the
25 effective date thereof.

26 (e) The procedures and required approvals pursuant to the amendment,
27 adoption of the budget, veto of the mayor and appropriation, certifi-
28 cation and publication of the budget, without regard to the dates spec-
29 ified therein, shall be followed in the case of:

30 1. any proposed amendment to the budget respecting the creation of new
31 units of appropriation,

32 2. the appropriation of new revenues from any source except for reven-
33 ues from federal, state or private sources in regard to the use of which
34 the city has no discretion provided, however, that the mayor shall give
35 notice to the council of the receipt and proposed utilization of any
36 such revenues, or

37 3. the proposed use by the city of previously unappropriated funds
38 received from any source. Any request by the mayor respecting an amend-
39 ment to the budget that involves an increase in the budget shall be
40 accompanied by a statement of the source of current revenues or other
41 identifiable and currently available funds required for the payment of
42 such additional amounts.

43 § 6-12. Quarterly account of council budget.

44 The council shall be required to publish quarterly accounting of its
45 actual and planned expenditures, in sufficient detail to indicate the
46 positions and their purposes which have been funded, as well as the
47 activities and categories of materials and supplies purchased.

48 § 6-13. General fund.

49 All revenues of the city, of every administration, department, board,
50 office and commission thereof, and of every other division of government
51 within the city, from whatsoever source except taxes on real estate, not
52 required by law to be paid into any other fund or account shall be paid
53 into a fund to be termed the "general fund."

54 § 6-14. Expenditure reports.

55 Any public or private agency, authority, corporation, board or commis-
56 sion which receives city funds and is not otherwise subject to the

1 requirements of section 6-10 of this chapter shall submit quarterly
2 reports of the expenditure of such funds to the mayor in such form and
3 detail as the mayor may prescribe.

4 § 6-15. Self-dealing among members of the governing boards of charita-
5 ble institutions.

6 (a) Any charitable institution which receives any payment from the
7 city of Staten Island charitable institutions budget shall pass and
8 implement by-laws which will:

9 1. require disclosure to the agency responsible for the administration
10 of charitable institutions budget and approval by such agency of the
11 material terms of any contract or transaction, direct or indirect,
12 between an institution and any member of its governing board, any part-
13 nership of which he or she is a member or any corporation in which he or
14 she holds ten per centum or more of the outstanding common stock;

15 2. preclude any member of the governing board of any institution from
16 sharing, participating or benefiting, directly or indirectly, in the
17 proceeds from any contract or transaction entered into between the
18 institution and any third party unless such participation or benefit has
19 been approved in advance by the agency and the governing board of the
20 institution has approved the transaction by a two-thirds majority
21 excluding the vote of member to be benefitted;

22 3. require each member of its governing board to submit to the agency
23 each year a disclosure statement including such member's name, home
24 address, principal occupation and business interests from which such
25 member or such member's spouse received income equal to or greater than
26 ten percent of their aggregate gross income during the previous year.

27 (b) At the discretion of the agency, any payment or any portion of any
28 payment may be withheld from any institution which has failed to pass
29 and implement such by-laws.

30 § 6-16. Definitions of capital projects and budget terms.

31 As used in this charter:

32 (a) The term "capital project" shall mean:

33 1. a project which provides for the construction, reconstruction,
34 acquisition or installation of a physical public betterment or improve-
35 ment which would be classified as a capital asset under generally
36 accepted accounting principles for municipalities or any preliminary
37 studies and surveys relative thereto or any underwriting or other costs
38 incurred in connection with the financing thereof;

39 2. the acquisition of property of a permanent nature including wharf
40 property;

41 3. the acquisition of any furnishings, machinery, apparatus or equip-
42 ment for any public betterment or improvement when such betterment or
43 improvement is first constructed or acquired;

44 4. any public betterment involving either a physical improvement or
45 the acquisition of real property for a physical improvement consisting
46 in, including or affecting:

47 (i) streets and parks;

48 (ii) bridges and tunnels;

49 (iii) receiving basins, inlets and sewers, including intercepting
50 sewers, plants or structures for the treatment, disposal or filtration
51 of sewage, including grit chambers, sewer tunnels and all necessary
52 accessories thereof;

53 (iv) the fencing of vacant lots and the filling of sunken lots;

54 (v) any other project allowed to be financed by the local finance law,
55 with the approval of the mayor and the comptroller; or

56 (vi) any combination of the above.

1 (b) The term "pending" shall mean not yet completed.

2 (c) The term "standards" for each category of capital projects to
3 which they apply shall include: maximum gross and net areas allowed;
4 types of programs which may be operated in the facility; performance
5 requirements for environmental systems; allowable materials and
6 finishes; maximum areas allowed for different functions and activities;
7 approximate cost limits per square foot of construction; and such other
8 items designated by the mayor or by resolution of the council.

9 (d) The term "scope of project" or "proposed scope of project" shall
10 mean a description of a capital project included in the capital budget
11 that contains specific guidelines for the design and implementation of
12 such project consistent with the standards for the appropriate category
13 of capital projects and includes each of the following items of informa-
14 tion which are relevant to the capital project involved:

- 15 1. purposes and public to be served;
- 16 2. programs to be conducted in the facility;
- 17 3. gross and net amounts of space and bulk for any building or struc-
18 ture and for areas for different functions and activities;
- 19 4. identification of required architectural, engineering or other
20 consultants and estimated fees for such consultants;
- 21 5. estimated completion dates for scope, design and construction;
- 22 6. total estimated project costs, including costs for site acquisi-
23 tion, preparation and tenant relocation, design, construction and equip-
24 ment;
- 25 7. estimated expenditures for the project for each fiscal year until
26 its completion;
- 27 8. estimated annual costs to operate programs within the facility when
28 fully staffed and to maintain the facility; and
- 29 9. such other information as shall be required by the mayor or by
30 resolution of the council.

31 (e) The term "cost" shall include the contract liabilities and expend-
32 iture incurred for work in carrying out the physical improvement and
33 interest thereon, and the compensation to be made to the owner of any
34 real property acquired for the improvement as determined by a court or
35 by agreement, and interest thereon.

36 (f) The term "expenses" shall mean any expenses incurred in relation
37 to an assessable improvement exclusive of cost and of damages assessed
38 by the board of assessors.

39 (g) The term "street," as used in this chapter, shall include street,
40 avenue, road, alley, lane, highway, boulevard, concourse, parkway,
41 driveway, culvert, sidewalk, crosswalk, boardwalk, and viaduct, and
42 every class of public road, square and place, except marginal streets.

43 (h) The term "real property" shall include all lands and improvements,
44 lands under water, waterfront property, the water of any lake, pond or
45 stream, all easements and hereditament, corporeal or incorporeal, and
46 every estate, interest and right, legal or equitable, in lands or water,
47 and right, interest, privilege, easement and franchise relating to the
48 same, including terms for years and liens by way of judgment, mortgage
49 or otherwise.

50 (i) The terms "maintenance" or "maintain" shall denote those activ-
51 ities necessary to keep the relevant portion of the capital plant in
52 good repair so as to preserve its structural integrity and to prevent
53 its deterioration.

54 (j) The term "major portion of the capital plant" shall mean:

- 55 1. any capital asset

1 (i) which is a capital facility or system comprising a component of
2 the public domain or infrastructure general fixed assets of the city or
3 a building comprising a component of the general fixed assets of the
4 city; and

5 (ii) which, as of the effective date of this charter, or, as a result
6 of any reconstruction or expansion after such date, has a replacement
7 cost of at least ten million dollars and a useful life of at least ten
8 years, or if purchased or constructed after such date has an original
9 cost of at least ten million dollars and an original useful life of at
10 least ten years; and

11 2. any other capital asset of the city designated by the mayor for the
12 purposes of this section; provided, however, that it shall not include
13 any asset which is leased to or otherwise under the cognizance and
14 control of a public benefit corporation or which is otherwise covered,
15 pursuant to state law, by requirements which are substantially similar
16 to the requirements of this section.

17 § 6-17. Format of departmental estimates for capital projects, prelim-
18 inary capital budget and executive capital budget.

19 The departmental estimates for capital projects and the executive
20 capital budget shall consist of a detailed estimate of all capital
21 projects pending or which the agency head, for departmental estimates,
22 or the mayor, for the executive budget, believes should be undertaken
23 within the ensuing fiscal year and the three succeeding fiscal years.
24 Each agency head, and the mayor, for the executive budgets, shall submit
25 a written response to each of the capital budget priorities included in
26 the council's recommendation of budget priorities for local and neigh-
27 borhood needs submitted in accordance with the section on preliminary
28 budget hearings of this chapter. Such responses shall include the
29 response of the agency head and the mayor, as appropriate, regarding the
30 disposition of each such priority and meaningful explanations of any
31 disapprovals contained in such estimates or budget.

32 § 6-18. Preliminary capital budget.

33 The preliminary capital budget statements shall consist of:

34 (a) a financial plan covering estimates of capital expenditures for
35 the four ensuing fiscal years;

36 (b) departmental estimates for capital projects as provided in section
37 6-19 of this chapter together with the cash flow requirements and
38 proposed sources of funding for each project included in such estimates;

39 (c) a capital program status report which sets forth the appropri-
40 ations for each project included in the capital budget for the current
41 fiscal year together with the expenditures to date; and

42 (d) a summary description of the purpose of each capital project and
43 the needs it will fulfill, the schedule for beginning and constructing
44 the project, its period of probable usefulness and an appropriate main-
45 tenance schedule.

46 § 6-19. Executive capital budget.

47 (a) The executive capital budget shall set forth separately each capi-
48 tal project, and shall include:

49 1. a brief description and the location of each project; the total
50 estimated cost of the project; the appropriations which have been previ-
51 ously adopted for this project; the amount of appropriations recommended
52 to be adopted for the ensuing fiscal year the aggregate amount of which
53 shall not exceed the amount in the mayor's certificate; the amount of
54 appropriations required thereafter to complete the project; the sources
55 of funds for the project including state, federal, private and other
56 funds; the period of probable usefulness; the estimated additional annu-

1 al maintenance and operation costs; and any terms and conditions of the
2 project; the estimated dates of completion of final scope, final design
3 and final construction; and

4 2. a listing of all pending projects; and any recommendations that any
5 pending projects be modified, rescinded or postponed accompanied by a
6 statement of the budgetary impact of any such action.

7 (b) The executive capital program shall set forth for both program
8 categories and individual projects:

9 1. a statement for each of the three succeeding fiscal years of the
10 total dollar amounts necessary to complete projects initiated in prior
11 years and projects proposed in the executive budget the amounts neces-
12 sary for projects proposed to be initiated in future years and the
13 amounts necessary for amendments and contingencies; and

14 2. a statement of the likely impact on the expense budget of staffing,
15 maintaining and operating the capital projects included in or contem-
16 plated by the capital program.

17 § 6-20. Amendment.

18 (a) Upon receipt of a recommendation in writing from the mayor in
19 manner specified herein, the council may amend the capital budget or
20 capital program in the same manner as the adoption of the capital budget
21 and capital program including the right to approve the proposed amend-
22 ment as submitted or to increase or decrease the amounts of funds
23 proposed to be appropriated thereby, but only if funds are available
24 within the capital budget and the applicable program category of the
25 capital program, provided, however that the mayor may only recommend
26 such an amendment relating to an appropriation included in the capital
27 budget pursuant to this charter.

28 (b) Upon the adoption of any such amendment by the council, it shall
29 be certified by the mayor, the speaker of the council and the city clerk
30 and the capital budget shall be amended accordingly.

31 (c) Not later than five days after such certification such amendment
32 shall be filed in the office of the comptroller and shall be published
33 forthwith.

34 § 6-21. Restrictions on capital projects.

35 (a) No obligations of the city shall be issued or authorized for or on
36 account of any capital project not included in a capital budget, or for
37 which funds have not been reserved in an appropriate program category of
38 the capital program for any year of such program in which it is project-
39 ed that funds will be expended for the completion of the project, or in
40 excess of the maximum amount of obligations which may be issued on
41 account of such project as fixed in such capital budget; and no amount
42 may be expended on account of any capital project in excess of the
43 amount appropriated for such purposes in a capital budget, except that
44 the amount appropriated for such purposes may be increased by the mayor
45 by not more than fifteen per centum thereof in order to meet any costs
46 required to advance such project. Notice of any such increase shall be
47 provided to the council together with a statement of identifiable funds
48 available for payment of the increase.

49 (b) Funds included in the capital budget for a capital project that
50 are not obligated or committed during the fiscal year in which appropri-
51 ated shall not be obligated or committed in the subsequent fiscal year
52 unless reappropriated in a subsequent capital budget or an amendment
53 thereto. A capital project included in a capital budget that is not
54 initiated by the expenditure of funds within two years after its inclu-
55 sion in the budget shall be eliminated from the budget.

1 (c) The city may issue capital debt only to finance capital projects
2 as defined in this charter. The capital budget may not include expense
3 items that are properly includable only in the expense budget, as deter-
4 mined in accordance with the accounting principles set forth in the
5 state comptroller's uniform system of accounts for municipalities, as
6 the same may be modified by the state comptroller, in consultation with
7 the city comptroller, for application to the city.

8 (d) No capital project shall be included in the proposed executive
9 capital budget or otherwise adopted as part of the capital budget or as
10 an amendment thereto unless sufficient funds are available within the
11 appropriate general program category of the capital program for any year
12 of such program in which it is projected that additional appropriations
13 will be necessary for the completion of the project.

14 § 6-22. Site selection.

15 (a) The selection of sites for capital projects shall be pursuant to
16 local law.

17 (b) To the maximum extent feasible, final approval of a site for a
18 capital project shall occur prior to or simultaneously with the approval
19 of the scope of the project pursuant to this chapter.

20 § 6-23. Project initiation; commitment plan.

21 (a) The inclusion of a capital project in the capital budget as
22 adopted or amended shall constitute a direction and order to the agency
23 to proceed with the preparation of a scope of project pursuant to this
24 chapter unless sufficient planning funds for such purpose have not been
25 appropriated in the capital budget. The head of the agency shall notify
26 the comptroller of the amount of appropriated planning funds to be
27 encumbered for such purpose.

28 (b) The approval of a scope of project for a capital project pursuant
29 to this chapter, including the amount of obligations necessary to
30 finance the design and construction of the project, shall constitute a
31 direction and order to the agency to design the project, unless suffi-
32 cient funds for such purpose have not been appropriated in the capital
33 budget or are otherwise not available within the appropriate program
34 category of the capital program. Such approval shall constitute notifi-
35 cation to the comptroller of the comptroller's authorization to expend
36 appropriated design funds.

37 (c) The approval of the final design for a capital project pursuant to
38 this chapter shall constitute a direction and order to the agency
39 responsible for construction to prepare bid and award documents and to
40 proceed to bid, unless sufficient funds for such purpose have not been
41 appropriated in the capital budget or are otherwise not available within
42 each year of the capital program in which it is projected that funds
43 will be expended for the completion of the project. Such approval shall
44 constitute notification to the comptroller of the comptroller's authori-
45 zation to expend appropriated construction funds.

46 (d) The mayor shall require each agency to prepare and submit periodic
47 reports, in regard to the progress of its capital projects, including
48 schedules and clear explanations of any delays for particular projects
49 and summary information on each agency's record on such matters. Such
50 reports shall be published at least three times each year: within ninety
51 days of the adoption of the capital budget; with the preliminary capital
52 budget; and with the executive capital budget, copies of such reports
53 shall be transmitted by the mayor to the council. Such reports shall
54 include, for each project, the dates set in the adopted capital budget
55 for the completion of scope, design, and construction and any changes in
56 such dates.

1 1. The report issued with the executive budget shall include, for each
2 new capital project being proposed in the executive budget, a
3 description of the project including, to the extent practicable, the
4 information required to be included in a scope of project.

5 2. The report issued following the adoption of the budget shall
6 include, for each capital project added to the budget, a description of
7 the project including, to the extent practicable, the information
8 required to be included in a scope of project.

9 3. The report issued following the adoption of the budget shall
10 include, for each capital project for which a substantial change was
11 made, a revised description of the project including, to the extent
12 practicable, the information required to be included in a scope of
13 project.

14 (e) Any capital project which results in the acquisition or
15 construction of a capital asset which will be subject to the require-
16 ments of this charter shall contain a provision requiring a comprehen-
17 sive manual setting forth the useful life of the asset and explaining
18 the activities necessary to maintain the asset throughout such useful
19 life.

20 (f) The mayor may issue directives and adopt rules and regulations in
21 regard to the execution of capital projects, consistent with the
22 requirements of subdivisions (a), (b), (c) and (d) of this section,
23 which shall be binding upon all agencies.

24 § 6-24. Improvements payable other than by city.

25 Any owner of real property or any other person interested may apply to
26 the council to authorize an improvement referred to in paragraph one of
27 subdivision (a) of section 6-16 of this chapter, not included in the
28 capital budget. The council may authorize such improvement to be made by
29 the city or by such owner or other person interested upon compliance
30 with the following conditions:

31 (a) such owner or group or other persons interested shall enter into
32 an agreement with the city, whereby they will either authorize the city,
33 or themselves agree, to perform such work in accordance with such plans
34 and specifications approved by the agencies having jurisdiction there-
35 over and under their supervision;

36 (b) all of such work shall be done for the account of or at the sole
37 cost and expense of the person or persons applying for permission to do
38 the same, who shall furnish to the city such security and in such amount
39 as may be required to secure the payment of such cost and expense or the
40 proper performance of the said work in the time and in the manner agreed
41 upon, and shall further secure the city, in the latter case, against
42 latent defects in such work for a period of two years;

43 (c) such improvement shall be approved by the city planning department
44 and reviewed pursuant to local law and charter provisions; and

45 (d) any agreement providing for the performance of such work and the
46 furnishing of such security, shall be first approved by the council
47 before the same shall become effective.

48 § 6-25. Standards for capital projects.

49 The mayor shall prepare general standards and cost limits for catego-
50 ries of capital projects and standards for the preparation of the scope
51 of project for capital projects of various types. Such standards and
52 limits shall be submitted by the mayor to the council for review. The
53 proposed standards shall become effective thirty days after they have
54 been filed with the council unless within that time the council modifies
55 or disapproves them or part of them, after conducting a public hearing.
56 Any modification by the council shall be subject to disapproval by the

1 mayor in accordance with provisions of this charter and any such disap-
2 proval shall be subject to override by the council in accordance with
3 this charter.

4 § 6-26. Scope of project.

5 (a) Each agency, with respect to a capital project under its jurisdic-
6 tion included in a capital budget, shall prepare a proposed scope of
7 project within appropriated planning funds. The proposed scope of
8 project, or, in the case of a delay, an explanation for such delay along
9 with a revised schedule, shall be submitted to the mayor and the coun-
10 cil, by the date specified in the adopted capital budget in which the
11 capital project is included. Such proposed scope shall identify all
12 substantial differences between the guidelines for the capital project
13 as contained in such scope and the description of the capital project
14 contained in the report issued pursuant to this charter at the time such
15 project was proposed in the executive budget or following the budget
16 adoption in which such project was added to the capital budget.

17 (b) Not later than sixty days after receipt of the proposed scope of
18 project from an agency pursuant to subdivision (a) of this section, the
19 mayor shall approve, modify, or disapprove the proposed scope of project
20 and notify the agency and the council. In the case of a scope approved
21 by the mayor with modifications, such notification shall include a copy
22 of the scope as approved.

23 (c) No scope of project shall be approved by the mayor unless:

24 1. it contains the information required by paragraph four of subdivi-
25 sion (d) of section 6-16 of this chapter and it conforms to the applica-
26 ble standards for the type of project adopted pursuant to this chapter,
27 and

28 2. funds are available within the appropriate program category of the
29 capital program that can be reserved for each fiscal year required to
30 complete the project.

31 § 6-27. Design of capital project.

32 (a) The proposed design and final design for a capital project shall
33 be made available for review by the council. The mayor or the mayor's
34 representative shall review the final design to determine its conform-
35 ance with the approved scope of project pursuant to this chapter.

36 (b) Works of art may be provided for each capital project which
37 involves the construction or the substantial reconstruction of a city-
38 owned public building or structure the intended use of which requires
39 that it be accessible to the public generally or to members of the
40 public participating in, requiring or receiving programs, services or
41 benefits provided thereat. For the purposes of this section a police
42 precinct house and a firehouse shall be deemed to be such buildings.

43 Chapter 7

44 Planning Department

45 § 7-01. Planning department.

46 There shall be a department of city planning consisting of a planning
47 director and such subordinate employees as are required to administer
48 the planning program described herein.

49 § 7-02. Planning director.

50 The mayor shall appoint and shall have the power to remove the plan-
51 ning director, who shall have had at least five years of appropriate
52 professional land use experience. The planning director shall be the
53 head of the planning department, and shall be responsible for the proper
54 conduct of the affairs of the department and for the execution of the

1 planning program prescribed in this charter and in local laws and rules
2 consistent herewith.

3 § 7-03. Powers, duties and functions.

4 (a) The planning director, through the planning department, shall:

5 1. advise and assist the mayor and the council in regard to the phys-
6 ical planning and public improvement aspects of the development of the
7 city and on all matters related to the planning program prescribed in
8 this charter and in local law and rules consistent herewith;

9 2. prepare the general plan and revisions thereof, and development
10 plans at least every four years in the year following the mayoral
11 election and annual reviews thereof, for the improvement and development
12 of the city;

13 3. establish procedures for processing revisions to the general plan
14 and to the four-year and one-year development plans;

15 4. hold public hearings on such plans and revisions thereof and trans-
16 mit them, with findings and recommendations thereon, through the mayor
17 to the council for its consideration and action;

18 5. prepare zoning resolutions, maps and rules and regulations and any
19 revision or amendments thereto in accordance with the general plan;

20 6. prepare local laws or resolutions and rules and regulations govern-
21 ing the subdivision of lands within the city and any revisions or amend-
22 ments thereto;

23 7. administer the zoning and subdivision local laws or resolutions and
24 rules and regulations adopted thereunder and any regulatory laws or
25 resolutions which may be adopted to supplement or replace such resol-
26 utions;

27 8. recommend periodic amendments to zoning resolutions and subdivision
28 laws or regulations, and provide opportunity for taxpayers to recommend
29 periodic amendments to zoning resolutions and subdivision laws or regu-
30 lations;

31 9. hold public hearings on land subdivision and zoning resolutions and
32 amendments thereto, transmit such proposed resolutions, with findings
33 and recommendations thereon, through the mayor to the council for its
34 consideration and action;

35 10. establish procedures for the review of land utilization applica-
36 tions;

37 11. review subdivision plats and zoning petitions;

38 12. approve applications for special permits and variances within the
39 jurisdiction of the department of city planning under the zoning resol-
40 ution;

41 13. collect data on population, housing and other relevant social and
42 economic indicators to serve as a basis for planning recommendations;
43 and may conduct continuous studies and policy analyses on economic
44 development, urban design, capital improvements, environmental impact
45 assessment and such other subjects as the mayor or council may from time
46 to time request;

47 14. be custodian of the city map and thereon record all changes legal-
48 ly authorized;

49 15. administer the program prescribed by law with respect to the
50 establishment and regulation of landmarks, portions of landmarks, land-
51 mark sites, interior landmarks, scenic landmarks and historic districts;

52 16. hold public hearings on a proposed designation of a landmark,
53 landmark site, interior landmark, scenic landmark or historic district,
54 after notice of the proposed designation, notice of the hearing, and an
55 opportunity for comment to the affected property owner or owners;

1 17. submit to the council a report on the impact of any such desig-
2 nation whether of a district or a landmark to the zoning resolution,
3 projected public improvements, and any plans for the development,
4 growth, improvement or renewal of the area involved, and a recommenda-
5 tion for council action with respect to any such designation;

6 18. review the executive capital program and budget for conformance to
7 the purposes of the general plan and development plans prior to
8 submission of the executive capital program and budget to the council
9 and make a written report of his or her findings to the mayor and coun-
10 cil at the time of submission of such executive capital program and
11 budget;

12 19. prepare, in consultation with the director of the budget, the
13 draft ten-year capital strategy, and hold hearings on such draft, and
14 report his or her findings to the mayor and to the council;

15 20. consult with the appropriate State officials concerned with plan-
16 ning and environmental quality to assure compliance with State guide-
17 lines and oversee implementation of laws that require environmental
18 reviews of actions taken by the city; and

19 21. perform such other functions as are assigned by the mayor or other
20 provisions of law.

21 § 7-04. General plan.

22 The general plan shall set forth the city's broad policies for the
23 long range development of the city. It shall contain statements of the
24 general social, economic, environmental and design objectives to be
25 achieved for the general welfare and prosperity of the people of the
26 city through government action, city, state or federal. The statements
27 shall include, but not be limited to, policy and development objectives
28 to be achieved with respect to the distribution of social benefits, the
29 most desirable uses of land within the city, the overall circulation
30 pattern and the most desirable population densities within the several
31 areas of the city. In conformance with such development objectives and
32 policies the plan shall identify the general location, character, and
33 extent of streets and thoroughfares, parks, recreation facilities, sites
34 for public buildings and structures, city and privately owned utilities,
35 transportation systems and facilities, housing, community facilities,
36 future land use for all classifications and such other elements,
37 features and policies as will provide for the improvement of the city
38 over the next ten years.

39 § 7-05. Development plans.

40 Development plans shall present detailed means for implementing and
41 accomplishing the development objectives and policies of the general
42 plan within the several parts of the city. The mayor shall have a
43 comprehensive four-year development plan which shall recommend a gener-
44 alized land use development pattern to guide the growth of the city over
45 the succeeding four-year period and a one-year development plan that
46 delineates the city's proposed land use development pattern for a
47 succeeding twelve month period and is based upon the development goals
48 and objectives specified in the city's four-year development plan.

49 § 7-06. Adoption of the general plan and development plans.

50 (a) The mayor shall submit annually to the council such plans that
51 will include a general plan, four-year and one-year development plans
52 for all property within the city limits. The council shall adopt the
53 general plan or revisions thereof and development plans or amendments
54 thereto by local law. Any local law or resolution adopting or revising
55 the general plan shall be laid over for at least two weeks after intro-
56 duction. The mayor shall not certify as to the necessity for the immedi-

1 ate consideration of any general plan, development plans, or revisions
2 or amendments thereto. Public notice shall be provided at least ten days
3 before adoption by the council. Upon adoption, every local law or
4 resolution shall be presented to the mayor, and the mayor may approve or
5 disapprove it pursuant to applicable provisions governing the approval
6 or disapproval of a local law or resolution. If the mayor approves the
7 local law, the mayor shall sign it and return it to the clerk; it shall
8 then be deemed to have been adopted. If the mayor disapproves it, he or
9 she shall return it to the council with his or her objections stated in
10 writing. The council at its next regular meeting may reconsider the same
11 and if the votes of two-thirds of all the council members be cast in
12 favor of repassing such local law, it shall be deemed adopted, notwith-
13 standing the objections of the mayor.

14 (b) The general plan and all development plans shall be kept on file
15 in the department of city planning.

16 (c) The approved general plan and development plans shall be used as a
17 guide for the preparation of the city's capital improvement program and
18 capital budget.

19 (d) The mayor shall maintain an up-to-date zoning map of all proper-
20 ties within the city limits.

21 (e) Following the annual updating and adoption of the city's develop-
22 ment plans, the council shall amend the city's zoning ordinance to
23 conform it to the updated development plans in accordance with proce-
24 dures prescribed by general law.

25 § 7-07. Board of Appeals.

26 (a) There shall be a board of appeals which shall consist of five
27 members to be termed commissioners, three of whom shall be appointed by
28 the mayor and two appointed by the council. Members shall serve a stag-
29 gered term of five years.

30 (b) Commissioners shall be chosen for their independence, integrity
31 and civic commitment and for their professional competence in such areas
32 as planning, architecture, and engineering. The mayor shall designate
33 one of the members to serve as chair and one of the members to serve as
34 vice-chair who shall act as chair in the absence of the chair or in the
35 event that a vacancy exists in the office of chair.

36 (c) Every member of the board shall receive a salary, which shall not
37 be reduced during his or her term of office except in case of a general
38 reduction of salaries and in proportion to reductions of salaries of
39 other officers with similar salaries. A member shall not engage in any
40 other occupation, profession or employment. Members shall attend the
41 hearings and executive sessions of the board, and shall perform such
42 other duties as may be required by the chair.

43 (d) Vacancies shall be filled in the same manner as for an original
44 appointment for the unexpired term of the member whose place has become
45 vacant and with a person having his or her qualifications.

46 (e) Any member may be removed by the mayor on proof of official
47 misconduct, or of negligence in official duties, inability to perform
48 his or her duties; but before removal he or she shall receive a copy of
49 the charges and shall be entitled to a hearing before the mayor and to
50 the assistance of counsel at such hearing.

51 § 7-08. Meetings.

52 Meetings of the board shall be held at the call of the chair and at
53 such other times as the board may determine. The chair, or in his or her
54 absence the acting chair, may administer oaths and compel the attendance
55 of witnesses. All hearings before the board shall be open to the public
56 and shall be before at least three members of the board, and a concur-

1 ring vote of at least three members shall be necessary to a decision to
2 grant an application or an appeal, to revoke or modify a variance,
3 special permit or other decision of the board, or to make, amend or
4 repeal a rule or regulation. The board shall keep minutes of its
5 proceedings, showing the vote of each member upon every question, or if
6 absent or failing to vote, indicating such fact, and shall also keep
7 records of its examinations and other official action. Such minutes and
8 such records shall be public records.

9 § 7-09. Powers and duties.

10 The board shall have the power:

11 (a) to hear and determine appeals from the actions of the planning
12 director in the administration of the zoning and subdivision resolutions
13 and any rules and regulations adopted pursuant thereto, which appeal
14 shall be sustained only if the board finds that the director's action
15 was based on an erroneous finding of a material fact, or that the direc-
16 tor had acted in an arbitrary or capricious manner or had manifestly
17 abused discretion;

18 (b) to hear and determine appeals from the actions of the planning
19 director on petitions for varying the application of the zoning resol-
20 ution with respect to a specific parcel of land and may grant such a
21 variance upon the ground of unnecessary hardship if the record shows
22 that:

23 1. the applicant would be deprived of the reasonable use of such land
24 or building if it were used only for the purpose allowed in that zone;

25 2. the request of the applicant is due to unique circumstances and not
26 the general conditions in the neighborhood, so that the reasonableness
27 of the neighborhood zoning is not drawn into question; and

28 3. the use sought to be authorized by the variance will not alter the
29 essential character of the locality, provided however that the board
30 shall specify the particular evidence which supports the granting of a
31 variance;

32 (c) to hear and determine appeals from and review any recommendation
33 by the planning director to designate a landmark, landmark site, interi-
34 or landmark, scenic landmark or historic district;

35 (d) to make, amend and repeal rules and regulations for carrying into
36 effect the provisions of the laws, resolutions, rules and regulations in
37 respect to any subject-matter jurisdiction whereof is conferred by law
38 upon the board, and to include in such rules and regulations provisions
39 applying to specific conditions and prescribing means and methods of
40 practice to effectuate such provisions and for carrying into effect the
41 powers of the board;

42 (e) to review, upon motion of any member of the board, any rule, regu-
43 lation, amendment or repeal thereof, and any order, requirement, deci-
44 sion or determination from which an appeal may be taken to the board
45 under the provisions of this chapter or of any law, or of any rule,
46 regulation or decision of the board; but no such review shall prejudice
47 the rights of any person who has in good faith acted thereon before it
48 is reversed or modified; and

49 (f) to revoke or modify, upon due notice and hearing, variances and
50 special permits previously granted under the zoning resolution if the
51 terms and conditions of such grants have been violated.

52 § 7-10. Procedure on appeals.

53 (a) An appeal may be taken by an aggrieved party.

54 (b) Such appeal may be taken within such time as shall be prescribed
55 by the board by general rule, by filing with the officer from whom the
56 appeal is taken and with the board a notice of appeal, specifying the

1 grounds thereof. The officer from whom the appeal is taken shall forth-
2 with transmit to the board all the papers constituting the record upon
3 which the action appealed from was taken.

4 (c) The board shall fix a reasonable time for the hearing of appeals,
5 and give due notice thereof to the parties, and decide the same within a
6 reasonable time. If the appeal is from an order revoking a permit or
7 approval, the hearing shall be no later than at the third scheduled
8 hearing of the board following the date of filing of the appeal, or five
9 weeks following such date, whichever is sooner, and the decision of the
10 board shall be rendered expeditiously. Upon the hearing any party may
11 appear in person or by agent and/or attorney.

12 (d) Any decision of the board under this section may be reviewed as
13 provided by law.

14 Chapter 8
15 Franchises

16 § 8-01. Franchises.

17 All franchises, revocable consents and concessions shall be awarded in
18 accordance with the following procedures:

19 (a) The council shall have the power to grant, renew or extend any
20 franchise, revocable consent or concession which extends for a period of
21 three or more years, provided, however, that any franchise, revocable
22 consent or concession which extends for a period of ten years or more
23 shall require the approval of two-thirds of all the members; and

24 (b) The mayor shall have the power to enter into an agreement to
25 grant, renew or extend a franchise, revocable consent or concession
26 which extends for a period of less than thirty-six months.

27 Chapter 9
28 Contracting

29 § 9-01. Procurement.

30 Except as otherwise provided in this charter or by statute, all goods,
31 services or construction to be paid for out of the city treasury or out
32 of monies under the control of or assessed or collected by the city
33 shall be procured as prescribed in this chapter.

34 § 9-02. Conditions.

35 The circumstances under which procurement may be used for the
36 provision of technical, consultant or personal services, shall include
37 circumstances where the use of procurement is:

- 38 (a) cost effective or necessary to obtain special expertise;
39 (b) necessary to provide a service not needed on a long-term basis;
40 (c) necessary to avoid a conflict of interest; or
41 (d) where personnel or expertise is not available in city government.

42 § 9-03. Procedures.

43 All contracts shall be awarded in accordance with the following proce-
44 dures:

45 (a) The mayor as the chief elected executive shall through his or her
46 appointees have the power to enter into contracts on behalf of the city
47 of Staten Island.

48 (b) The comptroller shall, in accordance with provisions of this char-
49 ter and with practices promulgated by state law, certify all contracts,
50 within thirty days of receipt of such contract, provided there is no
51 cause not to certify. If the comptroller determines that a contract
52 cannot be certified, he or she shall so notify the mayor and the common
53 council within thirty days of receipt of such contract. Reasons not to
54 certify shall include but not be limited to debarment of

1 vendors/contractors, unreasonable and/or onerous terms and conditions,
2 financial problems or inconsistencies, and any other major cause not
3 advantageous to the city that the comptroller can identify and justify
4 through appropriate documentation.

5 (c) All contracts above ten thousand dollars, shall be let by compet-
6 itive bidding, in compliance with current rules, regulations, guidelines
7 and practices set forth by an appropriate national government procure-
8 ment officers professional association or the conventions set forth in
9 the generally accepted accounting practices or procedures as promulgated
10 by the New York State comptroller's office, as agreed to by the mayor,
11 the comptroller and approved by the common council; except that, when an
12 emergency as defined by local law is declared by the mayor to exist and
13 is certified by the comptroller, expedited rules as promulgated by the
14 mayor or the mayor's designee shall apply.

15 (d) Contracts of ten thousand dollars or less may be let by sole
16 source bid when an agency by rule determines that there is only one
17 source for the required good, service or construction. The agency
18 contract file shall contain a written determination that only one source
19 is available for the required good, service or construction, including
20 the process by which the agency made such determination. The agency
21 shall provide to the comptroller written documentation to support its
22 intention to let a sole source contract. This documentation shall
23 include, but not be limited to, the qualifications of the vendor and the
24 specific requirements of the contract.

25 (e) If, for any contract above ten thousand dollars, there is an
26 alteration, renewal, or change in the terms and conditions or the scope
27 of work which results in an increase or decrease of greater than five
28 per centum of the original contract amount, then those contract changes
29 must be certified by the comptroller.

30 § 9-04. Notification of contract opportunities and awards.

31 Each agency shall publish in the appropriate publication and in news-
32 papers of city, state or national distribution and trade publications,
33 notice of:

34 (a) the solicitation of bids or proposals pursuant to this chapter
35 where the value of a contract for goods, services or construction is
36 estimated to be above ten thousand dollars;

37 (b) the award of a contract for goods, services or construction
38 exceeding ten thousand dollars in value. Each such notice of award shall
39 indicate the name of the contractor, the dollar value of the contract,
40 the procurement method by which the contract was let;

41 (c) the comptroller shall promulgate rules providing for the publica-
42 tion and content of notices of contract actions required by this chap-
43 ter. Such rules shall include but not be limited to provisions regarding
44 the timing and frequency of notices, the required duration of solicita-
45 tion periods, and the form and content of notices.

46 § 9-05. Agency contract files.

47 Each agency shall maintain files containing all information pertaining
48 to the solicitation, award and management of each contract of the agen-
49 cy. The agency contract files shall contain copies of each determi-
50 nation, writing or filing required by this chapter pertaining to a
51 contract including the circumstances under which the procurement was let
52 in accordance with section 9-02 of this chapter, and copies of all costs
53 effectiveness analyses. Agency contract files shall be open to public
54 inspection with adequate protection for information which is confiden-
55 tial.

56 § 9-06. Centralized contract and contractor information.

1 The mayor shall ensure that copies of all city contracts and other
2 standard information regarding city contracts and contractors are
3 located in a central place which is accessible to the public. Such
4 information shall include:

5 (a) a copy of the contract;

6 (b) information regarding the method by which the contract was let;

7 (c) such standard documents as the contractor is required to submit,
8 which shall be updated regularly;

9 (d) information regarding the contractor's qualifications and perform-
10 ance;

11 (e) any evaluations of the contractor and any contractor responses to
12 such evaluation;

13 (f) any audits of the contract and any contractor responses to such
14 audits;

15 (g) any decisions regarding the suspension or debarment of the
16 contractor; and

17 (h) any analysis and determination of cost effectiveness.

18 The mayor shall ensure adequate public access to the information on
19 contracts and contractors which shall be maintained in a manner to
20 facilitate public review, with due consideration for the need to
21 protect, where appropriate, the confidentiality of any such information.

22 § 9-07. Adverse impact on public employees.

23 In the event that a proposed contract for goods, services or
24 construction may adversely affect public employees, the public employees
25 union, if any, shall be advised no later than three months in advance of
26 the contract being let of the nature, scope, and approximate dates, of
27 the contract, and the reasons therefor. Except that, when an emergency
28 as defined in subdivision (c) of section 9-03 of this chapter is in
29 effect, some or all of the provisions of this section may be omitted or
30 suspended for the period of the emergency, but only for those contracts
31 directly relevant to the management of that emergency or as a result of
32 the emergency.

33 The public employer will provide such union as soon as practicable,
34 with information, in sufficient detail, so that the union may prepare a
35 proposal designed to demonstrate the cost effectiveness of keeping the
36 work in-house. Such information shall include, but not be limited to,
37 applicable solicitation to vendors, winning bids, descriptions of
38 services to be provided by vendors, and the agency's estimated direct
39 operating and administrative costs of contracting out the work.

40 Not less than thirty days prior to the award of the contract, the
41 union shall have the opportunity to make a formal proposal to the public
42 employer demonstrating that it is cost effective or that it is in the
43 best interest of the public employer to continue to perform such work
44 in-house. The public employer shall consider such proposal before making
45 a final determination.

46 Chapter 10

47 Referendum and Amendment

48 § 10-01. Referendum on pending legislation.

49 (a) The people of the city of Staten Island reserve to themselves the
50 right to require the council to vote on proposed laws and amendments to
51 the local laws as hereinafter provided.

52 (b) The people shall have the power to require the council to vote on
53 proposed bills and resolutions by initiative petition. Each initiative
54 petition shall support a bill or resolution which has been introduced in

1 the council and shall be signed by five per centum of the total votes
2 cast on Staten Island at the previous general election.

3 (c) An initiative petition when signed by the requisite number of
4 voters shall be submitted to the Staten Island board of elections which
5 shall promptly determine whether the petition meets the requirements of
6 subdivision (b) of this section. If the Staten Island board of elections
7 determines those requirements are satisfied it shall certify to the
8 speaker of the council that the bill or resolution supported by the
9 petition is required to be considered in the council with the vote of
10 each member present recorded.

11 (d) No petition shall be certified to the council after May first in
12 any year. A petition which is not certified by the Staten Island board
13 of elections before May first shall be certified to the council on the
14 first day of the next legislative session.

15 (e) The council shall have sixty days from receipt of a certified
16 petition to vote on the bill or resolution which is the subject of the
17 petition. If the council fails to vote on such bill or resolution within
18 sixty days, such bill or resolution shall be deemed to have passed.

19 (f) City funds, facilities or employees may not be used to solicit
20 signatures on an initiative petition or to support or oppose the signing
21 of such a petition provided, however, that elected officials may solicit
22 such signatures or oppose the signing of such a petition.

23 (g) The council shall, by local law, prescribe the form and content
24 of, and the procedures for, initiative petitions consistent with this
25 section. The council may, by local law, provide for the reporting of the
26 identity of any person who expends money to affect any initiative peti-
27 tion and the amount of any money so expended.

28 § 10-02. Charter amendment.

29 (a) Amendments to this charter shall be adopted by referendum only,
30 except for those changes that are syntax and/or spelling changes which
31 may be effected, altered or amended by local law as adopted by the coun-
32 cil and the mayor as provided for in this charter. The council may
33 place an amendment on the ballot by a vote of two-thirds of all the
34 members.

35 (b) Referendum in order to amend the charter shall take place as a
36 ballot issue to be decided by affirmative vote of the majority of the
37 qualified electors of the city voting thereon, it shall take effect as
38 prescribed in such referendum.

39 (c) The referendum shall be placed on the ballot by petition of quali-
40 fied electors of not less than five per centum of the total vote cast in
41 the city of Staten Island at the last gubernatorial general election.
42 The petition shall be filed in the office of the clerk of the city of
43 Staten Island for the submission to the electors of the city at the next
44 general election therein held not less than sixty days after such
45 filing. The proposed amendment shall be set forth in full in such peti-
46 tion which may be made upon separate sheets and the signatures of each
47 shall be authenticated in the manner provided by the New York state
48 election law. If within ten days after the filing of such petition a
49 written objection thereto be filed with the office of the city clerk and
50 the board of elections, the Supreme Court or any justice thereof of the
51 appropriate judicial district shall determine any question arising ther-
52 eunder and make such order as justice may require as prescribed in the
53 state election law.

1 § 11-01. Inalienable property.

2 The rights of the city in and to its water front, ferries, wharf prop-
3 erty, bridges, land under water, public landings, wharves, docks,
4 streets, avenues, highways, parks, waters, waterways and all other
5 public places are hereby declared to be inalienable; but upon closing or
6 discontinuance of any street, avenue, park or other public place, the
7 property may be sold or otherwise disposed of as may be provided by law,
8 and leases of land under water, wharf property, wharves, docks and piers
9 may be made as may be provided by law.

10 § 11-02. Authority to acquire real property.

11 (a) The city may acquire title in fee to real property or any interest
12 therein whenever required for any public or municipal use or purpose or
13 for the promotion of public utility, comfort, health, enjoyment or
14 adornment. Such title or interest shall be acquired according to law by
15 purchase, gift, devise, lease, condemnation or otherwise, and, subject
16 to the provisions of this charter or other law may sell, lease, mort-
17 gage, hold, manage, and control such property as may now or hereafter be
18 owned by it.

19 (b) The council by local law shall prescribe the procedures for all
20 acquisitions of real and personal property by the city, including proce-
21 dures for determining compensation and for appealing from such determi-
22 nation without prejudice to the appellant. In addition to all other
23 requirements of law, written notice of the application to have compen-
24 sation for real property ascertained in any proceeding brought by the
25 city to acquire title to real property shall be given to the owners of
26 all property affected by the proceeding to such application. Such notice
27 shall state the purpose for which the property is to be acquired and the
28 date when such application will be presented and shall be made public
29 not less than ten days prior to such proceeding. Any owner whose proper-
30 ty has been taken in any such proceeding which has not been used for the
31 purpose stated in the proceeding for acquisition shall have the right of
32 first refusal to repurchase such property from the city after the expi-
33 ration of a five-year period from the date of the entry of the final
34 decree in the proceeding for the price paid plus simple interest.

35 § 11-03. Disposal of property of the city.

36 No real property of the city may be sold, leased, exchanged or other-
37 wise disposed of except as specifically provided by law.

38

Chapter 12

39

Personnel Management

40 § 12-01. Declaration of intent.

41 (a) The personnel policies and practices of the city government in
42 furtherance of this charter, the state civil service law and rules and
43 other applicable law shall:

44 1. preserve and promote merit and fitness in city employment;
45 2. ensure that appointments and promotions in city service are made,
46 and that wages are set, without regard to political affiliation, and
47 without unlawful discrimination based on sex, race, color, religion,
48 religious observance, national origin, disability, age, marital status,
49 citizenship status or sexual orientation; and promote and support the
50 efficient and effective delivery of services to the public.

51 (b) Consistent with subdivision (a) of this section, the heads of city
52 agencies shall have such powers, duties and responsibilities for person-
53 nel management as they shall require to administer their agencies effec-
54 tively and to supervise, evaluate, motivate, discipline, provide incen-
55 tives for and improve the skills of employees of the city.

1 § 12-02. Department; personnel director.

2 There shall be a department of personnel, the head of which shall be
3 the personnel director. The personnel director shall have all the powers
4 and duties of a municipal civil service commission provided in the state
5 civil service law or in any other statute or local law other than such
6 powers and duties as are by this chapter assigned to the mayor, the city
7 civil service commission or the heads of city agencies.

8 § 12-03. City civil service commission.

9 (a) There shall be a city civil service commission, consisting of
10 three members, not more than two of whom shall be members of the same
11 political party. Members shall be appointed by the mayor, from a list of
12 nominations provided by the screening committee established pursuant to
13 subdivision (b) of this section, for overlapping terms of six years. Of
14 the members first appointed, one shall serve for two years and one for
15 four years and one for six years. The members shall be removable in the
16 manner provided for members of a municipal civil service commission in
17 the state civil service law. A vacancy in such commission shall be
18 filled in the same manner as regular appointments for the balance of the
19 unexpired term. The mayor shall designate a member as chair and vice
20 chair, respectively, for one-year terms. Within appropriations for such
21 purposes, the members of the commission shall be reimbursed on a per
22 diem basis for attendance at regularly scheduled meetings and hearings
23 of the commission.

24 (b) There shall be a screening committee which shall submit to the
25 mayor a list of nominees, which shall include persons with knowledge or
26 experience of the state civil service system, or personnel management,
27 or compensation practices, from which the mayor shall make appointments
28 to the city civil service commission. Such screening committee shall
29 consist of six members, of whom three shall be appointed by the mayor
30 and three shall be appointed by the municipal labor committee. The
31 screening committee shall submit the list of nominees upon the occur-
32 rence of any vacancy on the commission or at least three months prior to
33 the expiration of the term of any incumbent member.

34 (c) The commission shall appoint a counsel, who shall not be employed
35 or retained by any other city agency, and may appoint a secretary and
36 such other subordinates as may be necessary within the appropriation
37 therefor.

38 (d) The civil service commission shall have the power to hear and
39 determine appeals by any person aggrieved by any action or determination
40 of the personnel director made pursuant to section 12-04 of this chapter
41 and may order such relief as it deems appropriate or necessary in
42 accordance with this charter or the state civil service law. Any such
43 appeal shall be taken by application in writing to the commission within
44 thirty days after the action or determination appealed from. The commis-
45 sion shall also have the powers and responsibilities of a municipal
46 civil service commission under section seventy-six of the state civil
47 service law. In accordance with the requirements of this charter, the
48 commission shall promulgate rules of procedure, including rules estab-
49 lishing time schedules, for the hearings and determinations authorized
50 by this section.

51 (e) The commission shall have the power and duty to conduct reviews,
52 studies, or analyses of the administration of personnel in the city,
53 including the classification of titles by the personnel director.

54 (f) The commission shall prepare and transmit directly to the mayor
55 departmental estimates as required by this charter. The mayor shall
56 include such proposed appropriations for the commission as a separate

1 agency in the preliminary and executive budgets as are sufficient for
2 the commission to fulfill the obligations assigned to it by this charter
3 or other law.

4 § 12-04. Personnel director; powers and duties.

5 (a) The personnel director shall have the following powers and duties
6 in addition to the powers and duties of a municipal civil service
7 commission provided in the state civil service law, and those vested in
8 the personnel director as the head of the department, except where any
9 specific power or duty is assigned to the mayor, heads of city agencies
10 or the civil service commission pursuant to this chapter:

11 1. to recruit personnel;

12 2. to make studies in regard to the grading and classifying of posi-
13 tions in the civil service, establish criteria and guidelines for allo-
14 cating positions to an existing class of positions, and grade and estab-
15 lish classes of positions;

16 3. to schedule and conduct examinations for positions in the civil
17 service;

18 4. to establish, promulgate and certify eligible lists in the manner
19 provided in the state civil service law, and the rules of the personnel
20 director;

21 5. to determine the appropriateness of eligible lists for the filling
22 of vacancies in the manner provided in the state civil service law and
23 the rules of the personnel director;

24 6. to investigate applicants for positions in the civil service; to
25 review their qualifications, and to revoke or rescind any certification
26 or appointment by reason of the disqualification of the applicant or
27 appointee under the provisions of the state civil service law, and the
28 rules of the personnel director or any other law;

29 7. to review any appointment of persons as provisional employees with-
30 in sixty days after appointment to assure compliance with this charter,
31 the state civil service law, and any rule or regulation issued pursuant
32 to this charter or state civil service law;

33 8. to certify payrolls in accordance with the provisions of the state
34 civil service law and the rules of the personnel director;

35 9. to keep records regarding candidates for appointment to the civil
36 service and officers and employees in the civil service;

37 10. to develop and recommend to the mayor standard rules governing
38 working conditions, vacations and leaves of absence; and career, salary
39 and wage plans providing for the creation, abolition and modification of
40 positions and grades and fixing salaries of persons paid from the city
41 treasury, subject to the provisions of this charter, the state civil
42 service law, other applicable statutes and collective bargaining agree-
43 ments;

44 11. to administer the city-wide incentive, training and development,
45 and other such personnel programs of the city;

46 12. to establish and enforce uniform procedures and standards to be
47 utilized by city agencies in establishing measures, programs and plans
48 to ensure a fair and effective affirmative employment plan for equal
49 employment opportunity for minority group members and women who are
50 employed by, or who seek employment with, city agencies. Such procedures
51 shall include a time schedule for the development of such plans which
52 provides for the preparation by each agency of a draft plan, the review
53 of such draft plan by the department of personnel, the equal employment
54 practices commission, and such other agency as the mayor requires, and
55 the consideration by the agency of any comments received on such draft

1 plans prior to the adoption of a final plan as required by section 12-05
2 of this chapter;

3 13. to establish a uniform format to be utilized by all city agencies
4 in the preparation of the quarterly reports required by section 12-05 of
5 this chapter. Such format shall provide for the presentation of statis-
6 tical information regarding total employment, new hiring and promotions
7 in a manner which facilitates understanding of an agency's efforts to
8 provide fair and effective equal opportunity employment for minority
9 group members, women and members of other groups who are employed by, or
10 who seek employment with, city agencies;

11 14. to develop, in conjunction with other city agencies, a clearing-
12 house for information on employment and educational programs and
13 services for minority group members and women; and

14 15. to provide assistance to minority group members and women employed
15 by, or interested in being employed by, city agencies to ensure that
16 such minority group members and women benefit, to the maximum extent
17 possible, from city employment and educational assistance programs.

18 (b) The personnel director shall have the following powers and duties
19 with respect to the personnel management functions assigned to city
20 agencies pursuant to subdivisions (a), (b), (c), and (d) of section
21 12-05 of this chapter:

22 1. to aid in the development of effective and efficient personnel
23 programs and professional personnel staffs in the agencies of the city;
24 and to convene the personnel officers of the agencies from time to time
25 as a personnel council to consider personnel matters of inter-agency or
26 of city-wide concern;

27 2. to approve agency plans and programs pursuant to section 12-05 of
28 this chapter;

29 3. to establish and enforce standards, guidelines and criteria for the
30 personnel management functions assigned to the agencies and to audit
31 performance by the agencies of such personnel functions;

32 4. to reverse or rescind any agency personnel action or decision
33 pursuant to an assignment or delegation of authority in this chapter,
34 upon a finding of abuse after notification to the agency and an opportu-
35 nity to be heard;

36 5. to hear and determine appeals by any person aggrieved by any action
37 or determination of the head of an agency made pursuant to section 12-05
38 of this chapter, subject to review by the civil service commission as
39 provided in subdivision (e) of section 12-03 of this chapter;

40 6. to delegate to the head of an agency personnel management functions
41 assigned to the personnel director where such delegation is not other-
42 wise prohibited by the state civil service law, and pursuant to terms
43 and conditions prescribed by the director;

44 7. to administer personnel programs of a city-wide nature or common to
45 two or more departments where administration by separate agencies would
46 be impracticable and uneconomical;

47 8. to annually publish and submit to the mayor, council and the
48 commission on equal employment practices a report on the activities of
49 the department of personnel and city agencies to provide fair and effec-
50 tive affirmative employment practices to ensure equal employment oppor-
51 tunity for minority group members and women who are employed by, or who
52 seek employment with, city agencies. Such report shall include, but not
53 be limited to, an analysis of the city government workforce and appli-
54 cants for such employment by agency, title and classification; a
55 description of each agency's employment practices, policies and
56 programs; an analysis of the effectiveness of the city's efforts to

1 provide fair and effective affirmative employment practices to ensure
2 equal employment opportunity for minority group members and women who
3 are employed by, or who seek employment with, city agencies; and such
4 legislative, programmatic and budgetary recommendations for the develop-
5 ment, implementation or improvement of such activities as the personnel
6 director deems appropriate.

7 (c) The personnel director shall promulgate rules and regulations
8 relating to the personnel policies, programs and activities of city
9 government in furtherance of and consistent with the state civil service
10 law and this chapter. The personnel director shall transmit to the state
11 civil service commission each proposed rule which must be submitted to
12 such commission, including any which establishes or reclassifies titles
13 in the non-competitive or exempt class, within sixty days after the
14 public hearing has been held on such rule.

15 (d) The personnel director shall, at the time requested by the city
16 civil service commission or the equal employment practices commission,
17 provide each commission with all the information which such commission
18 deems necessary to fulfill the duties assigned to it by the charter. The
19 provisions of this subdivision shall not apply to any information which
20 is required by law to be kept confidential or which is protected by the
21 privileges for attorney-client communications, attorney work products,
22 or material prepared for litigation.

23 (e) The personnel director shall submit a quarterly report to the
24 mayor, the council, the civil service commission and the equal employ-
25 ment practices commission. Such report shall specify, by agency and by
26 title, including temporary titles:

27 1. the number of provisional employees at the end of the second month
28 of the quarter;

29 2. the length of time such provisional employees have served in their
30 positions; and

31 3. the actions taken by the city to reduce the number of such provi-
32 sional employees and the length of their service in such positions. Such
33 reports shall be submitted by the last day of March, June, September,
34 and December of each year.

35 § 12-05. Agency heads; powers and duties.

36 (a) Subject to the state civil service law and applicable provisions
37 of this charter, heads of city agencies shall have the following powers
38 and duties essential for the management of their agencies in addition to
39 powers and duties vested in them pursuant to this charter or other
40 applicable law:

41 1. to recruit personnel;

42 2. to participate with the personnel department in job analyses for
43 the classification of positions;

44 3. to allocate individual positions to existing civil service titles;

45 4. to allocate individual managerial or executive positions to manage-
46 rial assignment levels;

47 5. to assist the personnel department in the determination of minimum
48 qualifications for classes of positions and to review and evaluate qual-
49 ifications of candidates for positions in the civil service;

50 6. to assist the personnel director in the planning and preparation of
51 open competitive examinations;

52 7. to schedule and conduct tests other than written tests for
53 promotion to competitive class positions;

54 8. to determine whether to hold an open competitive or promotion exam-
55 ination to fill positions in the civil service subject to disapproval of
56 the personnel director within thirty days;

- 1 9. to plan and administer employee incentive and recognition programs;
- 2 10. to fill vacant positions within quarterly spending allotments and
- 3 personnel controls pursuant to this charter;
- 4 11. to administer and certify eligible lists for classes of positions
- 5 unique to the agency;
- 6 12. to make appointments to competitive positions from eligible lists
- 7 pursuant to subdivision one of section sixty-one of the state civil
- 8 service law, which authority shall not be abridged or modified by local
- 9 law or in any other manner;
- 10 13. to establish and administer performance evaluation programs to be
- 11 used during the probationary period and for promotions, assignments,
- 12 incentives and training;
- 13 14. to conduct training and development programs to improve the
- 14 skills, performance and career opportunities of employees;
- 15 15. to ensure and promote equal opportunity for all persons in
- 16 appointment, payment of wages, development and advancement;
- 17 16. to administer employee safety programs;
- 18 17. to maintain personnel records;
- 19 18. to perform such other personnel management functions as are deleg-
- 20 ated by the personnel director pursuant to this chapter or that are not
- 21 otherwise assigned by this chapter;
- 22 19. to establish measures and programs to ensure a fair and effective
- 23 affirmative employment plan to provide equal employment opportunity for
- 24 minority group members and women who are employed by, or who seek
- 25 employment with, the agency and, in accordance with the uniform proce-
- 26 dures and standards established by the department of personnel for this
- 27 purpose, to adopt and implement an annual plan to accomplish this objec-
- 28 tive. Copies of such plans shall be filed with the mayor, council,
- 29 department of personnel, equal employment practices commission, and city
- 30 civil service commission and shall be made available for reasonable
- 31 public inspection; and
- 32 20. to provide assistance to minority group members and women inter-
- 33 ested in being employed by city agencies to ensure that such minority
- 34 group members and women benefit, to the maximum extent possible, from
- 35 city employment and educational assistance programs.
- 36 (b) Within one year from the effective date of this charter, the head
- 37 of each agency shall prepare and submit to the mayor and the personnel
- 38 director a plan and schedule for the discharge of the powers and duties
- 39 assigned in this section. No such plan shall take effect until approved
- 40 by the mayor.
- 41 (c) The mayor may modify, suspend, or withdraw for cause any power or
- 42 duty assigned or delegated to the head of an agency pursuant to this
- 43 section.
- 44 (d) Notification prior to each action or decision of an agency pursu-
- 45 ant to this chapter which changes the status of an individual employee,
- 46 a position, or a class of positions shall be provided to the personnel
- 47 director. The head of each agency shall certify on each payroll that all
- 48 personnel actions and transactions of the agency conform with the
- 49 provisions of the state civil service law and this chapter, the rules of
- 50 the personnel director and other applicable law.
- 51 (e) Before any new position in the city service shall be created, the
- 52 agency head shall furnish the commissioner of finance with a certificate
- 53 stating the title of the class of positions to which the position is to
- 54 be allocated. If the position is to be allocated to a new class of posi-
- 55 tions, the agency head shall request of the personnel director, and the
- 56 personnel director shall furnish to the agency head and the commissioner

1 of finance, a certificate stating the appropriate civil service title
2 for the proposed position, the range of salary of comparable civil
3 service positions and a statement of the class specifications and line
4 of promotion into which such new position will be placed and any such
5 new position shall be created only with the title approved by the
6 personnel director.

7 (f) The heads of all agencies shall, except as otherwise provided by
8 law, have power to appoint and remove, subject to the provisions of the
9 state civil service law, all chiefs of bureaus and all other officers,
10 employees and subordinates in their respective administrations, depart-
11 ments or offices, without reference to the tenure of office of any
12 appointee and to assign them their duties. Nothing herein shall be
13 construed to preclude the mayor from entering into a collective bargain-
14 ing agreement which provides for a procedure governing the discipline of
15 employees, including their removal.

16 (g) The heads of city agencies or their designated representatives
17 shall fulfill the requirements for agency participation in matters
18 affecting the management of the agency in advance of collective bargain-
19 ing negotiations affecting employees.

20 (h) The head of each city agency shall ensure that such agency does
21 not discriminate against employees or applicants for employment pursuant
22 to federal, state and local law.

23 (i) The head of each city agency shall quarterly publish and submit to
24 the mayor, council, department of personnel, and the equal employment
25 practices commission a report on the agency's efforts during the previ-
26 ous quarter to implement the plan adopted pursuant to this section.

27 (j) The head of each city agency shall include in all employment
28 retention, recruitment, training and promotional program literature,
29 advertisements, solicitations and job applications, such language as may
30 be necessary to effectuate the purpose of this chapter.

31 (k) The head of each city agency shall require each employment agency,
32 or authorized representative of workers with which it has a collective
33 bargaining or other agreement or understanding and which is involved in
34 the performance of recruitment and retention with the agency to furnish
35 a written statement that such employment agency, labor union or repre-
36 sentative shall not discriminate against employees or applicants for
37 employment pursuant to federal, state or local law and that such union
38 or representative will cooperate in the implementation of the agency's
39 obligations pursuant to this chapter.

40 § 12-06. Management service.

41 (a) The personnel director, in consultation with the heads of agen-
42 cies, shall develop and submit to the mayor a city-wide plan and sched-
43 ule for the development of qualified and competent technical, profes-
44 sional, management, administrative, and, supervisory personnel in the
45 civil service to meet the managerial needs of city government. The
46 mayor shall approve, disapprove or modify the plan within one year after
47 the effective date of this charter.

48 (b) The city-wide plan shall establish a management service for city
49 agencies and shall provide for:

50 1. membership in the service of employees with significant policy,
51 administrative, supervisory, managerial or professional duties that
52 require the exercise of independent judgment in the scheduling and
53 assignment of work, program management or planning, evaluation of
54 performance or allocation of resources;

55 2. preference for appointment into management service shall be given
56 to qualified civil service employees pursuant to promotional examina-

1 tions administered in a manner consistent with the requirements of the
2 state civil service law;

3 3. assessments of capacity and potential to perform managerial duties
4 as part of competitive tests for entry into the service and assignments
5 within the service;

6 4. a single managerial class of positions for each occupational series
7 within the service with assignment levels within each such class;

8 5. a plan for achieving equitable pay scales for members of the
9 service consonant with their duties and responsibilities;

10 6. merit increases, incentive awards, and recognition programs for
11 members of the services;

12 7. performance evaluations for members of the service to be used for
13 assignments, incentive awards, probationary period review, and discipli-
14 nary action;

15 8. a probationary period not to exceed one year for members of the
16 service;

17 9. management intern programs; and

18 10. training and career development programs.

19 (c) The personnel director shall conduct city-wide programs and func-
20 tions related to the management service; assist agencies in the imple-
21 mentation of the management service plan; and review and evaluate agency
22 performance under the plan.

23 § 12-07. Appointments and promotions.

24 (a) All appointments, promotions and changes in status of persons in
25 the public service of the city shall be made in the manner prescribed by
26 the constitution of the state and in accordance with the provisions of
27 the state civil service law and other provisions of law not inconsistent
28 therewith nor with this charter.

29 (b) Whenever qualifications for the appointment of persons to public
30 office are prescribed by law, the appointing officer shall, upon making
31 such appointment, file with the civil service commission a certificate
32 that such appointment complies with such law.

33 § 12-08. Power of investigation.

34 The personnel director and the city civil service commission shall
35 have the power to make investigations concerning all matters touching
36 the enforcement and effect of the provisions of the state civil service
37 law insofar as it applies to the city and the rules and regulations
38 prescribed thereunder, or concerning the actions of any examiner or
39 subordinate of the department, or of any officer or employee of the city
40 or of any county within the city, in respect to the execution of the
41 state civil service law; and in the course of such investigations the
42 personnel director of the city civil service commission shall have the
43 power to administer oaths, to compel the attendance of witnesses, and to
44 examine such persons as deemed necessary.

45 § 12-09. No compensation to unauthorized employees.

46 No officer of the city whose duty is to sign or countersign warrants
47 shall draw, sign or issue, or authorize the drawing, signing or issuing
48 of any warrant on the commissioner of finance or other disbursing offi-
49 cer of the city for payment of salary to any person in its service whose
50 appointment or retention has not been in accordance with the state civil
51 service law and the valid rules in force thereunder.

52 § 12-10. Examination for licenses.

53 The personnel director shall, unless otherwise provided by law, have
54 power, upon request of any person charged with the duty of issuing
55 licenses or permits, to conduct, under rules and regulations to be
56 established by the personnel director, examinations and tests to deter-

1 mine the qualifications of persons applying for such licenses or
2 permits. The personnel director shall certify to the person having power
3 to issue the license or permit the result of any such examination or
4 test.

5 § 12-11. Officers or employees designated to serve in exempt civil
6 service positions.

7 (a) Notwithstanding any provision in this charter to the contrary, the
8 mayor or head of an agency may designate any officer or employee occupy-
9 ing a position in the competitive class of the civil service to serve in
10 a position in the exempt class, and in such case, the officer or employ-
11 ee so designated shall thereupon enter upon and exercise all the powers
12 and duties and receive the salary of such exempt position, and shall
13 retain all the rights, privileges and status of such officer or employ-
14 ee's position in the competitive class.

15 (b) The appointment of any person chosen to fill the position thus
16 left vacant shall be temporary and shall terminate upon the return of
17 such officer or employee to such position as provided in subdivision (e)
18 of this section.

19 (c) Such designation shall be in writing and shall be filed and remain
20 of record in the office of such agency, in the office of the personnel
21 director and in the office of the mayor and shall remain in force until
22 revoked by the mayor or head of such agency, as the case may be.

23 (d) Service in such position in the exempt class shall be credited as
24 service in the competitive class and the status of such officer or
25 employee in respect to pensions or otherwise shall not be adversely
26 affected by such designation.

27 (e) Upon the termination of the officer or employee's services in such
28 exempt position, except by dismissal for cause in the manner provided in
29 section seventy-five of the state civil service law, such officer or
30 employee shall immediately and without further application return to the
31 position in the competitive class with the status, rights, privileges
32 and salary enjoyed immediately prior to the designation to the position
33 in the exempt class as if service in the competitive position had been
34 continuous.

35 § 12-12. Residency exemption.

36 Any employee who was previously employed by the city of New York, and
37 who is appointed, reassigned or transferred to city employment, without
38 a break in service shall be exempt from any residency requirement in
39 connection with his or her employment or subsequent promotion, demotion,
40 reassignment, transfer or other personnel change. For the purpose of
41 this section, a break in service shall be defined as a period of more
42 than one year.

43 Chapter 13

44 Equal Employment Practices Commission

45 § 13-01. Equal employment practices commission.

46 (a) There shall be an equal employment practices commission which
47 shall review, evaluate and monitor the employment procedures, practices
48 and programs of any city agency and the department of personnel to main-
49 tain an effective affirmative employment program of equal employment
50 opportunity for minority group members and women who are employed by or
51 who seek employment with city agencies.

52 (b) The commission shall consist of three members who shall be compen-
53 sated on a per diem basis. The mayor, the council, and the comptroller
54 shall each appoint one member. The mayor shall appoint a member to serve
55 as the chair.

56 (c) Members shall be appointed for four-year terms.

1 (d) The commission may, within the appropriations available therefor,
2 appoint an executive director and such deputies, assistants, and other
3 employees as may be needed for the performance of the duties prescribed
4 herein.

5 (e) The commission may meet as necessary to implement the provisions
6 of this chapter provided that the commission shall meet at least once
7 every eight weeks.

8 § 13-02. Duties and powers of the equal employment practices commis-
9 sion.

10 (a) The commission:

11 1. shall monitor the employment policies, programs and practices of
12 each city agency; and

13 2. monitor the coordination and implementation of any city affirmative
14 employment program of equal employment opportunity for minority group
15 members and women who are employed by or who seek employment with city
16 agencies, including the activities of the department of personnel, and
17 the civil service commission, pursuant to chapter twelve of this char-
18 ter, and any other agency designated by the mayor to assist in the
19 implementation or coordination of such efforts, and all city agencies
20 required by section 12-05 of this charter to establish agency program.

21 (b) The commission may request and shall receive from any city agency
22 such information, other than information which is required by law to be
23 kept confidential or which is privileged as attorney client communi-
24 cations, attorney work products or material prepared for litigation, and
25 such assistance as may be necessary to carry out the provisions of this
26 chapter.

27 (c) The commission shall communicate to any appropriate authority any
28 information regarding suspected or alleged violations of this chapter.

29 (d) The commission shall have the following powers and duties:

30 1. to review the uniform standards, procedures, and programs of the
31 department of personnel pursuant to section 12-04 of this charter, and
32 to review the plans adopted by city agencies in accordance with the
33 provisions of section 12-05 of this charter, and to provide any such
34 agency or the department of personnel with such comments and suggestions
35 as the commission deems necessary and appropriate;

36 2. to recommend to the department of personnel, all city agencies, or
37 any one or more particular agencies, procedures, approaches, measures,
38 standards and programs to be utilized by such agencies in their efforts
39 to ensure a fair and effective affirmative employment program of equal
40 employment opportunity for minority group members and women who are
41 employed by or seek employment with city agencies;

42 3. to recommend to any city agency actions which such agency should
43 consider including in its next annual plan as required by section 12-05
44 of this charter;

45 4. to advise and, if requested, assist city agencies in their efforts
46 to increase employment of minority group members and women who are
47 employed by or who seek employment with city agencies;

48 5. to audit and evaluate the employment practices and procedures of
49 each city agency and their efforts to ensure fair and effective equal
50 employment opportunity for minority group members and women at least
51 once every four years and whenever requested by the civil service
52 commission or the human rights commission or whenever otherwise deemed
53 necessary by this commission;

54 6. to make such policy, legislative and budgetary recommendations to
55 the mayor, council, the department of personnel or any city agency as

1 the commission deems necessary to ensure equal employment opportunity
2 for minority group members and women;

3 7. to publish by the fifteenth of February of each year a report to
4 the mayor and the council on the activities of the commission and the
5 effectiveness of each city agency's affirmative employment efforts and
6 the efforts by the department of personnel to ensure equal employment
7 opportunity for minority group members and women who are employed by or
8 seek to be employed by city agencies;

9 8. to establish appropriate advisory committees;

10 9. to serve with such other agencies or officials as shall be desig-
11 nated by the mayor as the city liaison to federal, state and local agen-
12 cies responsible for compliance with equal employment opportunity for
13 minority group members and women who are employed by or who seek to be
14 employed by city agencies; and

15 10. to take such other actions as are appropriate to effectuate the
16 provisions and purposes of this chapter.

17 § 13-03. Compliance procedures.

18 (a) The commission shall conduct such study or investigations and hold
19 such hearings as may be necessary to determine whether agencies are in
20 compliance with the equal employment opportunity requirements of this
21 chapter and chapter twelve of this charter.

22 (b) For the purpose of ascertaining facts in connection with any study
23 or investigation authorized by this chapter, the commission shall have
24 power to compel the attendance of witnesses, to administer oaths and to
25 examine such persons as they may deem necessary. The commission or any
26 agent or employee thereof duly designated in writing by them for such
27 purposes may administer oaths or affirmations, examine witnesses in
28 public or private hearing, receive evidence and preside at or conduct
29 any such study or investigation.

30 (c) If the commission makes a preliminary determination pursuant to
31 section 13-02 of this chapter, that any plan, program, procedure,
32 approach, measures or standard adopted or utilized by any city agency or
33 the department of personnel does not provide equal employment opportu-
34 nity; and/or if the commission makes a preliminary determination pursu-
35 ant to this chapter and chapter twelve of this charter, that an agency
36 has not provided equal employment opportunity the commission shall noti-
37 fy the agency in writing of this determination and provide an opportu-
38 nity for the agency to respond. If the commission, after consideration
39 of any such response and after consulting with the agency, concludes
40 that the corrective actions, if any, taken or planned by the agency are
41 not sufficient to correct the non-compliance identified in the prelimi-
42 nary determination, it should make a final determination in writing,
43 including such recommended corrective action as the commission may deem
44 appropriate. The agency shall within thirty days thereafter respond to
45 the commission on any corrective action it intends to make and shall
46 make monthly reports to such commission on the progress of such correc-
47 tive action. If the commission, after a period not to exceed six months,
48 determines that the agency has not taken appropriate and effective
49 corrective action, the commission shall notify the agency in writing of
50 this determination and the commission may thereafter publish a report
51 and recommend to the mayor whatever appropriate corrective action the
52 commission deems necessary to ensure compliance with equal employment
53 opportunity pursuant to the requirements of this chapter and chapter
54 twelve of this charter. Within thirty days of such determination the
55 agency shall submit a written response to the commission and the mayor.
56 The mayor after reviewing the commission's findings and the agency's

1 response, if any, shall order and publish such action as he or she deems
2 appropriate.

3 Chapter 14

4 Collective Bargaining

5 § 14-01. Office of collective bargaining; director.

6 There shall be an office of collective bargaining, the head of which
7 shall be the director of such office, who shall be the person holding
8 the office of chairman of the board of collective bargaining. The
9 director may appoint, and at pleasure remove, two deputies.

10 § 14-02. Board of collective bargaining.

11 There shall be in the office of collective bargaining a board of
12 collective bargaining, which shall consist of five members. Two members
13 of the board shall be city members, two members of the board shall be
14 labor members, and one impartial member who shall be the chair. The
15 mayor shall have the power to appoint the city members of the board to
16 serve at the mayor's pleasure, and the labor members of the board from
17 designations by the municipal labor committee. Each labor and city
18 member shall have an alternate, who shall be appointed and removed in
19 the same manner as the member for whom he or she is the alternate. The
20 chair shall be elected by the unanimous vote of the city and labor
21 members, and shall serve for three year terms.

22 Notwithstanding any other provision of law, a labor member may not be
23 removed from the board except upon request of the municipal labor
24 committee, or except for cause, as hereinafter provided. Any member may
25 be removed for cause by a majority of the entire board, including at
26 least one city member and one labor member, after having been given a
27 copy of the charges against him and an opportunity to be heard in person
28 or by counsel in his or her defense upon not less than ten days notice.
29 Vacancies in the office of a city member or a labor member shall be
30 filled in the same manner as herein provided for appointment. Vacancies
31 in the office of an impartial member occurring otherwise than by expira-
32 tion of term shall be filled by unanimous vote of the city and labor
33 members for the unexpired balance of the term.

34 § 14-03. Bureau of certification.

35 There shall be in the office of collective bargaining a bureau of
36 certification, which shall be administered by the impartial member of
37 the board of collective bargaining.

38 § 14-04. Powers and duties.

39 The office of collective bargaining, the board of collective bargain-
40 ing and the bureau of certification shall have such powers and duties
41 with respect to labor relations and collective bargaining as shall be
42 prescribed by law and which shall be substantially equivalent to chapter
43 3 of title 12 of the New York city administrative code as it existed on
44 the date this charter was submitted pursuant to subdivision c of section
45 4 of chapter 773 of the laws of 1989 and shall also provide for a Staten
46 Island municipal labor committee.

47 § 14-05. Compensation.

48 (a) Board of collective bargaining; bureau of certification director.
49 The city members and the labor members of the board of collective
50 bargaining and their alternates shall serve without compensation. The
51 director shall be salaried for his or her services as director, chair of
52 the board of collective bargaining, and administrator of the bureau
53 certification. The director and all members of both such boards and
54 their alternates shall be entitled to receive a per diem fee and
55 reimbursement for their actual and necessary expenses incurred in the
56 performance of their duties. Fifty percent of the salary, fees, and

1 expenses provided for in this subdivision shall be paid by the members
2 of the municipal labor committee, under rules and regulations issued by
3 the board of collective bargaining, which rules may provide how such
4 costs shall be distributed among such members.

5 (b) Members of mediation and impasse panels; arbitrators. Members of
6 mediation and impasse panels, and arbitrators, shall be paid a per diem
7 fee to be determined by the board of collective bargaining, unless the
8 parties to the particular dispute shall have agreed to a different fee,
9 and shall be reimbursed for their actual and necessary expenses incurred
10 in the performance of their duties. The public employer and public
11 employee organization which are parties to the particular negotiation or
12 grievance shall each pay fifty percent of such fees and expenses and
13 related expenses incidental to the handling of deadlocked negotiations
14 and unresolved grievances.

15 (c) Appointment of counsel and attorneys. The director may appoint a
16 counsel and attorneys, who, at the direction of the bureau of certifi-
17 cation or the board of collective bargaining may appear for and repre-
18 sent the office of collective bargaining or either of the aforesaid
19 boards in any legal proceeding.

20 § 14-06. Publication of collective bargaining agreements.

21 Not later than sixty calendar days after the execution of a collective
22 bargaining agreement, a copy shall be published in a newspaper of gener-
23 al circulation in the city together with a statement by the mayor:

24 (a) of the total costs and current and future budgetary and economic
25 consequences of the agreement, and

26 (b) of the implications and likely impact of the agreement on the
27 efficient management of city agencies and the productivity of city
28 employees.

29 § 14-07. Budgeting for agreements.

30 (a) So far as practicable, each collective bargaining agreement cover-
31 ing city employees shall be executed prior to the commencement of the
32 fiscal year during which its provisions shall first be in effect.

33 (b) No part of any retroactive wage or salary settlement shall be
34 charged to the capital budget.

35 Chapter 15

36 Transitory Provisions

37 § 15-01. Rights of officers and employees of the city of New York
38 preserved.

39 (a) Nothing in this charter contained shall affect or impair the
40 rights or privileges of officers or employees of the city of New York
41 who are transferred, reassigned, appointed or otherwise employed by the
42 city in relation to the personnel, appointment, salaries, ranks, grades,
43 tenure of office, promotion, removal, pension and retirement rights,
44 civil rights or any other rights or privileges of officers or employees
45 of the city generally or officers or employees of any agency.

46 (b) There shall be no layoffs of officers or employees of the city of
47 New York classified municipal civil service as a result of transfer of
48 functions or work currently being performed by employees or officers of
49 the city of New York to the city of Staten Island. The city shall guar-
50 antee the continued employment of all officers and employees of the city
51 of New York who are performing duties and functions related to any
52 municipal governmental operation affecting the city of Staten Island at
53 the time this charter takes effect.

54 § 15-02. Transfer of officers and employees in case of transfer of
55 functions.

1 Wherever by any provision of this charter functions, powers or duties
2 are assigned to any agency which have been heretofore exercised by the
3 city of New York, its agencies, boards, corporations or other related
4 entities, all officers and employees in the classified municipal civil
5 service who at the time when such charter provisions shall take effect
6 are engaged in the performance of such functions, powers or duties shall
7 be transferred to the agency to which such functions, powers or duties
8 are assigned by this charter, without examination and without affecting
9 existing compensation or pension or retirement rights, privileges or
10 obligations of such officers and employees. Furthermore, any employee to
11 be transferred to the city pursuant to this charter shall be given the
12 option to remain in the employ of the city of New York without diminu-
13 tion of rights, privileges, salary and benefits. Any employee not
14 included in such transfer shall be able to protest the decision pursuant
15 to the procedures set forth in section seventy of the civil service law.

16 § 15-03. Continuity of employee representation.

17 Employees transferred from the city of New York to the city except for
18 those designated managerial or confidential shall be included in employ-
19 er - employee negotiating units comparable to existing units in the city
20 of New York. With respect to employees to be placed in such negotiating
21 units, the public employee organization recognized or certified to
22 represent the employees in comparable city of New York negotiating units
23 shall be recognized as the city unit representative.

24 § 15-04. Continuity of collectively bargained benefits.

25 All rights, privileges and benefits provided by collectively bargained
26 agreements to city of New York employees shall be continued for such
27 employees transferred, reappointed or otherwise employed by the city
28 until such time as successor collective bargaining agreements are nego-
29 tiated.

30 § 15-05. Future alterations of the negotiating units.

31 Future alterations of the city negotiating units shall be made pursu-
32 ant to article fourteen of the state civil service law and office of
33 collective bargaining implementing legislation.

34 § 15-06. Establishment of new titles.

35 (a) The city shall consult and bargain on all terms and conditions of
36 employment with the appropriate public employee organization with
37 respect to the establishment of any new titles which are similar to or
38 reasonably related to titles already represented by such public employee
39 organizations in the city or in the city of New York.

40 (b) Any such titles for which terms and conditions are bargained
41 pursuant to subdivision (a) of this section shall be deemed to be
42 successor titles within the meaning of applicable law. So long as the
43 responsibilities of employees in these titles are reasonably related to
44 the responsibilities of employees currently represented by public
45 employee organizations, such titles shall be accredited or placed in a
46 negotiating unit represented by such public employee organizations.

47 § 15-07. Dispute resolution.

48 If a dispute arises, the office of collective bargaining shall deter-
49 mine which public employee organization is appropriate to represent
50 transferees, other hires, or employees in a new title on the basis of
51 the title's community of interest with titles in the city and the city
52 of New York.

53 § 15-08. Existing rights and remedies preserved.

54 No existing right or remedy of any character shall be lost or impaired
55 or affected by reason of the adoption of this charter.

Chapter 16
Labor Relations

§ 16-01. Department; commissioner.

(a) There is established a department of labor relations, the head of which shall be the commissioner of labor relations.

(b) The commissioner of labor relations is hereby authorized to represent the mayor in the conduct of all relations between the city and labor unions, associations, or other organizations representing employees of the city. The commissioner of labor relations shall be responsible for the conduct of all relations and she or he shall establish broad city wide policy governing them.

(c) The appropriate city staff agencies shall render advice to the commissioner of labor relations on questions of law, finance, personnel policy, operations and management.

§ 16-02. Powers and duties.

(a) The commissioner of labor relations is authorized to negotiate labor agreements with the unions certified as representing the various groups of city employees, and to prepare and sign labor agreements on behalf of the mayor.

(b) The heads of all city departments and agencies and the staff of the office of the mayor shall cooperate fully with the commissioner of labor relations in carrying out his or her responsibilities. This cooperation shall include, but not be limited to the following:

1. notice and transmittal to the commissioner of labor relations of all inquiries and requests from labor unions, associations or other organizations representing employees of the city soliciting interpretation of any agreement;

2. actions by city departments or agencies based upon interpretations of collective bargaining agreement shall not be taken without prior consultation with the commissioner of labor relations;

3. agreements, contracts or understandings, verbal or written, shall be consummated between the head of any city department or agency or one of his or her subordinates, and a union or organization representing employees of that agency, only after prior consultation and review by the commissioner of labor relations;

4. grievance and dispute settlement procedures such as arbitration, mediation, fact-finding and labor-management conference discussions relating to city employee labor disputes or grievances, either advisory or binding, shall be entered into by city departments or agencies only after prior consultation and review of the commissioner of labor relations. Such settlement procedures shall be processed through and handled by the department of labor relations;

5. city departments and agencies shall not unilaterally change, in a substantial way, the working conditions of their employees without prior consultation with the commissioner of labor relations;

6. city departments and agencies shall not take disciplinary action against any employee or group of employees involved in a labor relations dispute without prior consultation with the commissioner of labor relations;

7. city departments and agencies shall provide the commissioner of labor relations with all necessary information needed in the conduct of labor negotiations affecting employees in their departments and shall participate with the commissioner of labor relations in the negotiations as, in the opinion of the commissioner of labor relations, may be necessary from time to time;

1 8. heads of city departments and agencies and the staff of the office
2 of the mayor shall give notice to the commissioner of labor relations of
3 all meetings held with labor unions, associations, or other organiza-
4 tions representing city employees;

5 9. heads of city departments and agencies and the staff of the mayor
6 shall consult with the commissioner of labor relations prior to the
7 issuance of any public or press statement relating to labor relations
8 with city employees;

9 10. the labor relations officer of each city department and agency
10 shall act as liaison with the department of labor relations and shall
11 keep that department informed of employee relations problems in his or
12 her department or agency. In particular, he or she shall immediately
13 notify the department of labor relations of any threatened or actual
14 strike, work stoppage, job action, mass resignation or picketing by
15 employees of his or her department or agency.

16 § 3-001. Legislative findings and declaration of purposes.

17 The legislature hereby finds and declares that it is essential that a
18 municipal corporation of the city of Staten Island be authorized to
19 represent the interests of the city of Staten Island during the transi-
20 tion period prior to the date of establishment of the city, provide
21 preparation for the operations of the city and provide financing for
22 such transition period and initial funding for the city.

23 § 3-002. Elections.

24 1. The board of elections of the city of New York shall provide for
25 the election of a mayor, a city comptroller and a common council, as
26 provided for in chapter 773 of the laws of 1989, as amended, for a poli-
27 tical subdivision of the state to be known as the city of Staten Island,
28 at the general election to be held in November next succeeding the date
29 on which this section shall have become a law in the county of Richmond.
30 Such expenses for such election will be reimbursed by the state from
31 those moneys to be allocated as general state aid to a city of Staten
32 Island. Chapter 7 of title 3 of the administrative code of the city of
33 New York, known as the "New York City Campaign Finance Act", shall not
34 apply to such elections.

35 2. The Mayor elect and common council elect of the city of Staten
36 Island, upon the constitutional oath of office, are hereby authorized to
37 represent the interests of the city of Staten Island, and as govern-
38 mental officers of the city of Staten Island are authorized to enter
39 into negotiations as provided under this act and enter into such
40 purchase or employment contracts as would be authorized for such city
41 subsequent to the date of establishment. Any such contracts or agree-
42 ments from such negotiations shall be binding upon the city of Staten
43 Island.

44 3. The mayor elect, the comptroller elect and the common council elect
45 shall take the oath of office on the first of January next succeeding
46 the date on which this act shall have become a law, at which time the
47 city shall be incorporated. The mayor, city comptroller and common coun-
48 cil shall establish accounts according to the provisions of the charter
49 of the city of Staten Island and appoint such other city officers as may
50 be necessary in accordance with the provisions of the city charter.

51 § 3-003. Staten Island city government-transition.

52 1. Short title. This section may be cited as the "Staten Island City
53 Government-Transition Act".

54 2. Definitions. For the purposes of this section:

55 (a) "City" means the city of Staten Island.

1 (b) "Director of management and budget" means the director of manage-
2 ment and budget of the city of Staten Island.

3 (c) "Corporation" means the municipal corporation as created by this
4 section.

5 (d) "Mayor" means the mayor of the city of Staten Island.

6 (e) "Comptroller" means the comptroller of the city of Staten Island.

7 (f) "State" means the state of New York.

8 (g) "Bonds" and "notes" means revenue bonds and notes respectively,
9 issued by the corporation pursuant to this section.

10 (h) "Revenues" means all aid, rents, fees, charges, payments and other
11 income and receipts paid or payable to the municipal corporation for the
12 account of the city of Staten Island, including any payment required to
13 be made to the corporation by this section.

14 (i) "Operating expenses" means all expenses incurred by the government
15 in the administration of the municipal corporation including but not
16 limited to salaries, administrative expenses, insurance premiums, audit-
17 ing and legal expenses and fees and expenses incurred for professional
18 consultants and fiduciaries.

19 (j) "Capital reserve fund requirement" means as of any particular date
20 of computation, an amount of money equal to the amount required, for the
21 then current fiscal year of the municipal corporation, to pay interest
22 during such fiscal year on all bonds of the corporation outstanding on
23 said date of computation, the principal amount of all bonds of the
24 corporation outstanding on said date of computation which matures during
25 such fiscal year and the amount of sinking fund payments payable during
26 such fiscal year with respect to any bonds of the corporation outstand-
27 ing on said date of computation.

28 (k) "Sinking fund payment" means the amount of money specified in the
29 resolution authorizing bonds as payable into a sinking fund during a
30 particular fiscal year for the retirement of term bonds which mature
31 after such fiscal year, but shall not include any amount payable by
32 reason only of the maturity of the bond.

33 3. General powers as a municipal corporation. The city shall have the
34 following powers in addition to those specially conferred elsewhere in
35 this act: (a) to sue and be sued; (b) to have a seal and alter the same
36 at pleasure; (c) to make and alter by-laws for its organization and
37 internal management and, subject to agreements with noteholders or bond-
38 holders, to make rules and regulations governing the use of its property
39 and facilities; (d) to make and execute contracts, leases, subleases and
40 all other instruments or agreements necessary or convenient for the
41 exercise of its powers and functions under this section; (e) to purchase
42 real or personal property necessary and convenient for its municipal
43 purposes; to execute and deliver deeds for real property held in its own
44 name; and to sell or otherwise to dispose of such real or personal prop-
45 erty that, in the judgment of the city, is no longer necessary for its
46 municipal purposes; (f) to appoint officers, agents and employees,
47 prescribe their duties and qualifications and fix their compensation;
48 (g) to commence any action to protect or enforce any right conferred
49 upon it by any law, contract or other agreement; (h) to borrow money and
50 to issue negotiable notes or bonds or other obligations and to fund or
51 refund the same, and to provide for the rights of the holders of its
52 obligations; (i) subject to the provisions of any contract with note-
53 holders or bondholders, to invest any funds held in reserves or sinking
54 funds, or any funds not required for immediate use or disbursement, at
55 the discretion of the city, in obligations of the state or federal
56 government, obligations the principal of and interest on which are guar-

1 anteed by the state or federal government, or obligations of agencies of
2 the federal government which may, from time to time, be legally
3 purchased by savings banks of the state as investments of funds belong-
4 ing to them or in their control and which have been approved by the
5 state comptroller or in secured time deposits or other interest bearing
6 accounts secured by such obligations; (j) subject to the provisions of
7 any contract with noteholders or bondholders, to purchase notes or bonds
8 of the city; (k) to procure insurance against any loss in such amounts
9 and from such insurers as it deems desirable; (l) to engage the services
10 of consultants on a contract basis for rendering professional and tech-
11 nical assistance and advice; (m) to contract for and to accept any gifts
12 or grants or loans of funds or property or financial or other aid in any
13 form from the federal government or any agency or instrumentality there-
14 of, or from any other source and to comply with the terms and conditions
15 thereof; (n) as security for the payment of the principal of and inter-
16 est on any bonds so issued and any agreements made in connection there-
17 with, to pledge all or any part of its revenues; (o) to enact such local
18 laws to take effect on the date of establishment as shall be necessary
19 to provide for effective transition of government; and (p) to do any and
20 all things necessary or convenient to carry out its purposes and exer-
21 cise the powers expressly given and granted in this act.

22 4. Notes and bonds of the city. The city shall have power and is here-
23 by authorized from time to time to issue its negotiable notes and bonds
24 in conformity with applicable provisions of the uniform commercial code,
25 the local finance law and the state finance law.

26 § 3-004. Employees of the city of Staten Island.

27 1. Notwithstanding any inconsistent provisions of this act, the
28 appointment and promotion of all employees of and for the city shall be
29 made in accordance with the provisions of the state civil service law
30 and shall be subject to the jurisdiction of the state civil service
31 commission and the compensation for such employees shall be fixed by the
32 city.

33 2. Any municipality and the city shall have the power to agree to
34 provide for the transfer to the city of agents, employees and facilities
35 of such municipality to enable the city to fulfill its municipal
36 purposes. Employees of such municipality to be transferred to the city
37 pursuant to this act shall be automatically appointed and transferred to
38 the city in the same or equivalent classification and position they hold
39 at the time of the transfer. The city, its officers and employees,
40 shall be subject to article fourteen of the state civil service law and
41 for all purposes the city shall remain and be deemed "public employer".
42 Employees who are members or beneficiaries of any existing pension or
43 retirement system shall continue to have such rights, privileges, obli-
44 gations or status with respect to such system as are prescribed by law
45 on the date this act takes effect, and all such employees who have been
46 appointed to positions in municipal service in accordance with the
47 provisions of the state civil service law under the rules of the city
48 civil service commission shall have the same status with respect thereto
49 in the service of the city as they had in prior municipal service.

50 3. Transfer rights. Notwithstanding any other provision of law, there
51 shall be no layoffs of officers or employees of the preceding municipi-
52 pality, its agencies, authorities, boards, corporations or other related
53 entities as a result of the transfer of functions or work currently
54 performed by these officers and employees to the city of Staten Island.
55 All such employees who have been assigned to work on Staten Island or
56 who have been substantially engaged in the performance of a function to

1 be transferred to the city of Staten Island shall be transferred to
2 positions in employment by the city of Staten Island upon the establish-
3 ment of the city of Staten Island and shall retain all rights, privi-
4 leges, benefits and salaries to which any such employee was previously
5 entitled as an employee of the preceding municipality. Notice that an
6 employee is subject to transfer shall be given to an employee no less
7 than twenty days prior to the effective date of transfer. Any employee
8 so notified may opt to remain in his or her employment by the preceding
9 municipality rather than be transferred by so informing his or her
10 employer ten days prior to the transfer date. Such employee shall be
11 retained in employment by the preceding municipality and retain all
12 rights, privileges, benefits and salaries to which the employee was
13 entitled prior to the establishment of the city of Staten Island.

14 4. Transfer mechanism. The mechanism for the transfer of the employees
15 to the city of Staten Island shall be the subject of negotiations among
16 the preceding municipality, the city of Staten Island and the appropri-
17 ate public employee organizations. The parties shall negotiate an
18 appeals process for employees aggrieved by their exclusion from the
19 transfer. If the parties are unable to reach agreement as to transfer
20 issues, the parties shall submit such issues to mediation and, if neces-
21 sary, impasse panels to be appointed in accordance with the collective
22 bargaining provisions of the administrative code of the preceding muni-
23 cipality. Transferees represented by the public employee organizations
24 shall be entitled to all rights and benefits which they were entitled to
25 prior to transfer including, but not limited to, seniority and accrued
26 annual and sick leave time.

27 5. Vacancies. Any employee of the preceding municipality not subject
28 to the transfer set forth in subdivision three of this section shall be
29 eligible to transfer to a vacant position in a title in the city of
30 Staten Island requiring the same, similar or related duties to duties
31 actually performed in the preceding municipality title by submitting
32 written notice of intent to transfer to the city of Staten Island direc-
33 tor of personnel within six months of the establishment of the city of
34 Staten Island. The preceding municipality shall inform in writing
35 employees who are residents of Staten Island of their right to apply for
36 transfer. Immediately upon receipt of any notice to transfer, the direc-
37 tor of personnel shall establish for each city of Staten Island title
38 two lists of eligible employees who give timely notice in order of the
39 employees' preceding municipality seniority in the title requiring the
40 same, similar or related duties. The first list shall include the names
41 of transfer applicants who are domiciled in the city of Staten Island on
42 the date of the submission of the notice. The second list shall include
43 the names of transfer applicants not domiciled in the city of Staten
44 Island. Appointments to any vacant positions in these titles shall be
45 made from the Staten Island domicile list and, when that list is
46 exhausted, from the second list until such lists are exhausted or until
47 a period of four years from the date of the establishment of the indi-
48 vidual list has expired.

49 6. Residency exemption. Any employee of the preceding municipality
50 appointed, reassigned or transferred to city of Staten Island employment
51 without a break in service shall be exempt from any residency require-
52 ment in connection with his or her employment or subsequent promotion,
53 demotion, reassignment, transfer or other personnel change. For the
54 purpose of this section, a break in service shall be defined as a period
55 of more than one year. Notwithstanding any other provision of law, any
56 Staten Island resident employed by the preceding municipality or on

1 leave of absence from such employment on the date of the establishment
2 of the city of Staten Island shall be exempt from any residency require-
3 ment in connection with his or her preceding municipality employment or
4 subsequent preceding municipality promotion, demotion, reassignment,
5 transfer or other personnel change.

6 7. Retirement. The city of Staten Island shall participate in the
7 State's retirement systems.

8 (a) On and after the date of the establishment of the city of Staten
9 Island, employees of the preceding municipality who are transferred to
10 employment in the city of Staten Island shall thereupon become members
11 of the appropriate state retirement system to the extent permitted or
12 required by the provisions of the retirement and social security law,
13 the education law or local law, as appropriate, and the employees'
14 reserves in any other retirement system shall be transferred to the
15 appropriate New York state retirement system without request by them or
16 notice to the retirement systems, except that any such employee who is a
17 member of one of the retirement systems of the preceding municipality
18 may elect to continue membership in such system. Any election pursuant
19 to this subdivision shall be made no later than the one hundred twenti-
20 eth day succeeding the date on which the provisions of this section
21 become effective, by filing a written notice thereof with the adminis-
22 trative head of the appropriate New York state, preceding municipality
23 and city of Staten Island retirement systems, as appropriate, and once
24 made and filed, shall be irrevocable. Upon the retirement of an employee
25 who has made such an election, the calculation of final average salary
26 by the retirement system of the preceding municipality shall be
27 performed as if the salary earned as a city of Staten Island employee on
28 and after the effective date of this section was earned in employment of
29 the preceding municipality. In the case of an employee who remains or
30 becomes a member of a New York state employees' retirement system pursu-
31 ant to this subdivision, the retirement system of the preceding munici-
32 pality shall make a transfer of reserves, contributions and credits to
33 such New York state employees' retirement system, in the manner required
34 by section 43 of the retirement and social security law.

35 (b) The comptroller of the preceding municipality shall certify to the
36 comptroller of the city of Staten Island and the state comptroller or
37 other chief officer of a state pension system the amount of money
38 required to be paid by the city of Staten Island for pension costs
39 resulting from elections made pursuant to paragraph (a) of this subdivi-
40 sion and the comptroller of the city of Staten Island shall pay to the
41 retirement system of the preceding municipality upon approval by the
42 state comptroller or other chief officer of a state pension system, the
43 amounts so certified by the comptroller of the preceding municipality.
44 The comptroller of the preceding municipality shall also certify to the
45 comptroller of the city of Staten Island and the state comptroller or
46 other chief officer of a state pension system the amount of money
47 required to be contributed by such employees. The comptroller of the
48 city of Staten Island shall be authorized to provide for the withholding
49 or withhold the contribution of such employees and the payment of that
50 amount to the retirement system of the preceding municipality. The
51 amount so certified pursuant to this paragraph shall be the same as the
52 amounts required to be contributed for similarly situated city employees
53 by the preceding municipality and by employees of the preceding munici-
54 pality.

55 8. Health insurance coverage. Health insurance coverage for city of
56 Staten Island employees, persons retired from city of Staten Island

1 employment and dependents of such employees and retirees shall be
2 provided in accordance with the personnel and labor, health insurance
3 coverage for municipal employees, persons retired from municipal employ-
4 ment and dependents of such employees and retirees provisions of the
5 administrative code of the preceding municipality unless the duly recog-
6 nized public employee representative negotiates altered terms.

7 9. Quasi-public entities. Rights and benefits of employees currently
8 employed by public authorities, boards, corporations and other quasi-
9 public entities of the preceding municipality shall be preserved upon
10 any transfer of functions resulting from the establishment of the city
11 of Staten Island.

12 § 3-005. Assistance to the city of Staten Island.

13 With the consent of any municipality, the city of Staten Island may
14 use agents, employees and facilities of such municipality, paying to the
15 municipality its agreed proportion of the compensation or costs.

16 § 3-006. Provision of municipal services in the city of Staten Island.

17 During the transition period the mayor and comptroller of the city of
18 Staten Island and the mayor and comptroller of the preceding munici-
19 pality are authorized to enter into agreements as to the provision of
20 municipal services by the preceding municipality to the city of Staten
21 Island to be provided on or after the date of establishment of the city
22 of Staten Island and the terms and conditions thereof.

23 § 3-007. Debt, property, obligations and other allocations.

24 1. (a) Proportion of debt to be assumed by the city of Staten Island.
25 The proportion of the debt of the preceding municipality which shall be
26 assumed by the city of Staten Island, as constituted by this act, shall
27 be determined in the following manner: The mayor and the comptroller of
28 the city of Staten Island, as representing the city of Staten Island and
29 the mayor and the comptroller of the preceding municipality, are hereby
30 authorized and empowered to agree if they can, as to the amount of the
31 debt of the preceding municipality, which should equitably and properly
32 be assumed by the city of Staten Island. If the mayor and the comp-
33 troller of the city of Staten Island and the mayor and the comptroller
34 of the preceding municipality shall be unable to agree within six months
35 after this section takes effect as to the proportion of said debt of the
36 preceding municipality to be assumed by the city of Staten Island, the
37 supreme court of the third judicial district shall have power to deter-
38 mine the proportion of said debt of the preceding municipality to be
39 assumed by the city of Staten Island, and to enforce such award, deci-
40 sion and determination as shall be made in an action to be brought by
41 and in the name of either of said parties not less than six months nor
42 more than one year after this section takes effect. Nothing herein
43 contained shall impair the obligation of any contract; and the property
44 and inhabitants of such part of the preceding municipality as is by this
45 act included within the city of Staten Island, shall continue liable to
46 the existing creditors of the said preceding municipality, in like
47 manner, as if this act had not been passed. But from and after the
48 taking effect of this section, the preceding municipality shall have no
49 power to issue any bond, obligation or other evidence of indebtedness
50 which shall bind or render liable the property or inhabitants of any
51 part of said municipality included within the city of Staten Island as
52 hereby constituted. The apportionment of the debt of the preceding muni-
53 cipality shall be determined according to the relative assessed valu-
54 ation of the real property included in, or remaining without the city of
55 Staten Island.

1 (b) Proportion of obligations other than debt to be assumed by the
2 city of Staten Island. The proportion of the obligations other than debt
3 of the preceding municipality which shall be assumed by the city of
4 Staten Island, as constituted by this act, shall be determined in the
5 following manner: The mayor and the comptroller of the city of Staten
6 Island, as representing the city of Staten Island and the mayor and the
7 comptroller of the preceding municipality, are hereby authorized and
8 empowered to agree if they can, as to the amount of the obligations
9 other than debt of the preceding municipality, which should equitably
10 and properly be assumed by the city of Staten Island. If the mayor and
11 the comptroller of the city of Staten Island and the mayor and the comp-
12 troller of the preceding municipality shall be unable to agree within
13 six months after this section takes effect as to the proportion of said
14 obligations other than debt of the preceding municipality to be assumed
15 by the city of Staten Island, the supreme court of the third judicial
16 district shall have power to determine the proportion of said obli-
17 gations other than debt of the preceding municipality to be assumed by
18 the city of Staten Island, and to enforce such award, decision and
19 determination as shall be made in an action to be brought by and in the
20 name of either of said parties not less than six months nor more than
21 one year after this section takes effect. Nothing herein contained shall
22 impair the obligation of any contract; and the property and inhabitants
23 of such part of the preceding municipality as is by this act included
24 within the city of Staten Island, shall continue liable to the existing
25 obligees of the said preceding municipality, in like manner, as if this
26 act had not been passed. But from and after the taking effect of this
27 section, the preceding municipality shall have no power to bind or
28 render liable the property or inhabitants of any part of said munici-
29 pality included within the city of Staten Island as hereby constituted.

30 (c) Disposition of real and personal property owned by or held in
31 trust for the preceding municipality. All the real property owned by the
32 preceding municipality and situated in that part of said municipality
33 included within the city of Staten Island, as constituted by this act,
34 is hereby vested in the said city of Staten Island and divested out of
35 the preceding municipality, and all of the real property owned by the
36 preceding municipality and situated elsewhere in said municipality is
37 hereby vested in the preceding municipality and divested out of the said
38 city of Staten Island. All of the property owned by the preceding muni-
39 cipality other than real property, including money, investments, securi-
40 ties on investments and money held in trust for the benefit of said
41 municipality, directly or indirectly, shall be divided between the
42 preceding municipality and the city of Staten Island, as constituted by
43 this act, and the proportion of the same to which each shall, in equity
44 and good conscience, be entitled to receive upon such division, shall be
45 ascertained and determined by agreement by and between the mayor and
46 comptroller of the preceding municipality, upon the one side, and the
47 mayor and the comptroller of the said city of Staten Island, upon the
48 other side, and in the case of their inability to agree upon such divi-
49 sion within six months after this section shall take effect, the supreme
50 court in the third judicial district is hereby empowered to divide the
51 same between them and to ascertain and award to each its equitable
52 proportion thereof, and to enforce its determination thereon, and either
53 of the said municipalities may institute and prosecute, in its own name,
54 an action in said court for that purpose after the expiration of six
55 months and before the expiration of one year after this section takes
56 effect.

1 (d) Documents. The preceding municipality shall provide the city of
2 Staten Island with all books, papers, documents and files held by such
3 municipality which apply primarily to the area of the city of Staten
4 Island and shall make available for copying by the city of Staten Island
5 any other books, papers, documents and files which such city shall
6 request as pertaining to such city in any other manner.

7 2. (a) Proportion of debt to be assumed by the city school district of
8 the city of Staten Island. The proportion of the debt of the city school
9 district of the preceding municipality which shall be assumed by the
10 city school district of the city of Staten Island, as constituted by
11 this act, shall be determined in the following manner: The board of
12 education of the city school district of the city of Staten Island and
13 the board of education of the city school district of the preceding
14 municipality, are hereby authorized and empowered to agree if they can,
15 as to the amount of the debt of the city school district of the preced-
16 ing municipality, which should equitably and properly be assumed by the
17 city school district of the city of Staten Island. If the board of
18 education of the city school district of the city of Staten Island and
19 the board of education of the city school district of the preceding
20 municipality shall be unable to agree within six months after this
21 section takes effect as to the proportion of said debt of the city
22 school district of the preceding municipality to be assumed by the city
23 school district of the city of Staten Island, the supreme court of the
24 third judicial district shall have power to determine the proportion of
25 said debt of the city school district of the preceding municipality to
26 be assumed by the city school district of the city of Staten Island, and
27 to enforce such award, decision and determination as shall be made in an
28 action to be brought by and in the name of either of said parties not
29 less than six months nor more than one year after this section takes
30 effect. Nothing herein contained shall impair the obligation of any
31 contract; and the property and inhabitants of such part of the city
32 school district of the preceding municipality as is by this act included
33 within the city school district of the city of Staten Island, shall
34 continue liable to the existing creditors of the city school district of
35 the said preceding municipality, in like manner, as if this act had not
36 been passed. But from and after the taking effect of this section, the
37 city school district of said preceding municipality shall have no power
38 to issue any bond, obligation or other evidence of indebtedness which
39 shall bind or render liable the property or inhabitants of any part of
40 the city school district of said municipality included within the city
41 school district of the city of Staten Island as hereby constituted. The
42 apportionment of the debt of the city school district of the preceding
43 municipality shall be determined according to the relative assessed
44 valuation of the real property included in, or remaining without the
45 city school district of the city of Staten Island.

46 (b) Disposition of real and personal property owned by or held in
47 trust for the city school district of the preceding municipality. All
48 the real property owned by the city school district of the preceding
49 municipality and situated in that part of the city school district of
50 said municipality included within the city school district of the city
51 of Staten Island, as constituted by this act, is hereby vested in the
52 city school district of the city of Staten Island and divested out of
53 the city school district of the preceding municipality, and all of the
54 real property owned by the city school district of the preceding muni-
55 cipality and situated elsewhere in the city school district of the preced-
56 ing municipality is hereby vested in the city school district of the

1 preceding municipality and divested out of the city school district of
2 the city of Staten Island. All of the property owned by the city school
3 district of the preceding municipality other than real property, includ-
4 ing money, investments, securities on investments and money held in
5 trust for the benefit of the city school district of the preceding muni-
6 cipality, directly or indirectly, shall be divided between the city
7 school district of the preceding municipality and the city school
8 district of the city of Staten Island, as constituted by this act, and
9 the proportion of the same to which each shall, in equity and good
10 conscience, be entitled to receive upon such division, shall be ascer-
11 tained and determined by agreement by and between the board of education
12 of the city school district of the preceding municipality, upon the one
13 side, and the board of education of the city school district of the city
14 of Staten Island, upon the other side, and in the case of their inabili-
15 ty to agree upon such division within six months after this section
16 shall take effect, the supreme court in the third judicial district is
17 hereby empowered to divide the same between them and to ascertain and
18 award to each its equitable proportion thereof, and to enforce its
19 determination thereon, and either of the said school districts may
20 institute and prosecute, in its own name, an action in said court for
21 that purpose after the expiration of six months and before the expira-
22 tion of one year after this section takes effect.

23 (c) Documents. The city school district of the preceding municipality
24 shall provide the city school district of the city of Staten Island with
25 all books, papers, documents and files held by such school district
26 which apply primarily to the area of the city school district of the
27 city of Staten Island, including its property, faculty and students, and
28 shall make available for copying by the city school district of the city
29 of Staten Island any other books, papers, documents and files which the
30 city school district of the city of Staten Island shall request as
31 pertaining to the city school district of the city of Staten Island in
32 any other manner.

33 § 3-008. Continuance of municipal services.

34 The preceding municipality shall be obligated to continue to maintain
35 during the transition period all municipal services and related equip-
36 ment and supplies at a level materially equivalent to that level of
37 municipal services and related equipment and supplies for the geograph-
38 ical area of the city of Staten Island as existing on the first of July
39 in the year in which this act shall have become a law subject to exist-
40 ing budget restraints of the preceding municipality.

41 § 3-009. Powers of the city of Staten Island to adopt and amend local
42 laws.

43 Notwithstanding the provisions of any other law, the common council of
44 the city of Staten Island shall have the power to adopt local laws in
45 accordance with the provisions of section 10 of the municipal home rule
46 law; provided, however, that no such local law adopted during the tran-
47 sition period shall be effective until the date of establishment of the
48 city of Staten Island.

49 § 3-010. Powers of the city of Staten Island relating to home rule
50 powers.

51 In accordance with the provisions of article IX of the constitution,
52 the city of Staten Island during the transition period shall have all of
53 the rights, powers, privileges and immunities granted to local govern-
54 ments with respect to the power of the legislature to act in relation to
55 the property or affairs of the city of Staten Island.

56 § 4-001. City school district of the city of Staten Island.

1 1. The territory of the city of Staten Island in the county of Rich-
2 mond, on the date when this act shall take effect, shall be and is here-
3 by constituted a city school district, and shall be known as the city
4 school district of the city of Staten Island and shall have and enjoy
5 all the powers and duties of a city school district under the provisions
6 of the education law.

7 2. Such district shall be under the control of a board of education,
8 which shall be composed pursuant to the provisions of article 52 of the
9 education law.

10 § 4-002. Section 2550 of the education law, as amended by chapter 65
11 of the laws of 1972, is amended to read as follows:

12 § 2550. Application of article. This article shall apply to the city
13 school districts of the following cities only: New York, Buffalo,
14 Rochester, Syracuse, Staten Island and Yonkers.

15 § 4-003. Section 2552 of the education law is amended by adding a new
16 subdivision e to read as follows:

17 e. City school district of the city of Staten Island: nine members.

18 § 4-004. Subdivisions 1, 2, 4, 5 and 6 of section 2553 of the educa-
19 tion law, subdivision 1 as separately amended by chapters 211 and 441 of
20 the laws of 1980, subdivisions 2, 4 and 5 as added by chapter 242 of the
21 laws of 1974 and subdivision 6 as amended by chapter 211 of the laws of
22 1980, are amended to read as follows:

23 1. No person shall be eligible to the office of member of a board of
24 education who is not a citizen of the United States, who is not quali-
25 fied to register for or vote at an election in accordance with the
26 provisions of section 5-106 of the election law, and who, in the case of
27 the city school district of the city of Yonkers, has not been a resident
28 of the city school district for which he or she is chosen for a period
29 of at least three years immediately preceding the date of his or her
30 election or appointment and who, in the case of the city school district
31 of the city of Buffalo, in the case of a member to be elected at large
32 is not a qualified voter of such city school district and who has not
33 been a resident of such district for a period of at least three years
34 immediately preceding the date of his or her election and in the case of
35 a member elected from a city school subdistrict is not a qualified voter
36 of such city school subdistrict and has not been a resident of the city
37 school district for three years and a resident of the city school
38 subdistrict which he or she represents or seeks to represent for a peri-
39 od of one year immediately preceding the date of his or her election,
40 and who, in the case of the city school district of the city of Roches-
41 ter, is not a qualified voter under section 5-102 of the election law of
42 such city school district; and who, in the case of the city school
43 district of the city of Staten Island has been a qualified voter under
44 section 5-102 of the election law of such city school district for at
45 least ninety days immediately preceding the date of his or her election
46 or appointment; and who in the case of the city school district of the
47 city of Syracuse has not been a qualified voter under section 5-102 of
48 the election law of such city school district for at least ninety days
49 immediately preceding the date of his or her election or appointment.

50 2. In the city school districts of the cities of Rochester and Syra-
51 cuse the members of such board of education shall be chosen by the
52 voters at large at either a general or municipal election, or at both.
53 In the city school district of the city of Staten Island the members of
54 such board of education shall be chosen pursuant to the provisions of
55 subdivision eleven of this section. In the city school district of the

1 city of Buffalo the members of such board of education shall be chosen
2 pursuant to the provisions of subdivision ten of this section.

3 4. In the city school districts of the following cities, the terms of
4 such members shall be as follows:

5 a. Rochester: Four Years;

6 b. Syracuse: Four Years;

7 c. Yonkers: Five Years; and

8 d. Staten Island: Three Years.

9 5. The terms of one-fifth of all the members of a board of education,
10 or of a fraction as close to one-fifth thereof as possible, shall expire
11 annually on the first Tuesday in May, except in the city school
12 districts of the cities of Buffalo, Rochester, Staten Island and Syra-
13 cuse.

14 6. If a vacancy occurs other than by expiration of term in the office
15 of a member of a board of education in a district in which such members
16 are elected at a general or municipal election, such vacancy shall be
17 filled by appointment by the mayor until the next general or municipal
18 election is held, and such vacancy shall then be filled at such election
19 for the unexpired portion of such term, except that in the city school
20 district of the city of Rochester any such vacancy shall be filled
21 pursuant to the provisions of subdivision nine of this section and
22 except further that any such vacancy on the board of education of the
23 city school district of the city of Buffalo shall be filled pursuant to
24 the provisions of subdivision ten of this section and except that any
25 vacancy on the board of education of the city school district of the
26 city of Staten Island shall be filled pursuant to the provisions of
27 subdivision eleven of this section.

28 § 4-005. Section 2553 of the education law is amended by adding a new
29 subdivision 11 to read as follows:

30 11. a. The members of the board of education of the city school
31 district of the city of Staten Island shall be elected by the qualified
32 voters of such city as provided herein.

33 b. The members of the board of education shall be elected at large
34 throughout the city as provided for in this subdivision.

35 c. (1) Every registered voter residing in the city school district of
36 the city of Staten Island and every parent of a child of school age
37 under the jurisdiction of such school district who is a resident of the
38 city of Staten Island for at least ninety days immediately preceding
39 such election and at least eighteen years of age shall be eligible to
40 vote at such election for members of the board of education.

41 (2) Each candidate for member of the board of education of the city
42 school district of the city of Staten Island shall be required to file
43 petitions containing at least five hundred signatures. No petition shall
44 contain any political party or independent body name or label. Each
45 petition shall contain the name of only one candidate and such petition
46 shall be filed with the clerk of the board of elections of the county of
47 Richmond not earlier than the fifth Tuesday and not later than the
48 fourth Tuesday preceding the date on which an election shall be held. A
49 certificate of acceptance or declination of any individual so nominated
50 shall be filed not later than the third day after the fourth Tuesday
51 preceding the election.

52 d. No person shall be eligible for the office of member of such board
53 of education who is not a qualified voter under section 5-102 of the
54 election law of such city school district. No person shall hold at the
55 same time the office of member of the board of education and any other
56 elective office nor shall any holder of an elective office be a candi-

1 date for the office of member of such board of education. No employee of
2 the city school district of the city of Staten Island shall be a member
3 of the board of education.

4 e. The term of office of each member of the board of education of the
5 city school district of the city of Staten Island shall be three years.
6 Voting will be by means of cumulative voting. Each voter may cast up to
7 nine votes for the candidate or candidates of his or her choice by cast-
8 ing all of his or her votes for a single candidate, by casting one vote
9 for each of nine candidates, or by allocating any combination of nine
10 whole votes among the candidates. The maximum number of votes each voter
11 may cast shall not exceed nine. Nothing in this paragraph requires that
12 a voter cast more than one vote for any one candidate. The nine candi-
13 dates receiving the greatest number of votes cast shall be elected.

14 f. (1) Such election for such office shall be governed by the
15 provisions of the election law in the same manner as candidates for
16 office generally to be elected by the voters of the city of Staten
17 Island except, as the case may be, as to the date of the election; and,
18 further provided, however, that each such candidate for election as a
19 member of such board of education shall be required to file a petition
20 containing signatures of at least five hundred voters of such city
21 school district.

22 (2) For the election held in May, in the year next succeeding the
23 date on which this subdivision shall have become a law, such petition
24 shall be deemed to be timely filed for such election if filed with the
25 clerk of the board of elections of Richmond county on or before April
26 ninth, in the year next succeeding the date on which this subdivision
27 shall have become a law. A petition sent by mail in an envelope post-
28 marked prior to midnight on April ninth, in the year next succeeding the
29 date on which this subdivision shall have become a law, shall be deemed
30 to be timely filed when received. Written objection to such petition
31 shall be filed within two days after the final date for filing of such
32 petition and specifications of the grounds of the objections shall be
33 filed with the board within one day after the filing of the objection
34 and institution of court proceedings relating thereto shall be commenced
35 not later than May second, in the year next succeeding the date on which
36 this subdivision shall have become a law.

37 g. Petitions for the nomination of members of such school board shall
38 be on white paper containing the required signatures of qualified voters
39 of the city of Staten Island. The sheets of such petition shall be
40 numbered consecutively, beginning with number one, at the foot of each
41 sheet. Such a petition must set forth in every instance the correct
42 date of signing, the full name of the signer and his or her present
43 residence. A signer need not himself or herself fill in the date or
44 residence.

45 h. Each sheet of such a petition shall be signed in ink and shall be
46 substantially in the following form:

47 I, the undersigned, do hereby state that I am a duly qualified voter
48 of the city of Staten Island, that my present place of residence is
49 truly stated opposite my signature hereto, I intend to support at the
50 ensuing election and I do hereby nominate the following named person as
51 a candidate for nomination (for the public office of member of the board
52 of education of the city school district of the city of Staten Island at
53 large.....day of.....,) (for the city school
54 district.....day of.....,)

55 In witness whereof, I have hereunto set my hand the day and year
56 placed opposite my signature.

	<u>Date</u>	<u>Name of Signer</u>	<u>Present Residence</u>	<u>Assembly District</u>	<u>Election District</u>
3
4
5

The petition shall be authenticated by witnesses. Such statement shall be accepted for all purposes as the equivalent of an affidavit, and if false shall subject the witness to the same penalties as if he/she had been duly sworn. The form of such statement shall be substantially as follows:

STATEMENT OF WITNESS

I,....., (name of witness), state: I am a duly qualified voter of the state of New York, and now reside in the city, town or village of....., in such state, at(fill in street and house number and post office) therein. I know each of the voters whose names are subscribed to this petition sheet containing (fill in number).....signatures and each of them subscribed the same in my presence and upon so subscribing declared to me that the foregoing statement, made and subscribed by him/her, was true.

.....
Signature of witness
Date.....

i. The board of elections shall refuse to accept such petitions signed by an insufficient number of qualified voters, or petitions which are not timely or petitions bearing a political party or independent body, name or emblem or which contain the name of more than one candidate.

j. Except as it may be modified by the provisions of paragraph f of this subdivision, the provisions of the election law with respect to acceptances by candidates nominated by independent nominating petitions shall apply to candidates nominated by petitions for members of such board of education.

k. Objections to petitions for the nomination of members of such board of education and procedures and remedies applicable to such objections shall be the same as those applicable to independent nominating petitions under the election law, except as it may be modified by the provisions of paragraph d of this subdivision.

l. The board of elections shall cause to be printed official ballots containing the names of all candidates as above provided, except that the board may refuse to have the names of ineligible candidates placed on such ballots. The names of the candidates shall be arranged according to lot, and shall not bear the designation of any political party or independent body, name or emblem. Blank spaces shall be provided so that voters may vote for candidates who have not been nominated for the offices to be filled at such elections. The form of such ballots shall conform substantially to the form of ballots used at general elections as prescribed in the election law.

m. Voting for the election of members of such board of education shall be by voting machine, if practicable, and shall be governed by the applicable provisions of the election law with respect to voting machines.

n. If a candidate, after a petition in his or her behalf shall have been duly filed with the clerk of the board of elections, and prior to the date of the election, shall decline to accept the nomination, die,

1 remove from the school district, accept or be a candidate for another
2 elective office, or become otherwise disqualified for such city school
3 district office, a further petition may be filed with such clerk, nomi-
4 nating another candidate in his or her place and stead. Such further
5 petition shall in all respects comply with the provisions of paragraphs
6 f, g and i of this subdivision, except that it may be filed at any time
7 up to and including the fifteenth day preceding the date of the election
8 pursuant to the provisions of this subdivision and the time within which
9 to accept or object to such further petition shall be computed from the
10 date of filing or said fifteenth day, whichever is earlier.

11 o. Whenever a vacancy shall occur or exist in the office of member of
12 the board of education except by reason of expiration of term or
13 increase in the number of members of such board, the candidate who has
14 received the next highest total number of votes in the preceding school
15 board election as certified by the board of elections shall be selected
16 to fill the vacancy. In the event that no candidate is available, then
17 the mayor of the city of Staten Island shall appoint a person to fill
18 the vacancy for the remainder of the unexpired term.

19 p. The members so elected to the board of education shall convene on
20 the first business day in July of each year at the time of the commence-
21 ment of their term of office and select from their members a president
22 who shall serve for a term of one year or such other term, not exceeding
23 the term of his or her office, as may be fixed by the rules and regu-
24 lations of the board.

25 q. The election of members of the board of education of the city
26 school district of the city of Staten Island shall take place on May
27 second, two thousand twenty-five and on the first Tuesday in May every
28 third year thereafter. Such election shall be conducted by the board of
29 elections of the county of Richmond in the same manner as general
30 elections are conducted by it.

31 r. Polls shall be open for voting for the hours prescribed by section
32 8-100 of the election law for primary elections. The results of such
33 elections, after canvassing, shall be certified and reported by the
34 board of elections to the city clerk and the board of education of such
35 city.

36 § 4-006. Subdivision 2 of section 2554 of the education law, as
37 amended by chapter 27 of the laws of 2012, is amended to read as
38 follows:

39 2. [~~Te~~] Except as provided in subdivision one of section two thousand
40 five hundred seventy-three of this article, to create, abolish, maintain
41 and consolidate such positions, divisions, boards or bureaus as, in its
42 judgment, may be necessary for the proper and efficient administration
43 of its work; to appoint a superintendent of schools, such associate,
44 assistant, district and other superintendents, examiners, directors,
45 supervisors, principals, teachers, lecturers, special instructors,
46 medical inspectors, nurses, auditors, attendance officers, secretaries,
47 clerks, custodians, janitors and other employees and other persons or
48 experts in educational, social or recreational work or in the business
49 management or direction of its affairs as said board shall determine
50 necessary for the efficient management of the schools and other educa-
51 tional, social, recreational and business activities; provided, however,
52 that in the city school districts of the cities of Buffalo, Rochester,
53 and Syracuse appointment of associate, assistant and district super-
54 intendents, and other supervising staff who are excluded from the right
55 to bargain collectively pursuant to article fourteen of the civil
56 service law shall, within the amounts budgeted for such positions, be by

1 the superintendent of such city school district; and to determine their
2 duties except as otherwise provided herein.

3 § 4-007. Subdivision 8 of section 2554 of the education law, as
4 amended by chapter 576 of the laws of 1964, is amended to read as
5 follows:

6 8. To dispose of, in the city of New York and the city of Staten
7 Island, to the best advantage of the city of New York or the city of
8 Staten Island, either by sale or on the basis of money allowance for
9 waste paper all books delivered to the several public schools of such
10 city that have been discarded either by reason of being obsolete, no
11 longer required by the course of study, worn by long usage or mutilated
12 by accident. If disposal is made by sale it shall be to the highest
13 bidder and the money realized shall be paid into the city treasury and
14 shall at once be appropriated by the city to the special school fund of
15 the board of education entitled "supplies". If disposal is made on the
16 basis of money allowance for waste paper, it shall be to the highest
17 bidder. Such discarded books may be disposed of without public adver-
18 tisement or entry into a formal contract. Should the discarded books be
19 in such condition that no sale or exchange can be made, or should there
20 be reason to believe that such discarded books have become infected
21 through disease among the pupils, or should the superintendent of
22 schools certify that such discarded books contain erroneous, inaccurate,
23 obsolete or antiquated subject matter, illustrations, maps, charts or
24 other material, the committee on supplies of the board of education, if
25 such books cannot be sold, given away or otherwise salvaged as waste
26 paper without danger to the public health, may authorize their
27 destruction by fire, in which event the superintendent of school
28 supplies shall obtain and file in his office a certificate that such
29 books have been so destroyed, signed by the principal of the school in
30 which the books are located.

31 § 4-008. Subdivision 14 of section 2554 of the education law, such
32 section as renumbered by chapter 762 of the laws of 1950, is amended to
33 read as follows:

34 14. To provide in the schools administered by the board of education
35 of the city of New York or the city of Staten Island, the proper book or
36 books, in form as required by the by-laws of the board of education of
37 such city, in which it shall cause the class teachers under the direc-
38 tion and supervision of the principal to enter the names, ages and resi-
39 dences of the pupils attending the school, the name of the parent or
40 guardian of each pupil and the days on which the pupils shall have
41 attended respectively, and the aggregate attendance of each pupil during
42 the year, and also the day upon which the school shall have been visited
43 by the superintendent of schools or by an associate superintendent of
44 schools or by an assistant superintendent, or by members of the board of
45 education, or by members of the local school board, or by any of them,
46 which entry shall be verified by such oath or affirmation of the princi-
47 pal as may be prescribed by the board of education of such city. Such
48 books shall be preserved as the property of such board of education and
49 shall at all times be open to inspection by members of such board of
50 education, by members of the local school boards and by the superinten-
51 dent of schools, or by any associate superintendent of schools, or by
52 the assistant superintendents.

53 § 4-009. Subdivision 15 of section 2554 of the education law is
54 amended by adding a new paragraph b-1 to read as follows:

55 b-1. In the city of Staten Island, the board of education shall make
56 rules and regulations for the conduct, operation and maintenance of

1 extra classroom activities and for the safeguarding, accounting and
2 audit of all moneys received and derived therefrom. In the case of any
3 extra classroom activity as it shall deem proper, and notwithstanding
4 the provisions of section twenty-five hundred thirty of this title, it
5 may direct that the moneys received or derived from the conduct, opera-
6 tion or maintenance of such an extra classroom activity be deposited
7 with the chief fiscal officer of the board of education, who in such
8 event shall be the treasurer of such an extra classroom activity, the
9 moneys of which are required to be so deposited. In the procurement of
10 articles and services for the conduct, operation and maintenance of a
11 cafeteria or restaurant service, the board of education shall be subject
12 to the provisions of subdivision ten of section twenty-five hundred
13 fifty-six of this article, except that said board of education need not
14 have duly advertised for estimates in order to contract for such arti-
15 cles or services in an amount exceeding one thousand dollars. In such
16 city, the board of education shall also have power to assign any of its
17 officers or employees to perform such duties as it may prescribe in
18 connection with an extra classroom activity and to designate such of its
19 officers and employees when so assigned from whom a bond shall be
20 required for faithful performance of their duties and to fix the sum in
21 which each such bond shall be given.

22 § 4-010. Section 2554 of the education law is amended by adding two
23 new subdivisions 29 and 30 to read as follows:

24 29. To assign, in its discretion, one or more employees of the board
25 in the city of Staten Island to serve as trial examiner with power to
26 conduct investigations and hearings on behalf of such board. Each trial
27 examiner shall report the result of any such investigation or hearing to
28 the board.

29 30. To employ a superintendent of the city of Staten Island school
30 district by contract for a four-year term of office, subject to removal
31 for cause, at a salary to be fixed within the budgetary allocation
32 therefor.

33 § 4-011. Subdivision 5 of section 2556 of the education law, as
34 amended by chapter 480 of the laws of 2014, is amended to read as
35 follows:

36 5. It shall be unlawful for a schoolhouse to be constructed in the
37 city of New York or the city of Staten Island without an open-air play-
38 ground attached to or used in connection with the same. Existing play-
39 grounds shall not be sold, leased or transferred, or permanently author-
40 ized for other uses such as school building construction, renovation,
41 placement or storage of building materials for such work that would
42 eliminate the use of such playground space for outdoor recreational
43 activities unless a plan is established and implemented to provide suit-
44 able and adequate physical activities or space to accommodate the phys-
45 ical and recreational needs of the pupils of such building. The
46 provisions of this subdivision shall not apply to school construction or
47 renovation activities that occur on or require the use of such play-
48 grounds for a duration of no more than one year.

49 § 4-012. Section 2556 of the education law is amended by adding a new
50 subdivision 6-a to read as follows:

51 6-a. After a site has been selected and plans and specifications for a
52 building thereon have been approved as provided herein, the board of
53 education of the city school district of the city of Staten Island may,
54 in its discretion, by regulation deliver such plans and specifications
55 to the common council or other local legislative body which may thereup-
56 on, in its discretion, award a contract for the erection of such build-

1 ing in the same manner and in accordance with the provisions of law
2 regulating the awarding of contracts for the construction of municipal
3 buildings of such city.

4 § 4-013. Section 2556 of the education law is amended by adding three
5 new subdivisions 10-b, 11-a and 13-a to read as follows:

6 10-b. In the city of Staten Island if the several parts of the work or
7 labor to be done and/or the supplies, materials and equipment to be
8 furnished shall together involve an expenditure of not more than ten
9 thousand dollars, the same may be procured in compliance with the proce-
10 dures on contracting provided in chapter nine of the charter of the city
11 of Staten Island.

12 11-a. In all contracts by the board of education of the city school
13 district of the city of Staten Island, for the construction, repair,
14 alteration or remodeling of buildings or for the purchase of supplies,
15 furniture or equipment, a stipulation may be inserted for liquidated
16 damages for any breach, failure or delay in the performance thereof; and
17 such board of education is authorized and empowered to remit the whole
18 or any part of such damages as in its discretion may be just and equita-
19 ble; and in all suits commenced on any such contracts or on any bond
20 given in connection therewith it shall not be necessary for such board,
21 whether plaintiff or defendant, to prove actual or specific damages
22 sustained by reason of any such breach, failure or delay, but such stip-
23 ulation for liquidated damages shall be conclusive and binding upon all
24 parties.

25 13-a. The board of education of the city school district of the city
26 of Staten Island may through its duly designated officers, agents or
27 employees enter upon public or private property for the purpose of
28 making surveys, soundings or test borings necessary for the exercise of
29 the powers or the performance of the duties, of such board of education,
30 provided, however, that the mayor had formally approved the acquisition
31 of the real property as a school site.

32 § 4-014. The education law is amended by adding three new sections
33 2560-a, 2561-a, and 2562-a to read as follows:

34 § 2560-a. Liability of board of education of the city school district
35 of the city of Staten Island. 1. Notwithstanding any inconsistent
36 provision of law, general, special or local, or the limitation contained
37 in the provisions of any city charter, any duly appointed member of the
38 board of education of the city school district of the city of Staten
39 Island, the members of the school board of such city, the teaching or
40 supervising staff, officer, or employee of such board, member of a
41 committee on special education or subcommittee thereof or authorized
42 participant in the school volunteer program in such city shall be enti-
43 tled to legal representation and indemnification pursuant to the
44 provisions of, and subject to the conditions, procedures and limitations
45 contained in section fifty-k of the general municipal law, except that
46 any judgment or settlement pursuant to this section shall be payable
47 from the moneys of the board of education.

48 2. Notwithstanding any inconsistent provision of law, general, special
49 or local, or limitations contained in the provision of any city charter,
50 it shall not be within the power of the board of education of the city
51 of Staten Island to require a volunteer participating in any school
52 activities to execute a waiver of responsibility in favor of that board
53 as a condition, either express or implied, of such participation. Such
54 waiver would include, but not be limited to, a release of any party
55 against whom the volunteer may have rights under any existing provision
56 of law for personal injuries incurred during the performance of author-

1 ized volunteer duties by an authorized participant in a school volunteer
2 program.

3 § 2561-a. Liability of certain officers and employees of the board of
4 education of the city school district of the city of Staten Island. If,
5 in order to furnish needy children or minors with food, shoes, clothing,
6 and other necessities to enable them to attend school as contemplated by
7 law and to benefit from instruction, such board of education shall have
8 required, imposed or permitted, the performance of duties by any of its
9 officers and employees, because of which it became necessary or expedi-
10 ent for any such officer or employee to act for such board of education,
11 or to act for or in cooperation with any other agency of government,
12 federal, state or municipal, then irrespective of the fact that the
13 authority to require, impose or permit the performance of such duties
14 may not have been specifically conferred upon said board of education by
15 provisions of this chapter, such board of education shall be liable for
16 and shall assume liability to the extent that it shall save harmless any
17 such officers or employees for damages arising out of the negligence of
18 any such officer or employee while actually engaged in the performance
19 of such required or permitted duties, provided the officer or employee
20 at the time was acting within the scope of his or her duties or employ-
21 ment.

22 § 2562-a. Presentation of claims against the board of education of
23 the city school district of the city of Staten Island to be pleaded. 1.
24 No action or special proceeding, for any cause whatever, shall be prose-
25 cuted or maintained against the board of education of the city school
26 district of the city of Staten Island, unless it shall appear by and as
27 an allegation in the complaint or necessary moving papers that at least
28 thirty days have elapsed since the demand, claim or claims upon which
29 such action or special proceeding is founded were presented to the said
30 board of education for adjustment, and that the officer or body having
31 the power to adjust or pay said claim has neglected or refused to make
32 an adjustment or payment thereof for thirty days after such presentment.

33 2. The said board of education may require any person presenting for
34 settlement an account or claim for any cause whatever against it to be
35 sworn before it or a committee thereof, or before the auditor, or before
36 any person designated by said board, touching such account or claim, and
37 when so sworn, to answer orally as to any facts relative to the justness
38 of such account or claim. A member of the board, the auditor, or any
39 other person designated as hereinbefore stated, shall have the power to
40 administer an oath to any person who shall give testimony to the just-
41 ness of such account or claim, and for the purpose of securing such
42 testimony may issue subpoenas for the attendance of witnesses. Wilful
43 false swearing before the said board of education, a committee thereof,
44 the auditor, or before any person designated as hereinbefore stated, is
45 perjury and punishable as such.

46 § 4-015. Section 2566 of the education law is amended by adding a new
47 subdivision 3-a to read as follows:

48 3-a. In the city of Staten Island, to exercise the administrative and
49 ministerial powers of the board of education.

50 § 4-016. The education law is amended by adding two new sections
51 2567-a and 2568-a to read as follows:

52 § 2567-a. Protection of rights exercised under licenses issued by a
53 board of education in the city of Staten Island. No person shall
54 forfeit any right given to him or her under a license issued by such
55 board of education, pursuant to this chapter, because of absence while
56 in service in the armed forces of the United States or in the service of

1 the American Red Cross. Any person may at any time within six months
2 after his or her discharge from service in the armed forces of the
3 United States or the American Red Cross make application to the license
4 issuing authority by affidavit setting forth that he or she has been in
5 service in the armed forces of the United States or the American Red
6 Cross and has been discharged from such service and that he or she
7 desires the license theretofore issued to him or to her to be reissued
8 as of the date of such application, and it shall be the duty of the
9 licensing authority to reinstate such license as of the date on which
10 application is made.

11 § 2568-a. Superintendent of schools authorized to require medical
12 examination of certain employees of the board of education of the city
13 school district of the city of Staten Island. The superintendent of
14 schools shall be empowered to require any person employed by the board
15 of education of the city school district of the city of Staten Island to
16 submit to a medical examination by a physician or school medical inspec-
17 tor of the board, in order to determine the mental or physical capacity
18 of such person to perform his or her duties, whenever it has been recom-
19 ended in a report in writing that such examination should be made.
20 Such report to the superintendent may be made only by a person under
21 whose supervision or direction the person recommended for such medical
22 examination is employed. The person required to submit to such medical
23 examination shall be entitled to be accompanied by a physician or other
24 person of his or her own choice. The findings upon such examination
25 shall be reported to the superintendent of schools and may be referred
26 to and considered for the evaluation of service of the person examined
27 or for disability retirement.

28 § 4-017. Subdivision 1 of section 2573 of the education law, as
29 amended by section 3 of subpart D of part EE of chapter 56 of the laws
30 of 2015, subparagraph ii of paragraph (a) as amended by chapter 201 of
31 the laws of 2022 and subparagraph ii of paragraph (b) as amended by
32 chapter 345 of the laws of 2019, is amended to read as follows:

33 1. (a) i. ~~Teachers~~ Except as otherwise provided for in paragraph (c)
34 of this subdivision, teachers and all other members of the teaching
35 staff, appointed prior to July first, two thousand fifteen and author-
36 ized by section twenty-five hundred fifty-four of this article, shall be
37 appointed by the board of education, upon the recommendation of the
38 superintendent of schools, for a probationary period of three years,
39 except that in the case of a teacher who has rendered satisfactory
40 service as a regular substitute for a period of two years or as a
41 seasonally licensed per session teacher of swimming in day schools who
42 has served in that capacity for a period of two years and has been
43 appointed to teach the same subject in day schools on an annual salary,
44 the probationary period shall be limited to one year; provided, however,
45 that in the case of a teacher who has been appointed on tenure in ano-
46 ther school district within the state, the school district where currently
47 employed, or a board of cooperative educational services, and who was
48 not dismissed from such district or board as a result of charges brought
49 pursuant to subdivision one of section three thousand twenty-a or
50 section three thousand twenty-b of this chapter, the probationary period
51 shall not exceed two years; provided, however, that in cities with a
52 population of one million or more, a teacher appointed under a newly
53 created license, for teachers of reading and of the emotionally hand-
54 icated, to a position which the teacher has held for at least two years
55 prior to such appointment while serving on tenure in another license
56 area who was not dismissed as a result of charges brought pursuant to

1 subdivision one of section three thousand twenty-a or section three
2 thousand twenty-b of this chapter, the probationary period shall be one
3 year. The service of a person appointed to any of such positions may be
4 discontinued at any time during such probationary period, on the recom-
5 mendation of the superintendent of schools, by a majority vote of the
6 board of education. Each person who is not to be recommended for
7 appointment on tenure shall be so notified by the superintendent of
8 schools in writing not later than sixty days immediately preceding the
9 expiration of his or her probationary period. In city school districts
10 having a population of four hundred thousand or more, persons with
11 licenses obtained as a result of examinations announced subsequent to
12 the twenty-second day of May, nineteen hundred sixty-nine appointed upon
13 conditions that all announced requirements for the position be fulfilled
14 within a specified period of time, shall not acquire tenure unless and
15 until such requirements have been completed within the time specified
16 for the fulfillment of such requirements, notwithstanding the expiration
17 of any probationary period. In all other city school districts subject
18 to the provisions of this article, failure to maintain certification as
19 required by this article and by the regulations of the commissioner
20 shall be cause for removal within the meaning of subdivision five of
21 this section.

22 ii. [~~Teachers~~] Except as otherwise provided for in paragraph (c) of
23 this subdivision, teachers and all other members of the teaching staff
24 appointed on or after July first, two thousand fifteen and authorized by
25 section twenty-five hundred fifty-four of this article, shall be
26 appointed by the board of education, upon the recommendation of the
27 superintendent of schools, for a probationary period of four years,
28 except that in the case of a teacher who has rendered satisfactory
29 service as a regular substitute for a period of two years and, if a
30 classroom teacher, has received annual professional performance review
31 ratings in each of those years, or has rendered satisfactory service as
32 a seasonally licensed per session teacher of swimming in day schools who
33 has served in that capacity for a period of two years and has been
34 appointed to teach the same subject in day schools on an annual salary,
35 the teacher shall be appointed for a probationary period of two years;
36 provided, however, that in the case of a teacher who has been appointed
37 on tenure in another school district within the state, the school
38 district where currently employed, or a board of cooperative educational
39 services, and who was not dismissed from such district or board as a
40 result of charges brought pursuant to subdivision one of section three
41 thousand twenty-a or section three thousand twenty-b of this chapter,
42 the teacher shall be appointed for a probationary period of three years;
43 provided that, in the case of a classroom teacher, the teacher demon-
44 strates that he or she received an annual professional performance
45 review rating pursuant to section three thousand twelve-c or section
46 three thousand twelve-d of this chapter in his or her final year of
47 service in such other school district or board of cooperative educa-
48 tional services; provided, however, that, in the case of a classroom
49 teacher who has been appointed for a probationary period during the two
50 thousand twenty--two thousand twenty-one, the two thousand twenty-one--
51 two thousand twenty-two or the two thousand twenty-two--two thousand
52 twenty-three school year and who has been appointed on tenure in another
53 school district within the state, the school district where currently
54 employed, board of cooperative educational services or state school for
55 the blind or deaf, and who was not dismissed from such district, board
56 or state school for the blind or deaf as a result of charges brought

1 pursuant to section three thousand twenty-a or section three thousand
2 twenty-b of this chapter, such teacher shall be appointed for a proba-
3 tionary period of three years; provided that, in the case of a classroom
4 teacher, such teacher demonstrates that he or she received an annual
5 professional performance review rating pursuant to section three thou-
6 sand twelve-c or section three thousand twelve-d of this chapter in the
7 two thousand seventeen--two thousand eighteen or two thousand eighteen-
8 -two thousand nineteen school year in such other school district, board
9 of cooperative educational services or state school for the blind or
10 deaf; provided further, however, that in cities with a population of one
11 million or more, a teacher appointed under a newly created license, for
12 teachers of reading and of the emotionally handicapped, to a position
13 which the teacher has held for at least two years prior to such appoint-
14 ment while serving on tenure in another license area who was not
15 dismissed as a result of charges brought pursuant to subdivision one of
16 section three thousand twenty-a or section three thousand twenty-b of
17 this chapter, the teacher shall be appointed for a probationary period
18 of two years. The service of a person appointed to any of such posi-
19 tions may be discontinued at any time during such probationary period,
20 on the recommendation of the superintendent of schools, by a majority
21 vote of the board of education. Each person who is not to be recommended
22 for appointment on tenure shall be so notified by the superintendent of
23 schools in writing not later than sixty days immediately preceding the
24 expiration of his or her probationary period. In all city school
25 districts subject to the provisions of this article, failure to maintain
26 certification as required by this article and by the regulations of the
27 commissioner shall be cause for removal within the meaning of subdivi-
28 sion five of this section.

29 (b) i. ~~Administrators~~ Except as otherwise provided for in paragraph
30 (c) of this subdivision, administrators, directors, supervisors, princi-
31 pals and all other members of the supervising staff, except executive
32 directors, associate, assistant, district and community superintendents
33 and examiners, appointed prior to July first, two thousand fifteen and
34 authorized by section twenty-five hundred fifty-four of this article,
35 shall be appointed by the board of education, upon the recommendation of
36 the superintendent or chancellor of schools, for a probationary period
37 of three years. The service of a person appointed to any of such posi-
38 tions may be discontinued at any time during the probationary period on
39 the recommendation of the superintendent of schools, by a majority vote
40 of the board of education.

41 ii. ~~Administrators~~ Except as otherwise provided for in paragraph (c)
42 of this subdivision, administrators, directors, supervisors, principals
43 and all other members of the supervising staff, except executive direc-
44 tors, associate, assistant, district and community superintendents and
45 examiners, appointed on or after July first, two thousand fifteen and
46 authorized by section twenty-five hundred fifty-four of this article,
47 shall be appointed by the board of education, upon the recommendation of
48 the superintendent or chancellor of schools, for a probationary period
49 of four years provided that such probationary period may be extended in
50 accordance with paragraph (b) of subdivision five of this section;
51 provided, however, that in the case of a principal, administrator,
52 supervisor, or other member of the supervising staff who has been
53 appointed on tenure pursuant to this chapter as an administrator within
54 an authorized administrative tenure area in another school district
55 within the state, the school district where currently employed, or a
56 board of cooperative educational services, and who was not dismissed

1 from such district or board as a result of charges brought pursuant to
2 subdivision one of section three thousand twenty-a or section three
3 thousand twenty-b of this chapter, the principal, administrator, super-
4 visor or other member of the supervising staff shall be appointed for a
5 probationary period of three years. The service of a person appointed to
6 any of such positions may be discontinued at any time during the proba-
7 tionary period on the recommendation of the superintendent of schools,
8 by a majority vote of the board of education.

9 (c) Notwithstanding the provisions of paragraphs (a) and (b) of this
10 subdivision, the superintendent of the city school district of the city
11 of Staten Island shall have the authority to appoint, with the approval
12 of the school board, principals and city wide administrators. Such
13 superintendent may appoint assistant principals and other clerical and
14 administrative staff without the approval of the school board. Such
15 assistant principals, clerical and administrative staff shall serve in
16 accordance with the provisions of paragraphs (a) and (b) of this subdivi-
17 vision.

18 § 4-018. Section 2576 of the education law is amended by adding a new
19 subdivision 4-a to read as follows:

20 4-a. In the city of Staten Island such estimate shall be filed with
21 the officer authorized to receive other department estimates and the
22 same acted on by such officer and by the common council of such city in
23 the same manner and with the same effect as other department estimates.
24 The common council is also authorized, in its discretion, to include in
25 such budget a sum for any of the purposes enumerated in paragraph c of
26 subdivision one of this section, and any further amount for such
27 purposes as may be authorized by a tax election held in such city pursu-
28 ant to the provisions of this chapter. After the adoption of such budget
29 the common council shall cause the amount thereof to be included in the
30 tax and assessment roll of the city and the same shall be collected in
31 the same manner and at the same time as other taxes of the city are
32 collected, and placed to the credit of the board of education of the
33 city school district of such city.

34 § 4-019. Section 2579 of the education law is amended by adding a new
35 subdivision 4 to read as follows:

36 4. If the city of Staten Island shall issue obligations to defray, in
37 whole or in part, the expense of the construction, improvement and
38 equipment of school buildings or the purchase or acquisition of school
39 sites, the proceeds of the sale of such bonds shall be paid into the
40 treasury of the city and placed to the credit of the board of education
41 of the city school district of such city. As such obligations become
42 due the municipal authorities of the city shall include in the tax levy,
43 and assess upon the property of the city, the amount necessary to pay
44 such bonds and interest thereon.

45 § 4-020. Additional transitory provisions relating to the city school
46 district of the city of Staten Island. 1. The board of education of the
47 city school district of the city of Staten Island shall possess those
48 powers and duties as are authorized for a city school district pursuant
49 to article 52 of the education law, as amended by this act. In further-
50 ance of such powers and duties the board shall confer with the mayor,
51 the comptroller and the common council of the city of Staten Island and
52 the board of education of the preceding municipality for the purpose of
53 preparing for submission and implementation of a budget for the school
54 year commencing on the first of July in the second year next succeeding
55 the date on which this act shall have become a law and to take such
56 other actions as may be necessary and appropriate to provide for the

1 operation of the city school district of the city of Staten Island on
2 and after the date of establishment of the city of Staten Island.

3 2. Fiscal and regulatory authority pertaining to the public schools to
4 be contained within the city school district of the city of Staten
5 Island shall remain with the board of education of the city school
6 district of the preceding municipality until the date of establishment
7 of the city of Staten Island.

8 3. All employees of the board of education of the city school district
9 of the preceding municipality and such other employees of any other
10 public entity as may be transferred pursuant to the provisions of this
11 act shall retain all rights, privileges, benefits and salaries to which
12 the employee was previously entitled as an employee of the board of
13 education of the preceding municipality. Transfers of employment to the
14 city school district of the city of Staten Island shall be conducted in
15 the same manner as is provided by for the city of Staten Island as
16 provided in this act. Such employees shall not suffer a loss of employ-
17 ment by reason of such transfer within a period of three years from the
18 effective date of such transfer nor shall any such employees be subject
19 to any additional employment probationary period by reason of such
20 transfer.

21 4. During the transition period as defined in section 1-003 of this
22 act, the city school district of the city of Staten Island may retain
23 the services of a superintendent of schools, a chief financial officer
24 and such other staff as to which funding shall have been provided by the
25 mayor and the common council of the city of Staten Island.

26 5. All actions deemed necessary and proper to implement the provisions
27 of sections 4-001 through 4-019 of this act are hereby authorized.

28 § 5-001. Transfer of the college of Staten Island. 1. The legislature
29 finds that due to the establishment of the city of Staten Island, the
30 transfer of the college of Staten Island from the city university of New
31 York to the state university of New York is a public purpose. Such
32 transfer shall not affect the title to the real property of the college
33 of Staten Island which shall continue to be held by the state of New
34 York, except that notwithstanding the provisions of paragraph b of
35 subdivision 1 of section 6219 of the education law if such real property
36 ceases to be used for college purposes, title to such property shall
37 revert to the city of Staten Island as successor in interest to the
38 prior municipal government of the geographical area of Staten Island.
39 The college of Staten Island is hereby transferred to the state univer-
40 sity of New York. Such transfers shall include all furnishings, equip-
41 ment, records and all other property normally allocated to the college
42 of Staten Island by the city university of New York.

43 2. The college of Staten Island is hereby transferred from the city
44 university of New York to the state university of New York. The college
45 of Staten Island shall continue to offer a full range of baccalaureate
46 degree programs and associate degree programs, selected masters degree
47 programs and provide faculty participation in research and doctoral
48 programs at the graduate center of the city university of New York. The
49 city of Staten Island shall serve as local sponsor for the two year
50 component of the college of Staten Island and such component shall be
51 subject to the provisions of section 6304 of the education law. Such two
52 year component shall be a part of the state university of New York and
53 shall not be governed by a community college board of trustees.

54 3. (a) Whenever the term "city university of New York" is referred to
55 or designated in any law, general, special or local, contract, lease,
56 judgment, decision or document pertaining to the functions, powers and

1 duties relating to the college of Staten Island hereby continued in,
2 transferred and assigned to, or devolved upon, the state university of
3 New York, such reference or designation shall be deemed to refer to and
4 include the state university of New York, so far as such law, contract,
5 lease, judgment, decision or document pertains to matters which are
6 within its jurisdiction by reason of the redesignation, continuation,
7 transfer, assignment and devolution of functions, powers and duties made
8 by this act.

9 (b) All contracts, leases and other agreements entered into by the
10 city university of New York relating to the college of Staten Island
11 before the effective date of this section shall be conducted and
12 completed by the state university of New York in the same manner and
13 under the same terms and conditions and with the same effect as if the
14 same had been conducted and completed by the state university of New
15 York. In addition, any contracts, leases and other agreements entered
16 into by the state university of New York prior to the effective date of
17 this section shall remain in full force and effect and shall be
18 conducted and completed by the state university of New York.

19 (c) All rights, title and interest in personal property used for
20 educational or administrative purposes of the college of Staten Island
21 of the city university of New York vested in the city university of New
22 York on the effective date of this section are hereby transferred,
23 assigned and devolved upon the state university of New York.

24 (d) No existing right or remedy of any character shall be lost,
25 impaired or affected, nor shall any new right or remedy of any character
26 accrue to or for the benefit of any person by reason of the transfer of
27 the college of Staten Island pursuant to the provisions of this act.

28 (e) No action or proceeding based upon a cause of action which arose
29 prior to the effective date of this section brought by or against the
30 board of trustees of the city university of New York, the city universi-
31 ty construction fund, the board of trustees of the state university of
32 New York or the college of Staten Island shall be affected by any
33 provision of this act.

34 (f) Any lease entered into by the city university of New York for the
35 purposes of the college of Staten Island before the effective date of
36 this section is hereby transferred, assigned and devolved upon the state
37 university of New York, notwithstanding any provision that may be
38 contained therein providing for the nonassignability of such lease and
39 any such provision shall be deemed to be void as against the public
40 policy of the state and of no force and effect.

41 4. A council for the college of Staten Island is hereby established
42 pursuant to section 356 of the education law. It shall consist of ten
43 members, nine of whom shall be appointed by the governor and one of whom
44 shall be elected by and from among the students of the institution. Such
45 voting members shall be subject to every provision of any general,
46 special or local law, ordinance, charter, code, rule or regulation
47 applying to the voting members of such board with respect to the
48 discharge of their duties including, but not limited to those provisions
49 setting forth codes of ethics, disclosure requirements and prohibiting
50 business and professional activities. The election of the student member
51 shall be conducted in accordance with rules and regulations promulgated
52 by the respective representative campus student association in accord-
53 ance with guidelines established by the state university trustees. One
54 member shall be designated by the governor as chairman. Vacancies shall
55 be filled for the unexpired term in the same manner as original
56 selections. The term of office for each council member shall be seven

1 years. The term of office for the student member shall be one year. In
2 the event the student member ceases to be a student at the institution
3 such member shall be required to resign. Members appointed by the gover-
4 nor may be removed by the governor. Members elected by the students of
5 the institution may be removed by such students in accordance with rules
6 and regulations promulgated by the respective representative campus
7 student association in accordance with guidelines promulgated by the
8 state university trustees. Members of such council shall receive no
9 compensation for their services but shall be reimbursed for the expenses
10 actually and necessarily incurred by them in the performance of their
11 duties hereunder.

12 5. All employees of the college of Staten Island of the city universi-
13 ty of New York shall be transferred to employment in the state universi-
14 ty of New York and shall retain all rights, privileges, benefits and
15 salaries to which the employee was previously entitled as an employee of
16 the city university of New York.

17 Employees of the college of Staten Island of the city university of
18 New York transferred to employment in the state university of New York
19 pursuant to the provisions of this act shall not be involuntarily
20 assigned to work outside the geographical boundaries of the city of
21 Staten Island nor shall any such employees suffer a loss of employment
22 by reason of such transfer within a period of three years from the
23 effective date of such transfer nor shall any such employees be subject
24 to any additional employment probationary period by reason of their
25 transfer.

26 Employees transferred from the college of Staten Island of the city
27 university of New York to employment in the state university of New
28 York except for those designated managerial or confidential shall be
29 included in employer - employee negotiating units comparable to existing
30 units in the city university of the city of New York. With respect to
31 employees to be placed in such negotiating units, the public employee
32 organization recognized or certified to represent the employees in
33 comparable city university of the city of New York negotiating units
34 shall be recognized as the unit representative.

35 All rights, privileges and benefits provided by collectively bargained
36 agreements to employees of the city university of the city of New York
37 shall be continued for such employees transferred, reappointed or other-
38 wise employed until such time as successor collective bargaining agree-
39 ments are negotiated.

40 The state university of New York shall consult and bargain on all
41 terms and conditions of employment with the appropriate public employee
42 organization with respect to the establishment of any new titles which
43 are similar to or reasonably related to titles already represented by
44 such public employee organizations in the city university of the city of
45 New York.

46 Any such titles for which terms and conditions are bargained pursuant
47 to this subdivision shall be deemed to be successor titles within the
48 meaning of applicable law. So long as the responsibilities of employees
49 in these titles are reasonably related to the responsibilities of
50 employees currently represented by public employee organizations, such
51 titles shall be accredited or placed in a negotiating unit represented
52 by such public employee organizations.

53 If a dispute arises, the office of collective bargaining shall deter-
54 mine which public employee organization is appropriate to represent
55 transferees, other hires, or employees in a new title on the basis of

1 the title's community of interest with titles in the state university of
2 New York and the city university of the city of New York.

3 No existing right or remedy of any character shall be lost or impaired
4 or affected by reason of the adoption of this charter.

5 6. On and after the first of July in the second year next succeeding
6 the date on which this act shall have become a law, officers and employ-
7 ees who become employees of the state pursuant to this act shall become
8 members of the New York state employees' retirement system to the extent
9 permitted or required by the provisions of the retirement and social
10 security law, except that any employee who is a member of the New York
11 city employees' retirement system may elect to continue membership in
12 the New York city employees' retirement system. Any election pursuant to
13 this section shall be made no later than the one hundred twentieth day
14 after the effective date of this section, by filing a written notice
15 thereof with the administrative head of the New York state employees'
16 retirement system and the New York city employees' retirement system
17 and, once made and filed, shall be irrevocable. Upon the retirement of
18 an employee who has made such an election, the calculation of final
19 average salary by the New York city employees' retirement system shall
20 be performed as if the salary earned as a state employee on and after
21 such effective date were earned in New York city employment. In the case
22 of an employee who becomes a member of the New York state employees'
23 retirement system pursuant to this section, the New York city employees'
24 retirement system shall make a transfer of reserves, contributions and
25 credits to the New York state employees' retirement system, in the
26 manner required by section 43 of the retirement and social security law.

27 The comptroller of the city of New York shall certify to the state
28 administrator the amount of money required to be paid by the state of
29 New York for pension costs resulting from elections made pursuant to
30 this section. The comptroller of the state of New York shall pay to the
31 New York city employees' retirement system, upon approval by the state
32 administrator, the amounts so certified by the comptroller of the city
33 of New York. The comptroller of the city of New York shall also certify
34 to the state administrator the amount of money required to be contrib-
35 uted by each of such employees. The comptroller of the state of New
36 York shall be authorized to withhold the contributions of such employees
37 and pay that amount to the New York city employees' retirement system.
38 The amount so certified shall be the same as the amounts required to be
39 contributed for similarly situated city employees by the city of New
40 York and by employees of the city of New York.

41 § 5-002. Subdivision 3 of section 352 of the education law, as amended
42 by chapter 13 of the laws of 2021, is amended to read as follows:

43 3. The state university shall consist of the four university centers
44 at Albany, Binghamton, Buffalo and Stony Brook, the designated colleges
45 of arts and sciences at Brockport, Buffalo, Cortland, Fredonia, Geneseo,
46 New Paltz, Old Westbury, Oneonta, Oswego, Plattsburgh, Potsdam ~~[and]~~,
47 Purchase and Staten Island, empire state college, the agricultural and
48 technical colleges at Alfred, Canton, Cobleskill, Delhi, Farmingdale and
49 Morrisville, downstate medical center, upstate medical center, the
50 college of optometry, the college of environmental science and forestry,
51 maritime college, the college of technology at Utica/Rome, the statutory
52 or contract colleges at Cornell university and Alfred university, and
53 such additional universities, colleges and other institutions, facili-
54 ties and research centers as have been or hereafter may be acquired,
55 established, operated or contracted to be operated for the state by the
56 state university trustees.

1 § 5-003. Paragraphs (f) and (g) of subdivision 2 and paragraph (d) of
 2 subdivision 3 of section 6204 of the education law, paragraph (f) of
 3 subdivision 2 as amended by chapter 306 and paragraph (g) of subdivision
 4 2 as added by chapter 305 of the laws of 1979, and paragraph (d) of
 5 subdivision 3 as amended by chapter 98 of the laws of 2010, are amended
 6 to read as follows:

7 (f) The five trustees appointed by the mayor shall include at least
 8 one resident of each of the [~~five~~] boroughs of the city of New York.

9 (g) The trustees appointed by the governor shall include at least one
 10 resident of each of the [~~five~~] boroughs of the city of New York.

11 (d) (i) The board of trustees shall hold at least one public hearing
 12 each year in each of the [~~five~~] boroughs of the city of New York. The
 13 purpose of such hearing shall be to receive testimony and statements
 14 from concerned individuals about university issues.

15 (ii) The board of trustees shall fix the time, place, duration and
 16 format of each hearing.

17 (iii) At least thirty days notice of the hearing shall be given by the
 18 chairperson of the board of trustees to all of the trustees, to all
 19 presidents of educational units, to the chair of faculty-senate bodies
 20 of educational units, to all student government presidents of educa-
 21 tional units, to the borough president, the members of the city council,
 22 the members of the board of estimate, the local community boards of the
 23 borough where the hearing is to be held and to the media. The notice
 24 shall contain the time, place and date of the public hearing. Such
 25 information shall be made electronically available on the city universi-
 26 ty of New York website. Any such meeting of the board of trustees shall
 27 be conducted in accordance with article seven of the public officers
 28 law.

29 (iv) At least three trustees shall attend each hearing.

30 § 6-001. The judiciary law is amended by adding a new article 5-C to
 31 read as follows:

32 ARTICLE 5-C

33 INTERIM COURT STRUCTURE FOR THE CITY OF STATEN ISLAND

34 Section 178. Declaration of legislative findings and intent.

35 178-a. Continuation of court proceedings.

36 178-b. Judicial transition.

37 178-c. Judiciary jurisdiction.

38 178-d. Judiciary; family court.

39 178-e. Judiciary; criminal court.

40 178-f. Judiciary; civil court.

41 178-g. Judicial transition; structure.

42 178-h. Unified court system; services.

43 178-i. Judicial transition services.

44 178-j. Effect of existing collective bargaining agreements.

45 § 178. Declaration of legislative findings and intent. The interim
 46 court structure established for the city of Staten Island by this arti-
 47 cle is being enacted in the exercise of the legislature's constitutional
 48 authority to provide for the creation and organization of units of local
 49 government. The legislature finds that it is not possible to create,
 50 fund and staff a new and jurisdictionally distinct court structure for
 51 the city of Staten Island which would be fully operational on the effec-
 52 tive date of such city's incorporation. The legislature also finds that
 53 the creation of a jurisdictionally distinct court structure for the city
 54 of Staten Island would likely disrupt the orderly administration of
 55 justice in such city and the county of Richmond, unnecessarily inconven-
 56 ience and confuse litigants, and increase significantly the cost of

1 conducting litigation within such city and county. The purpose of this
2 article is to prevent an interregnum in the operations of the unified
3 court system in connection with the incorporation of the city of Staten
4 Island and its organization as a functional unit of local government. By
5 establishing an interim court structure for such city, the legislature
6 intends to relieve taxpayers and litigants of the expense, inconven-
7 ience, confusion, and delay that would be occasioned by the creation of
8 a new court structure for such city. By preserving the existing trial
9 court structure in the county of Richmond during the period of govern-
10 mental reorganization following the incorporation of the city of Staten
11 Island, the legislature intends that all inhabitants of such county and
12 city will continue to possess the same rights and access to the unified
13 court system that they possessed immediately prior to the incorporation
14 of such city.

15 § 178-a. Continuation of court proceedings. The incorporation of the
16 city of Staten Island shall not alter the jurisdiction of any court
17 existing in the county of Richmond immediately prior to the effective
18 date of such city's incorporation. All courts in such county are contin-
19 ued, and no civil or criminal appeal, action or proceeding pending
20 before any court or any judge or justice on the effective date of incor-
21 poration shall abate or be impaired; and every such appeal, action or
22 proceeding shall be continued in the court in which such appeal, action
23 or proceeding was pending immediately prior to such effective date.

24 § 178-b. Judicial transition. There is established a judicial transi-
25 tion period for the city of Staten Island. Such period shall commence
26 on the effective date of such city's incorporation and terminate on
27 December thirty-first in the fifth year following such incorporation or
28 until the provisions of this article are specifically superseded by
29 state law.

30 § 178-c. Judiciary jurisdiction. During the judicial transition peri-
31 od:

32 (1) the county of Richmond shall be deemed to be a county within the
33 city of New York for all purposes of article six of the state constitu-
34 tion;

35 (2) the county of Richmond shall be deemed to be a county within the
36 city of New York for the purposes of section five hundred two of this
37 chapter;

38 (3) the city of Staten Island shall be deemed to be a part of the city
39 of New York for the purposes of section one hundred fifty-five and arti-
40 cles two-A and two-B of title two of the vehicle and traffic law; and

41 (4) the judge of the surrogate's court in the county of Richmond shall
42 be deemed to be a judge of a surrogate's court within the city of New
43 York for the purposes of subdivision c of section twelve of article six
44 of the state constitution.

45 § 178-d. Judiciary; family court. Notwithstanding section one hundred
46 twenty-one of the family court act, the county of Richmond shall be
47 deemed to be a county within the city of New York during the judicial
48 transition period, and there shall be no fewer than three judges of such
49 court who shall be residents of the county of Richmond. A vacancy occur-
50 ring in the office of any such judge during the judicial transition
51 period shall be filled by the mayor of the city of New York upon the
52 recommendation of the mayor of the city of Staten Island consistent with
53 the provisions of section two hundred sixteen-a of the family court act.

54 § 178-e. Judiciary; criminal court. Notwithstanding the provisions of
55 sections twenty and twenty-two of the New York city criminal court act,
56 the city of Staten Island shall be deemed to be part of the city of New

1 York during the judicial transition period, and there shall be no fewer
2 than three judges of such court who shall be residents of the city of
3 Staten Island. A vacancy occurring in the office of such judge during
4 the judicial transition period shall be filled by the mayor of the city
5 of New York upon the recommendation of the mayor of the city of Staten
6 Island consistent with the provisions of section twenty-two of the New
7 York city criminal court act.

8 § 178-f. Judiciary; civil court. Notwithstanding the provisions of
9 section one hundred two-a of the New York city civil court act, the city
10 of Staten Island shall be deemed to be part of the city of New York
11 during the judicial transition period, and there shall be no fewer than
12 three judges of such court who shall be residents of the city of Staten
13 Island. A vacancy occurring in the office of such judge otherwise than
14 by expiration of term during the judicial transition period shall be
15 filled by the mayor of the city of New York upon the recommendation of
16 the mayor of the city of Staten Island consistent with the provisions of
17 section one hundred two-a of the New York city civil court act.

18 § 178-g. Judicial transition; structure. The mayor and the common
19 council of the city of Staten Island, in consultation with the chief
20 administrator of the courts, shall develop a plan for an appropriate
21 court structure for the city of Staten Island following the judicial
22 transition period. Such plan shall include recommendations for the
23 jurisdiction of each court, the number of judges needed, a personnel
24 structure for nonjudicial officers and employees, necessary physical
25 facilities, and a fiscal analysis of each component of the plan. Such
26 plan shall be submitted to the governor, the legislature and to the
27 chief judge of the state, no later than three years following commence-
28 ment of the judicial transition period.

29 § 178-h. Unified court system; services. The chief administrator of
30 the courts is authorized to do all things necessary to continue the
31 efficient operation of the unified court system within the county of
32 Richmond and the city of Staten Island during and after the judicial
33 transition period.

34 § 178-i. Judicial transition services. During the judicial transition
35 period, the mayor and the comptroller of the city of Staten Island and
36 the mayor and the comptroller of the city of New York are authorized to
37 enter into agreements relating to the provision of municipal services
38 for the courts within the city of Staten Island. Such municipal services
39 may include, but shall not be limited to, correctional services.

40 § 178-j. Effect of existing collective bargaining agreements.
41 Notwithstanding any other provision of law:

42 (1) The provisions of this article shall not alter any existing
43 collective negotiating unit of nonjudicial employees or any provision of
44 a collective negotiating agreement in effect on the effective date of
45 this article.

46 (2) To the extent permitted by the state constitution, where a judi-
47 cial or nonjudicial officer or employee of the unified court system is
48 required as a condition of his or her continued employment to reside in
49 the city of New York and, on the effective date of this article, he or
50 she resides in the county of Richmond, such officer or employee shall be
51 deemed to reside in the city of New York for so long as he or she
52 remains in his or her position, provided he or she continues to reside
53 in the county or in the city of New York.

54 (3) The nonjudicial personnel of the courts affected by this article
55 in office on the effective date of this article shall, to the extent
56 practicable, be continued without diminution of salaries and with the

1 same status and rights in the courts continued in the county of Rich-
2 mond.

3 § 7-001. Section 31 of the public housing law, as amended by chapter
4 829 of the laws of 1947, is amended to read as follows:

5 § 31. Scope of authority's jurisdiction. The territorial jurisdic-
6 tion of an authority established for a city or village shall be cotermi-
7 nous with the territorial limits of such city or village, and the terri-
8 torial jurisdiction of an authority established for a town shall include
9 all such town, except that such territorial jurisdiction shall not
10 include any territory that lies within the boundaries of any village,
11 whether such village has or has not established an authority. The
12 members of such town authority shall if they consent and when authorized
13 by resolutions of the town board and the village board, act as the
14 authority in and for said village, the same as if it had been created
15 especially for said village.

16 The foregoing notwithstanding, the New York city housing authority,
17 the creation and establishment of which was validated pursuant to
18 section four hundred of this chapter, shall continue to have territorial
19 jurisdiction for the five counties which had constituted parts of the
20 city of New York prior to the establishment of the city of Staten
21 Island.

22 § 7-002. Subdivision 3 of section 402 of the public housing law, as
23 added by chapter 96 of the laws of 2013, is amended to read as follows:

24 3. a. The authority shall consist of seven members appointed by the
25 mayor, one of whom shall be designated by the mayor as [~~chairman~~] chair-
26 person removable at his or her pleasure. The term of office of each
27 member other than the [~~chairman~~] chairperson shall be three years,
28 provided, however, that the initial appointments of the six members
29 other than the [~~chairman~~] chairperson shall be as follows: two shall be
30 appointed for one-year terms, two shall be appointed for two-year terms,
31 and two shall be appointed for three-year terms. The mayor shall file
32 with the commissioner of housing a certificate of appointment of the
33 [~~chairman~~] chairperson and of each member. Any member other than the
34 [~~chairman~~] chairperson may be removed by the mayor upon filing in the
35 office of the commissioner of citywide administrative services and serv-
36 ing upon the member the reasons therefor. Such document setting forth
37 the reasons shall be made available to the general public, which shall
38 include but not be limited to publishing the reasons on the New York
39 city housing authority's website. Three of such members shall be a
40 tenant of record or an authorized member of the tenant household, in
41 good standing, residing in one of the federal projects owned or operated
42 by the authority, provided, however, that for the initial appointments
43 of the three such members, one shall be among the members initially
44 appointed for one-year terms, one shall be among the members initially
45 appointed for two-year terms, and one shall be among the members
46 initially appointed for three-year terms. A vacancy in the office of a
47 member other than the [~~chairman~~] chairperson occurring otherwise than by
48 expiration of term shall be filled for the unexpired term. Further, any
49 vacancy in the office of a tenant member shall only be filled by the
50 appointment of an eligible tenant member, and such appointment shall be
51 made within ninety days of such vacancy.

52 b. Notwithstanding paragraph a of this subdivision, upon the estab-
53 lishment of a city of Staten Island and for so long as the New York city
54 housing authority shall have territorial jurisdiction in the city of
55 Staten Island, such authority shall consist of eight members, the eighth
56 of whom shall be appointed by the mayor of Staten Island and shall serve

1 for a five-year term. The mayor of the city of Staten Island shall file
2 with the commissioner of housing and the chairperson of the New York
3 city housing authority a certificate of appointment of such member. Such
4 member may be removed by the mayor of Staten Island for cause after a
5 public hearing. Such member may be of any political party. A vacancy in
6 the office of such member occurring other than by expiration of a term
7 shall be filled for the unexpired term.

8 § 7-003. Section 455 of the education law, as amended by chapter 724
9 of the laws of 1976, is amended to read as follows:

10 § 455. Relationship with the board of education and the city of New
11 York. 1. In order most effectively to carry out its corporate purposes,
12 the fund shall cooperate with the director of management and budget and
13 the board of education of the city of New York in matters relating to
14 land acquisition and capital planning for school buildings and facili-
15 ties. During the course of construction, reconstruction, rehabilitation
16 and improvement of combined occupancy structures the fund shall consult
17 with personnel of such board as the work progresses in matters relating
18 to space requirements, site plans, architectural concept, and substan-
19 tial changes in the plans and specifications therefor, and in matters
20 relating to the original furnishings, equipment, machinery and apparatus
21 needed to furnish and equip the school portion of such buildings and
22 structures, upon the completion of work. The board, on its part, shall
23 perform such functions and services for the fund as may be requested and
24 the fund shall pay to the board, from any monies of the fund available
25 for such purpose, the reasonable cost of such functions and services.

26 2. Notwithstanding subdivision one of this section, upon the estab-
27 lishment of a city of Staten Island, with respect to any fund activities
28 to take place within such city of Staten Island, the fund shall cooper-
29 ate with the mayor and comptroller of such city of Staten Island and the
30 board of education of the city school district of the city of Staten
31 Island in matters relating to land acquisition and capital planning for
32 school buildings and facilities to the same extent as with the respec-
33 tive officials of the city of New York.

34 § 7-004. Paragraph (c) of subdivision 1 of section 462 of the educa-
35 tion law, as separately amended by chapters 724 and 729 of the laws of
36 1976, is amended to read as follows:

37 (c) (i) To assure the continued operation and solvency of the capital
38 reserve fund for the carrying out of the public purposes of this arti-
39 cle, provision is made in paragraph (a) of this subdivision for the
40 accumulation in the capital reserve fund of an amount equal to the maxi-
41 mum amount of principal and interest maturing and becoming due and sink-
42 ing fund payments required to be made in any succeeding fiscal year on
43 all bonds of the fund then outstanding secured by the capital reserve
44 fund. In order further to assure such maintenance of the capital
45 reserve fund, the board of education shall annually request from the
46 city of New York and pay over to the fund, for deposit in the capital
47 reserve fund, such sum, if any, as shall be certified by the [~~chairman~~]
48 chairperson of the fund to the board, the mayor and the director of
49 management and budget of the city of New York as necessary to restore
50 the capital reserve fund to an amount equal to the maximum amount of
51 principal and interest maturing and becoming due and sinking fund
52 payments required to be made in the next succeeding fiscal year on the
53 bonds of the fund then outstanding secured by the capital reserve fund;
54 provided, however, that such sum shall have been first appropriated by
55 the city to the board or shall otherwise have been made lawfully avail-
56 able to the board for such purpose. The [~~chairman~~] chairperson of the

1 fund shall annually, not later than the fifteenth day of February in
2 each year, make and deliver to the board, the mayor and the director of
3 management and budget his or her certificate stating the amount, if any,
4 required to restore the capital reserve fund to the amount aforesaid and
5 the amount so stated, if any, shall be paid to the fund by the board
6 during the then current fiscal year of the fund. In the event of the
7 failure or inability of the board to pay over the stated amount to the
8 fund on or before August first of the same year, the [~~chairman~~] chair-
9 person of the fund shall forthwith make and deliver to the comptroller
10 of the state of New York and the mayor and comptroller of the city of
11 Staten Island a further certificate restating the amount so required
12 and, after the comptroller of the state of New York shall have given
13 written notice to the commissioner of education, the mayor and director
14 of management and budget and the mayor and comptroller of the city of
15 Staten Island, such amount shall be paid over to the fund by the comp-
16 troller of the state of New York out of the next payment of state aid
17 apportioned, first, to the city of New York on behalf of the city school
18 district of the city of New York for the support of common schools or
19 such other aid or assistance payable in support of common schools as
20 shall supersede or supplement such state aid for the support of common
21 schools, including federal moneys apportioned by the state to the city
22 of New York on behalf of the city school district for the support of
23 common schools and, thereafter, if such amounts are insufficient, from
24 such similar aid payable to the city of Staten Island. Any amount so
25 paid over to the fund shall be deducted from the corresponding appor-
26 tionment of state education aid or other aid or assistance for education
27 otherwise credited to the board of education for its purposes and shall
28 not obligate the state to make or entitle the city or the board of
29 education or city of Staten Island to receive any additional or
30 increased apportionment or payment of state aid for school purposes.

31 (ii) Notwithstanding subparagraph (i) of this paragraph, on or after
32 the first of January next succeeding the date on which this subparagraph
33 shall have become a law, the fund shall not issue any bonds, notes or
34 other obligations secured by a capital reserve fund into which state aid
35 or other aid otherwise payable to the city of Staten Island is to be
36 deposited pursuant to this paragraph, provided, however, the fund may
37 issue refunding bonds to pay bonds previously issued, which refunding
38 bonds may be so secured if the fund gives reasonable adequate notice of
39 its intention to issue such refunding bonds to the mayor of the city of
40 Staten Island and the comptroller of the city of Staten Island and both
41 such officials are given a reasonable opportunity to participate at the
42 meeting or meetings of the board of the fund at which action is taken to
43 issue such refunding bonds.

44 § 7-005. Paragraph (c) of subdivision 3 of section 462 of the educa-
45 tion law, as amended by chapter 474 of the laws of 1996, is amended to
46 read as follows:

47 (c) (i) To assure the continued operation and solvency of the fund for
48 the carrying out of the public purposes of this article, provision is
49 made in paragraph (a) of this subdivision for the accumulation in a debt
50 service reserve fund of an amount equal to the debt service reserve fund
51 requirement on all bonds of the fund then outstanding secured by a debt
52 service or debt service reserve fund. In order further to assure such
53 maintenance of a debt service reserve fund, the board of education shall
54 annually request from the city of New York and pay over to the fund
55 after making the payment required by paragraph (c) of subdivision one of
56 this section for deposit in a debt service reserve fund, such sum, if

1 any, as shall be certified by the [~~chairman~~] chairperson of the fund to
2 the board, the mayor and the director of the budget of the city of New
3 York as necessary to restore such debt service reserve fund to an amount
4 equal to the debt service reserve fund requirement for the bonds of the
5 fund secured by such debt service reserve fund; provided, however, that
6 such sum shall have been first appropriated by the city to the board or
7 shall otherwise have been made lawfully available to the board for such
8 purpose. The [~~chairman~~] chairperson of the fund shall annually, not
9 later than the fifteenth day of February in each year, make and deliver
10 to the board, the mayor and the director of the budget his or her
11 certificate stating the amount, if any, required to restore a debt
12 service reserve fund to the amount aforesaid and the amount so stated
13 after making the payment required by paragraph (c) of subdivision one of
14 this section if any, shall be paid to the fund by the board during the
15 then current fiscal year of the fund. In the event of the failure or
16 inability of the board to pay over the stated amount to the fund on or
17 before August first of the same year, the [~~chairman~~] chairperson of the
18 fund shall forthwith make and deliver to the comptroller of the state of
19 New York and the mayor and comptroller of the city of Staten Island a
20 further certificate restating the amount so required and, after the
21 comptroller of the state of New York shall have given written notice to
22 the commissioner, the mayor and director of the budget and the mayor and
23 comptroller of the city of Staten Island, such amount after making the
24 payment required by paragraph (c) of subdivision one of this section
25 shall be paid over to the fund by the comptroller of the state of New
26 York out of the next payment of state aid apportioned, first, to the
27 city of New York on behalf of the city school district of the city of
28 New York for the support of common schools or such other aid or assist-
29 ance payable in support of common schools as shall supercede or supple-
30 ment such state aid for the support of common schools, including federal
31 moneys apportioned by the state to the city of New York on behalf of the
32 city school district for the support of common schools and, thereafter,
33 if such amounts are insufficient, from such similar aid payable to the
34 city of Staten Island. Any amount so paid over to the fund under para-
35 graph (c) of subdivision one of this section shall be deducted from the
36 corresponding apportionment of state education aid or other aid or
37 assistance for education otherwise credited to the board of education or
38 the city of Staten Island for its purposes and shall not obligate the
39 state to make or entitle the city or the board of education or the city
40 of Staten Island to receive any additional or increased apportionment or
41 payment of state aid for school purposes.

42 (ii) Notwithstanding subparagraph (i) of this paragraph, on or after
43 the first of January next succeeding the date on which this subparagraph
44 shall have become a law, the fund shall not issue any bonds, notes or
45 other obligations secured by a debt service reserve fund into which
46 state aid or other aid otherwise payable to the city of Staten Island is
47 to be deposited pursuant to this paragraph, provided, however, the fund
48 may issue refunding bonds to pay bonds previously issued, which refund-
49 ing bonds may be so secured if the fund gives reasonable adequate notice
50 of its intention to issue such refunding bonds to the mayor of the city
51 of Staten Island and the comptroller of the city of Staten Island and
52 both such officials are given a reasonable opportunity to participate at
53 the meeting or meetings of the board of the fund at which action is
54 taken to issue such refunding bonds.

1 § 7-006. Subdivision 1 of section 1045-c of the public authorities
2 law, as added by chapter 513 of the laws of 1984, is amended to read as
3 follows:

4 1. A corporation known as the New York city municipal water finance
5 authority is hereby created for public purposes and charged with the
6 duties and having the powers provided in this title. The authority shall
7 be a body corporate and politic constituting a public benefit corpo-
8 ration. It shall be administered by a board of directors consisting of
9 [~~seven~~] eight members as follows: the commissioner of environmental
10 protection of the city, the state commissioner of environmental conser-
11 vation, the director of management and budget of the city, the commis-
12 sioner of finance of the city, two public members to be appointed by the
13 mayor, one public member to be appointed by the mayor of Staten Island
14 and one public member to be appointed by the governor. One public
15 member appointed by the mayor shall serve for a term of one year, one
16 public member appointed by the mayor shall serve for a term of two
17 years, and the public [~~member~~] members appointed by the governor and
18 mayor of Staten Island shall serve for a term of two years from January
19 first next succeeding the date of their appointment. Their successors
20 shall serve for terms of two years each. Members shall continue in
21 office until their successors have been appointed and qualified. The
22 mayor, mayor of Staten Island or the governor shall fill any vacancy
23 which may occur by reason of death, resignation or otherwise in a manner
24 consistent with the original appointment. A public member may be
25 removed by the mayor, mayor of Staten Island, or the governor, whichever
26 appointed him or her, for cause, but not without an opportunity to be
27 heard in person or by counsel, in his or her defense, upon not less than
28 ten days' notice. The mayor shall select a [~~chairman~~] chairperson from
29 among the directors appointed by him or her who shall serve in such
30 capacity at his or her pleasure. The [~~chairman~~] chairperson shall
31 preside over all meetings of the board of directors and shall have such
32 other duties as may be prescribed by the board.

33 § 7-007. Subdivision 2 of section 1045-f of the public authorities
34 law, as added by chapter 513 of the laws of 1984, is amended to read as
35 follows:

36 2. The water board shall consist of seven members, six of which shall
37 be appointed by the mayor and, the seventh of which shall be appointed
38 by the mayor of Staten Island. The mayor of Staten Island shall fill
39 the earlier of the first expiration of a term or the first vacancy
40 occurring after the date of establishment of the city of Staten Island
41 and any successor thereto. Terms of office of the members shall be two
42 years except that the terms of four of the board members first appointed
43 shall be one year. At least one member shall have experience in the
44 science of water resource development. No member shall be a director of
45 the authority. The mayor shall appoint a [~~chairman~~] chairperson from
46 among the members of the board. All members shall continue to hold
47 office until their successors are appointed and qualified. Vacancies
48 shall be filled in the manner provided for original appointments. Vacan-
49 cies, occurring otherwise than by expiration of term of office, shall be
50 filled in the same manner as original appointments for the unexpired
51 terms.

52 § 7-008. Subdivision 5 of section 1045-f of the public authorities
53 law, as added by chapter 513 of the laws of 1984, is amended to read as
54 follows:

55 5. The appointing mayor may remove any member for inefficiency,
56 neglect of duty or misconduct in office after giving such member a copy

1 of the charges against such member and an opportunity to be heard and
2 defended, in person or by counsel, upon not less than ten days' notice.
3 If any member shall be so removed, the appointing mayor shall file in
4 the office of the clerk of the city a complete statement of charges
5 against such member, and the appointing mayor's findings thereon,
6 together with a complete record of the proceedings.

7 § 7-009. Paragraphs e and f of subdivision 1 of section 656 of the
8 private housing finance law, as amended by chapter 174 of the laws of
9 1992, are amended to read as follows:

10 e. (i) To assure the continued operation and solvency of the corpo-
11 ration for the carrying out of its corporate purposes, provision is made
12 in paragraph a of this subdivision for the accumulation in each capital
13 reserve fund of an amount equal to the maximum capital reserve fund
14 requirement. In order further to assure such maintenance of each capital
15 reserve fund, there shall be paid by the city to the corporation for
16 deposit in each capital reserve fund on or before the first day of
17 April, in each year, such amount, if any, needed for the purpose of
18 restoring each such capital reserve fund to the maximum capital reserve
19 fund requirement for such fund, as shall be certified by the chairperson
20 of the corporation to the mayor and the director of management and budg-
21 et on or before the first day of December next preceding; provided that
22 any such amount shall have been first appropriated by or on behalf of
23 the city for such purpose or shall have been otherwise made available
24 from the proceeds of notes or bonds of the city authorized and issued
25 pursuant to the local finance law for such purpose, which is hereby
26 determined to be a specific object or purpose having a period of proba-
27 ble usefulness of five years. In the event of the failure or inability
28 of the city to pay over to the corporation, in full, on or before such
29 first day of April the amount so certified the chairperson of the corpo-
30 ration shall forthwith certify to the comptroller of the state of New
31 York the amount remaining unpaid and thereupon the state comptroller
32 shall pay to the corporation, out of the first moneys available for the
33 next succeeding payments of ~~[(+)]~~ (A) state aid apportioned to the city
34 of New York and, to the extent the amounts available therefor are insuf-
35 ficient, state aid apportioned to the city of Staten Island, as per
36 capita aid for the support of local government pursuant to section
37 fifty-four of the state finance law or ~~[(+)]~~ (B) such other aid or
38 assistance payable by the state to the city and to the extent the
39 amounts available therefor are insufficient, such aid or assistance
40 payable by the state to the city of Staten Island and not otherwise
41 allocated as shall supersede or supplement such state per capita aid,
42 including federal moneys apportioned to the city and, to the extent the
43 amounts available therefor are insufficient, such moneys apportioned to
44 the city of Staten Island by the state, such amount remaining unpaid,
45 after giving written notice to the director of management and budget of
46 each amount to be paid out of such state aid, until the amount in each
47 such capital reserve fund is restored to the maximum capital reserve
48 fund requirement thereof; provided, however, that prior to the issuance
49 of any notes or bonds of the corporation pursuant to this article the
50 city shall have enacted a local law authorizing payments from such
51 sources into such a fund so long as any notes or bonds of the corpo-
52 ration shall be outstanding and unpaid, and provided further that
53 moneys, if any, payable to the city university construction fund pursu-
54 ant to the provisions of the city university construction fund act shall
55 be paid, in full, to such fund, prior to any payments therefrom to the
56 corporation. Any amount so paid over to the corporation shall be

1 deducted from the corresponding apportionment of such per capita state
2 aid otherwise payable to the city of New York or the city of Staten
3 Island, as applicable, and shall not obligate the state to make nor
4 entitle the city or the city of Staten Island to receive any additional
5 apportionment or payment of per capita state aid. All amounts paid over
6 to the corporation as provided in this [~~paragraph~~] subparagraph, includ-
7 ing amounts paid by the state comptroller out of payments of such state
8 aid, shall constitute and be accounted for as non-interest bearing loans
9 by the city or the city of Staten Island, as applicable to the corpo-
10 ration and, subject, subordinate and junior to the rights of the holders
11 of any notes or bonds of the corporation theretofore or thereafter
12 issued, shall be repaid to the city from [~~(i)~~] (A) moneys in such capi-
13 tal reserve fund in excess of the maximum capital reserve fund require-
14 ment thereof or [~~(ii)~~] (B) any moneys of the corporation not required
15 for any other of its corporate purposes.

16 (ii) Notwithstanding subparagraph (i) of this paragraph, on or after
17 the first of January next succeeding the date on which this subparagraph
18 shall have become a law, the corporation shall not issue any bonds,
19 notes or other obligations secured by a capital reserve fund into which
20 per capita state aid or other aid otherwise payable to the city of
21 Staten Island is to be deposited pursuant to this subparagraph,
22 provided, however, the corporation may issue refunding bonds to pay
23 bonds previously issued, which refunding bonds may be so secured if the
24 corporation gives reasonable adequate notice of its intention to issue
25 such refunding bonds to the mayor of the city of Staten Island and the
26 comptroller of the city of Staten Island and both such officials are
27 given a reasonable opportunity to participate at the meeting or meetings
28 of the board of the corporation at which action is taken to issue such
29 refunding bonds.

30 f. In the event the chairperson of the corporation shall certify to
31 the mayor and director of management and budget or to the state comp-
32 troller any amount necessary to restore a capital reserve fund to the
33 maximum capital reserve fund requirement thereof pursuant to subdivision
34 e of this section, the chairperson shall simultaneously deliver to the
35 mayor of the city of Staten Island and the comptroller of the city of
36 Staten Island and additionally to such persons a statement of the cause
37 or causes of such capital reserve fund deficiency and the measures to be
38 taken by the corporation or the department of housing preservation and
39 development to insure repayment of any loans made by the city or the
40 city of Staten Island to the corporation, including amounts paid by the
41 state comptroller out of payments of state aid, for the purpose of
42 restoring such capital reserve fund to the maximum capital reserve fund
43 requirement thereof and to prevent the recurrence of any such deficien-
44 cy.

45 § 7-010. Subdivision 4 of section 1680-b of the public authorities
46 law, as amended by chapter 62 of the laws of 1988, is amended to read as
47 follows:

48 4. In the event that a participating municipality fails to pay to the
49 authority when due all or part of the rentals and other payments payable
50 pursuant to any lease, sublease or agreement with the authority, the
51 chairman or another officer of the authority shall certify at the times
52 provided in this subdivision the amount of rentals and other payments
53 then due from such participating municipality and unpaid. The state
54 comptroller, upon receipt of such certificate, shall deduct the amount
55 of such rentals and other payments as remains unpaid to the authority
56 first from the aid payable to such participating municipality from the

1 court facilities incentive aid fund established by section ninety-four
2 of the state finance law and, then, from the next succeeding payments of
3 state aid apportioned to such participating municipality, as revenue
4 sharing, per capita aid, and any other aid pursuant to section fifty-
5 four of the state finance law and, then, from the next succeeding
6 payments of state aid for any local governmental administrative costs
7 that are reimbursable to the participating municipality pursuant to
8 state law and, then, from the next succeeding payments of state aid from
9 moneys appropriated pursuant to section six hundred eight of the public
10 health law and pursuant to section ten-c of the highway law; provided,
11 however, that the right of the authority to the payment of any amount
12 deducted by the state comptroller pursuant to this section from per
13 capita aid apportioned to the city of New York or, to the extent insuf-
14 ficient, the city of Staten Island shall be subject and subordinate to
15 the rights of the city university construction fund pursuant to section
16 sixty-two hundred seventy-nine of the education law, the New York city
17 housing development corporation pursuant to section six hundred fifty-
18 six of the private housing finance law, the trustees of the police
19 pension fund pursuant to paragraph e of subdivision seven of section
20 fifty-four of the state finance law, and the municipal assistance corpo-
21 ration for the city of New York pursuant to section three thousand thir-
22 ty-six-a of this chapter and subdivision one of section ninety-two-e of
23 the state finance law. In order to insure that the amount of rentals
24 and other payments due and unpaid by a participating municipality are
25 paid, the authority on or within thirty days prior to January twenty-
26 fifth, April twenty-fifth, July twenty-fifth and October twenty-fifth of
27 each year shall certify to the state comptroller the amount of rentals
28 and other payments then due and unpaid by each participating munici-
29 pality pursuant to any lease, sublease or other agreement. The amount
30 required to be deducted by the state comptroller pursuant to this subdivi-
31 sion shall be deducted from such aid, whether or not the state aid
32 from which such deduction is to be made is then payable to the partic-
33 ipating municipality, and thereupon paid to the authority. The amount of
34 state aid payable to such participating municipality shall be reduced by
35 the amount deducted by the state comptroller notwithstanding the amount
36 appropriated and apportioned by the state to such participating munici-
37 pality, and the state shall not be obligated to make and the participat-
38 ing municipality shall not be entitled to receive any additional appor-
39 tionment or payment of such state aid. Nothing shall be construed to
40 create an obligation upon the state to appropriate moneys, to preclude
41 the state from reducing the amount of moneys appropriated or level of
42 assistance provided, or to preclude the state from altering or modifying
43 the manner in which it provides for or provides assistance.

44 § 7-011. Section 1727 of the public authorities law is amended by
45 adding a new subdivision 9 to read as follows:

46 9. Notwithstanding the provisions of this section or any other
47 provision of law to the contrary, the authority shall continue its
48 corporate existence regardless of the alteration of the composition of
49 the board of education of the city school district of the city of New
50 York caused by the incorporation of the city of Staten Island and the
51 establishment of the city school district of the city of Staten Island.

52 § 8-001. Subdivision 1 of section 23 of the executive law, as amended
53 by chapter 385 of the laws of 2017, is amended to read as follows:

54 1. Each county, except Richmond county and those counties contained
55 within the city of New York, and each city with a population of one
56 million or more, shall prepare a comprehensive emergency management

1 plan. Each city with a population of less than one million, town and
2 village is authorized to prepare a comprehensive emergency management
3 plan. The disaster preparedness commission shall provide assistance and
4 advice for the development of such plans. Each city with a population of
5 less than one million, town and village plan shall be coordinated with
6 the county plan.

7 § 8-002. Subdivision 1 of section 101-b of the executive law, as
8 added by chapter 1214 of the laws of 1971, is amended to read as
9 follows:

10 1. Definitions. As used in this section,

11 a. "Agency" means any state board, bureau, commission, department,
12 division or officer authorized by law to adopt rules.

13 b. "Rule" means the whole or part of each agency statement of general
14 applicability or regulation or code that implements or applies law,
15 including the amendment, suspension or repeal thereof.

16 c. "Municipal corporation" means [~~a~~] any county outside the [~~city~~]
17 cities of New York and Staten Island, a city, a town, a village or a
18 school district.

19 d. "Governing body" means:

20 (1) In a county, a board of supervisors, county legislature or other
21 body vested by its charter, other law or other valid enactment with
22 jurisdiction to enact local laws;

23 (2) In a city, the board of aldermen, a common council, commission or
24 other body vested by its charter or other law with jurisdiction to enact
25 ordinances or local laws;

26 (3) In a town, the town board;

27 (4) In a village, the board of trustees; and

28 (5) In a school district, the board of education, board of trustees or
29 sole trustee.

30 § 8-003. Intentionally omitted.

31 § 8-004. Subdivisions 1, 2, 3, 4 and 6 of section 246 of the executive
32 law, subdivisions 1, 2 and 3 as amended by section 10 of part D of chap-
33 ter 56 of the laws of 2010, subdivision 4 as amended by section 102 of
34 part WWW of chapter 59 of the laws of 2017, and subdivision 6 as added
35 by chapter 479 of the laws of 1970 and as renumbered by chapter 813 of
36 the laws of 1985, are amended to read as follows:

37 1. The program of state aid to county probation services shall be
38 administered by the division of criminal justice services with the
39 advice of the state probation commission and the director of the office
40 of probation and correctional alternatives. Funds appropriated to the
41 division for distribution as state aid to county probation services
42 [~~and~~], to the probation services of New York city and to the probation
43 services of the city of Staten Island shall be distributed by the divi-
44 sion in accordance with rules and regulations adopted by the commis-
45 sioner of the division of criminal justice services after consultation with
46 the state probation commission and the director of the office of
47 probation and correctional alternatives.

48 2. State aid shall be granted to the city of New York, the city of
49 Staten Island and the respective counties outside [~~the city of New York~~]
50 such cities for expenditures to be incurred by the county or [~~city~~] such
51 cities in maintaining and improving local probation services subject to
52 amounts appropriated for this purpose. State aid grants shall not be
53 used for expenditures for capital additions or improvements, or for debt
54 service costs for capital improvements.

55 State aid shall be granted by the commissioner of the division of
56 criminal justice services after consultation with the state probation

1 commission and the director of the office of probation and correctional
2 alternatives, provided the respective counties or the city of Staten
3 Island or the city of New York conform to standards relating to the
4 administration of probation services as adopted by the commissioner of
5 the division of criminal justice services after consultation with the
6 state probation commission and the director of the office of probation
7 and correctional alternatives.

8 3. Applications from counties or the city of Staten Island or the city
9 of New York for state aid under this section shall be made by filing
10 with the division of criminal justice services, a detailed plan, includ-
11 ing cost estimates covering probation services for the fiscal year or
12 portion thereof for which aid is requested. Included in such estimates
13 shall be clerical costs and maintenance and operation costs as well as
14 salaries of probation personnel and such other pertinent information as
15 the commissioner of the division of criminal justice services may
16 require. Items for which state aid is requested under this section shall
17 be duly designated in the estimates submitted. The commissioner of the
18 division of criminal justice services, after consultation with the state
19 probation commission and the director of the office of probation and
20 correctional alternatives, shall approve such plan if it conforms to
21 standards relating to the administration of probation services as speci-
22 fied in the rules adopted by him or her.

23 4. An approved plan and compliance with standards relating to the
24 administration of probation services promulgated by the commissioner of
25 the division of criminal justice services shall be a prerequisite to
26 eligibility for state aid.

27 The commissioner of the division of criminal justice services may take
28 into consideration granting additional state aid from an appropriation
29 made for state aid for county probation services for counties or the
30 city of Staten Island or the city of New York when a county or the city
31 of Staten Island or the city of New York demonstrates that additional
32 probation services were dedicated to intensive supervision programs and
33 intensive programs for sex offenders. The commissioner shall grant addi-
34 tional state aid from an appropriation dedicated to juvenile risk inter-
35 vention services coordination by probation departments which shall
36 include, but not be limited to, probation services performed under arti-
37 cle three of the family court act. The administration of such additional
38 grants shall be made according to rules and regulations promulgated by
39 the commissioner of the division of criminal justice services. Each
40 county and the city of Staten Island and the city of New York shall
41 certify the total amount collected pursuant to section two hundred
42 fifty-seven-c of this chapter. The commissioner of the division of crim-
43 inal justice services shall thereupon certify to the comptroller for
44 payment by the state out of funds appropriated for that purpose, the
45 amount to which the county or the city of Staten Island or the city of
46 New York shall be entitled under this section. The commissioner shall,
47 subject to an appropriation made available for such purpose, establish
48 and provide funding to probation departments for a continuum of
49 evidence-based intervention services for youth alleged or adjudicated
50 juvenile delinquents pursuant to article three of the family court act
51 or for eligible youth before or sentenced under the youth part in
52 accordance with the criminal procedure law. Such additional state aid
53 shall be made in an amount necessary to pay one hundred percent of the
54 expenditures for evidence-based practices and juvenile risk and
55 evidence-based intervention services provided to youth sixteen years of
56 age or older when such services would not otherwise have been provided

1 absent the provisions of [~~a~~] part WWW of chapter fifty-nine of the laws
2 of two thousand seventeen [~~that increased the age of juvenile jurisdic-~~
3 ~~tion~~].

4 6. The director, after consultation with the state probation commis-
5 sion, may authorize or require the comptroller to withhold the payment
6 of state aid to any county, or the city of Staten Island or the city of
7 New York, in the event that such county, or the city of Staten Island or
8 the city of New York, (a) fails to conform to standards of probation
9 administration as formulated by the director pursuant to this section,
10 (b) discontinues or fails to follow an approved plan, or (c) fails to
11 enforce in a satisfactory manner rules promulgated pursuant to this
12 section, or laws now in effect or hereafter adopted which relate in any
13 manner to the administration of probation services.

14 § 8-004-a. The second undesignated paragraph of subdivision 4 of
15 section 246 of the executive law, as amended by section 103 of part WWW
16 of chapter 59 of the laws of 2017, is amended to read as follows:

17 The commissioner of the division of criminal justice services may take
18 into consideration granting additional state aid from an appropriation
19 made for state aid for county probation services for counties or the
20 city of Staten Island or the city of New York when a county or the city
21 of Staten Island or the city of New York demonstrates that additional
22 probation services were dedicated to intensive supervision programs and
23 intensive programs for sex offenders. The commissioner shall grant addi-
24 tional state aid from an appropriation dedicated to juvenile risk inter-
25 vention services coordination by probation departments which shall
26 include, but not be limited to, probation services performed under arti-
27 cle three of the family court act. The administration of such additional
28 grants shall be made according to rules and regulations promulgated by
29 the commissioner of the division of criminal justice services. Each
30 county and the city of Staten Island and the city of New York shall
31 certify the total amount collected pursuant to section two hundred
32 fifty-seven-c of this chapter. The commissioner of the division of crim-
33 inal justice services shall thereupon certify to the comptroller for
34 payment by the state out of funds appropriated for that purpose, the
35 amount to which the county or the city if Staten Island or the city of
36 New York shall be entitled under this section. The commissioner shall,
37 subject to an appropriation made available for such purpose, establish
38 and provide funding to probation departments for a continuum of
39 evidence-based intervention services for youth alleged or adjudicated
40 juvenile delinquents pursuant to article three of the family court act
41 or for eligible youth before or sentenced under the youth part in
42 accordance with the criminal procedure law.

43 § 8-005. Subdivision 1 of section 255 of the executive law, as added
44 by chapter 603 of the laws of 1973, is amended to read as follows:

45 1. There is hereby created a department of probation in and for the
46 city of New York to have charge of all probation work in the supreme,
47 family and criminal courts in the counties of Bronx, Kings, New York[~~7~~]
48 and Queens [~~and Richmond~~].

49 § 8-006. The executive law is amended by adding a new section 255-a to
50 read as follows:

51 § 255-a. Probation in the city of Staten Island. 1. There is hereby
52 created a department of probation in and for the city of Staten Island
53 to have charge of all probation work in the supreme, family and other
54 criminal courts in the county of Richmond.

55 2. The head of such department shall be a director of probation
56 appointed by the mayor of the city of Staten Island to serve during the

1 pleasure of the mayor. The director shall have charge of the adminis-
2 tration of the department and shall be responsible for carrying out the
3 functions of the department including intake, investigation, super-
4 vision, conciliation and pre-disposition social treatment in cases
5 coming to the courts referred to in this section. The director may,
6 from time to time, create, abolish, transfer and consolidate bureaus and
7 other units within the department as he or she may determine necessary
8 for efficient operation thereof. The director also shall have the power
9 to appoint and remove such deputy directors, assistants, probation offi-
10 cers and other employees as may be needed for the performance of the
11 duties of the department and may prescribe their duties and fix their
12 compensation, within appropriations made available therefor by the city
13 of Staten Island and subject to all applicable civil service laws and
14 rules and regulations. The director may, in his or her discretion,
15 appoint volunteer probation officers, when necessary, provided they have
16 the qualifications required of salaried officers, but no such volunteer
17 probation officer shall receive pay from the public funds for his or her
18 services. The city of Staten Island shall make the necessary appropri-
19 ation for the salaries of the director and of all officers and employees
20 of the department as referred to herein, as well as for the expenses
21 actually and necessarily incurred by such director, officers and employ-
22 ees in the performance of their duties.

23 3. The director shall discharge his or her powers and responsibil-
24 ities in accordance with all laws and rules applicable to probation and
25 with the general rules regulating methods and procedure in the adminis-
26 tration of probation as adopted from time to time pursuant to section
27 two hundred forty-three of this chapter. The director may adopt depart-
28 mental rules, not inconsistent with law or the aforesaid general rules,
29 to regulate the policies, programs, standards, and methods of procedure
30 in relation to probation and the powers and duties of officers and
31 employees as in the director's judgment are deemed proper.

32 4. Notwithstanding any other provision of law or of the Staten Island
33 city charter or administrative code, any duly appointed officer or
34 employee of such probation department may reside in any county within
35 the state.

36 § 8-007. Subdivisions 1 and 4 of section 257-c of the executive law,
37 as added by chapter 55 of the laws of 1992, are amended to read as
38 follows:

39 1. Notwithstanding any other provision of law, every county, the city
40 of Staten Island and the city of New York, may adopt a local law requir-
41 ing individuals currently serving or who shall be sentenced to a period
42 of probation upon conviction of any crime under article thirty-one of
43 the vehicle and traffic law to pay to the local probation department
44 with the responsibility of supervising the probationer an administrative
45 fee of thirty dollars per month. The department shall waive all or part
46 of such fee where, because of the indigence of the offender, the payment
47 of said surcharge would work an unreasonable hardship on the person
48 convicted, his or her immediate family, or any other person who is
49 dependent on such person for financial support.

50 4. In the event of non-payment of any fees which have not been waived
51 by the local probation department, the county, the city of Staten Island
52 or the city of New York may seek to enforce payment in any manner
53 permitted by law for enforcement of a debt.

54 § 8-008. Subdivision 3 of section 262 of the executive law, as amended
55 by section 28 of part A of chapter 56 of the laws of 2010, is amended to
56 read as follows:

1 3. Upon approval by the board, by a majority of its members, any coun-
2 ty outside the [~~city~~] cities of New York and Staten Island acting
3 through its county executive, and upon approval of the local legislative
4 body, may submit a proposed service plan to the office for approval. The
5 city of New York acting through the mayor and upon approval by the board
6 of estimate and the city of Staten Island acting through the mayor and
7 upon approval by the common council may submit a proposed service plan
8 to the office for approval.

9 § 8-009. Subdivisions 1 and 2 of section 266 of the executive law, as
10 added by chapter 338 of the laws of 1989, are amended to read as
11 follows:

12 1. Counties and the [~~city~~] cities of New York and Staten Island may
13 submit approved amendments for alcohol and substance abuse programs as
14 defined in this article as part of or in addition to an approved plan.
15 In accordance with this article, nothing in this section shall prohibit
16 the development of regional alcohol and substance abuse programs by two
17 or more counties, the city of Staten Island or cities with a population
18 of one million or more.

19 2. Such approved amendments shall include a statement by the county or
20 the city of New York or the city of Staten Island indicating such
21 municipality's understanding that funding for eligible alcohol and
22 substance abuse programs shall be in accordance with subdivision four of
23 this section and the municipality's commitment to meet the funding
24 requirements as set forth in such subdivision.

25 § 8-010. Section 267 of the executive law, as amended by section 33 of
26 part A of chapter 56 of the laws of 2010, is amended to read as follows:

27 § 267. Office reports. The office shall submit to the governor, the
28 temporary president of the senate, the speaker of the assembly, the
29 [~~chairman~~] chairperson of the senate crime and correction committee and
30 the [~~chairman~~] chairperson of the assembly committee on codes by October
31 first of each year its evaluation and assessment of this alternatives
32 planning and programming effort by the counties. Such report shall
33 include, but not be limited to, the status of the development of such
34 plans, the approval and implementation of such plans, the success of the
35 programs, in terms of their utilization, effect on jail population,
36 results of the analyses provided counties and the [~~city~~] cities of New
37 York and Staten Island on the relationship between alcohol, drugs and
38 crime and the success of the eligible alcohol and substance abuse
39 programs and sentencing decisions together with any recommendations with
40 respect to the proper operation or improvement of planning and implemen-
41 tation of effective alternatives to detention and alternatives to incar-
42 ceration programs in counties.

43 § 8-011. Subdivisions 1 and 7 of section 530 of the executive law,
44 subdivision 1 as amended by section 4 of subpart B of part Q of chapter
45 58 of the laws of 2011, subdivision 7 as amended by section 21 of part K
46 of chapter 56 of the laws of 2019, are amended to read as follows:

47 1. Definitions. As used in this section, the term "municipality" shall
48 mean a county, the city of Staten Island or a city having a population
49 of one million or more.

50 7. The agency administering detention for each county and the city of
51 Staten Island and the city of New York shall submit to the office of
52 children and family services, at such times and in such form and manner
53 and containing such information as required by the office of children
54 and family services, an annual report on youth remanded pursuant to
55 article three or seven of the family court act who are detained during
56 each calendar year including, commencing January first, two thousand

1 twelve, the risk level of each detained youth as assessed by a detention
2 risk assessment instrument approved by the office of children and family
3 services provided, however, that the report due January first, two thou-
4 sand twenty-one and thereafter shall not be required to contain any
5 information on youth who are subject to article seven of the family
6 court act. The office may require that such data on detention use be
7 submitted to the office electronically. Such report shall include, but
8 not be limited to, the reason for the court's determination in accord-
9 ance with section 320.5 or seven hundred thirty-nine of the family court
10 act to detain the youth; the offense or offenses with which the youth is
11 charged; and all other reasons why the youth remains detained. The
12 office shall submit a compilation of all the separate reports to the
13 governor and the legislature.

14 § 8-012. Subdivisions 1, 2 and 4 of section 214 of the elder law are
15 amended to read as follows:

16 1. Definitions. As used in this section, the following words shall
17 have the following meanings:

18 (a) "Designated agency" shall mean an agency which is designated by
19 the chief executive officer of the county if there be one, or otherwise
20 the governing board of such county, or the chief executive officer of
21 the city of New York or the mayor of the city of Staten Island, or the
22 governing board of an Indian tribal council; which is either a unit of
23 county government or the city of New York or the city of Staten Island
24 or an Indian tribal organization or a private non-profit agency, and
25 which is the area agency on aging created pursuant to the federal older
26 Americans act of 1965.

27 (b) "Elderly person" shall mean a person sixty years of age or older.

28 (c) "County" shall mean a county, as defined in section three of the
29 county law, except that the city of New York shall be considered one
30 county.

31 (d) "Base year expenditures" and "base year services" shall mean the
32 level of expenditures and services in the year prior to the first year
33 for which a county plan is submitted or in such county's two thousand
34 five fiscal year, whichever is greater.

35 (e) "Community services" shall mean services for elderly persons which
36 are provided by a public or governmental agency or non-profit agency,
37 and which are provided in the home of an elderly person or in community
38 settings such as senior citizens centers, housing projects, or agency
39 offices. Such services shall not include any services provided pursuant
40 to the public health law other than home care services.

41 (f) "Community service projects" shall mean community services
42 financed pursuant to paragraph (b) of subdivision four of this section.

43 (g) "County plan" shall mean a plan for community services prepared by
44 a county pursuant to this section.

45 (h) "Non-profit agency" shall mean a corporation organized or existing
46 pursuant to the not-for-profit corporation law.

47 (i) "Program year" shall mean the period from April first through
48 March thirty-first of the following calendar year.

49 (j) "First program year" for a county shall mean the initial year for
50 which the county has received approval for its county plan.

51 2. County plans for improving the availability of community services
52 to the elderly. (a) Counties with a designated agency are required to
53 submit a county plan for a two-, three-, or four-year period determined
54 by the director, with an annual update containing a budget request for
55 the forthcoming program year and such other information as shall be
56 required by the director, for improving the delivery of community

1 services for elderly persons in the format prescribed by the director.
2 The plan for the city of New York or the plan for the city of Staten
3 Island shall specifically address the needs of each county within such
4 city. Such plan shall be a comprehensive description of the manner in
5 which the county intends to address the needs of elderly persons living
6 in the county through improved coordination of existing community
7 services and by the development of any new or expanded community service
8 projects which will improve the delivery of services to the elderly.

9 Such plan shall contain:

10 (1) a statement of goals and objectives for addressing the needs of
11 elderly persons in the county, an assessment of the needs of elderly
12 persons residing in the county, a description of public and private
13 resources that currently provide community services to elderly persons
14 within the county, a description of intended actions to consolidate and
15 coordinate existing community services administered by county govern-
16 ment, a description of the intended actions to coordinate congregate
17 services programs for the elderly operated within the county pursuant to
18 section two hundred seventeen of this title with other community
19 services for the elderly, a description of the means to coordinate other
20 community services for elderly persons in the county with those adminis-
21 tered by county government, and a statement of the priorities for the
22 provision of community services during the program period covered by
23 such plan;

24 (2) an identification of community service projects to be developed to
25 improve the delivery of services, a budget request for approval for the
26 forthcoming year which individually identifies each community service
27 project to be funded pursuant to paragraph (b) of subdivision four of
28 this section, letters of comment from the appropriate local agencies on
29 the relationship and expected impact of the proposed community service
30 projects, assurances that community service projects will provide
31 services to those most in need, an indication of fee schedules by which
32 elderly persons participating in community service projects may contrib-
33 ute to the costs of such projects, and an indication of how the effec-
34 tiveness of such community service projects will be evaluated;

35 (3) an identification of planning, coordination, and administrative
36 activities necessary to achieve the goals and objectives of the plan,
37 together with a budget request for such activities for approval for the
38 forthcoming year to be funded pursuant to paragraph (a) of subdivision
39 four of this section, and assurances by the county that it will comply
40 with the requirements of state and federal law; and

41 (4) such other components as may be required pursuant to regulations
42 promulgated by the director.

43 (b) Such county plan for community services or annual update shall be
44 prepared by the designated agency and approved by the chief executive
45 officer of the county, if there be one, or otherwise the governing board
46 of the county, or the chief executive of the city of New York or the
47 mayor of the city of Staten Island and submitted to the director no
48 later than ninety days prior to the beginning of the program period
49 covered by such plan or annual update. Prior to a submission of a coun-
50 ty plan or annual update to the director for approval, the designated
51 agency shall conduct such public hearings as may be required by regu-
52 lations of the director, provided that there shall be at least one such
53 hearing, and one in each county contained within the city of New York or
54 the city of Staten Island.

55 (c) The director shall review such county plan and may approve or
56 disapprove such plan, or any part, program, or project within such plan,

1 and shall propose such modifications and conditions as are deemed appro-
2 priate and necessary. Compliance with paragraphs (a) and (b) of this
3 subdivision shall be the basis for approval of a county plan. The direc-
4 tor shall establish by regulation the dates for notifying the designated
5 agency of approval or disapproval of a county plan. In the event the
6 director shall disapprove the proposed county plan, the county submit-
7 ting such application shall be afforded an opportunity for an adjudica-
8 tory hearing, as prescribed by article three of the state administrative
9 procedure act.

10 (d) Notwithstanding any provision of this section, nothing contained
11 in this section shall give the director or a designated agency any
12 administrative, fiscal, supervisory, or other authority whatsoever over
13 any plans, programs or expenditures authorized pursuant to titles eigh-
14 teen, nineteen and twenty of the federal social security act, or over
15 any unit of state or local government.

16 (e) Counties with a designated agency may submit to the director a
17 letter of intent, in the form and by the date prescribed by the director
18 with the approval of the director of the budget, evidencing the commit-
19 ment of the county to develop a county home care plan for functionally
20 impaired elderly.

21 (f) Within the amounts appropriated therefor, counties submitting an
22 approved letter of intent pursuant to paragraph (e) of this subdivision
23 shall be eligible for reimbursement of one hundred percent of the
24 approved expenditures for preparing a county home care plan for func-
25 tionally impaired elderly. Such a grant-in-aid shall be available to a
26 county only once and shall be limited to one-half the amount available
27 to such county pursuant to subparagraph one of paragraph (a) of subdivi-
28 sion four of this section; provided however that in either of the two
29 years immediately following its first submission of a home care plan for
30 functionally impaired elderly, a county which does not receive state aid
31 during such year for expanded non-medical in-home services, non-institu-
32 tional respite services, case management services, and ancillary
33 services pursuant to paragraph (j) of subdivision four of this section,
34 may apply for reimbursement of one hundred percent of the approved
35 expenditures for revising such home care plan, limited to one-quarter
36 the amount available to such county pursuant to subparagraph one of
37 paragraph (a) of subdivision four of this section.

38 (g) County home care plans for functionally impaired elderly prepared
39 pursuant to this subdivision shall include a comprehensive description
40 of all aspects of home care, non-institutional respite, case management,
41 and ancillary services available to elderly persons in the county; a
42 description of intended actions to coordinate such home care, non-insti-
43 tutional respite, case management, and ancillary services to func-
44 tionally impaired elderly persons in their county provided under this
45 section with other services to elderly persons; a proposal for expanded
46 non-medical in-home services, non-institutional respite services, case
47 management services, and ancillary services for functionally impaired
48 elderly persons with unmet needs to support such persons' continued
49 residence in their homes; and such other components as may be required
50 pursuant to regulations promulgated by the director, including how the
51 proposed expanded non-medical in-home services, non-institutional
52 respite services, case management services, and ancillary services will
53 be delivered to unserved or underserved populations.

54 (h) Such county home care plan for functionally impaired elderly shall
55 be prepared by the designated agency after consultation with the social
56 services district and the local public health agency, and shall be

1 approved by the chief executive officer of the county, if there be one,
2 or otherwise the governing board of the county, or the chief executive
3 of the city of New York or the mayor of the city of Staten Island, and
4 submitted to the director for approval by such date as may be specified
5 by regulation. The director shall not approve such county home care plan
6 for functionally impaired elderly unless it complies with the standards
7 and regulations issued pursuant to this section.

8 4. State aid. (a) County plans for improving the availability of
9 community services to the elderly:

10 (1) within the amounts appropriated therefor, counties with an
11 approved county plan shall be eligible for reimbursement of one hundred
12 percent of the annual approved expenditures for the preparation and
13 revision of such county plan, evaluation of projects contained within
14 such county plan, execution of interagency agreements necessary to carry
15 out the plan, actions to consolidate, combine or collocate services
16 within the county, and such other costs of the designated agency neces-
17 sary to implement such county plan, provided that the total annual
18 amount payable to a county pursuant to this subparagraph shall not
19 exceed the sum of one dollar for each elderly person residing in the
20 county, or seventy-five thousand dollars, whichever is less, and further
21 provided that for the city of New York or the city of Staten Island such
22 amount shall not exceed one dollar for each elderly person residing in
23 [~~the~~] such city or three hundred seventy-five thousand dollars, whichev-
24 er is less. Notwithstanding the foregoing limitations, counties with a
25 population of less than twenty thousand elderly persons shall be eligi-
26 ble for reimbursement of one hundred percent of such annual approved
27 expenditures provided that the total annual amount of such reimbursement
28 per county shall not exceed twenty thousand dollars.

29 (2) within the amounts appropriated therefor, a county may receive a
30 grant-in-aid of up to twenty-five per centum of the total annual amount
31 that such county is eligible to receive pursuant to subparagraph one of
32 this paragraph for the cost of preparing an initial county plan in
33 accordance with this section. Such a grant-in-aid shall be available to
34 a county only once and shall be in addition to the reimbursement
35 received by the county pursuant to subparagraph one of this paragraph
36 for the first program year. A request for such a grant-in-aid shall be
37 accompanied by a letter of intent in the form prescribed by the director
38 evidencing the commitment of the county to develop a county plan for
39 community services and shall be submitted to the director at least six
40 months prior to the beginning of the first program year.

41 (b) Community service projects:

42 (1) within the amounts appropriated therefor, counties having an
43 approved county plan shall be eligible for reimbursement by the state
44 for expenditures for approved community service projects pursuant to
45 this section. Such state reimbursement shall not exceed thirty-three
46 thousand six hundred dollars or four dollars twenty cents for each
47 elderly person residing in the county, whichever is greater. The annual
48 state reimbursement eligibility shall be at a rate of seventy-five
49 percent of the total annual expenditures for such approved programs.

50 (2) the director shall provide by regulation that certain non-county
51 moneys and in-kind equivalents may be used to comprise the county share
52 of such total annual approved expenditures, provided that such county
53 share shall not include cost-sharing received from elderly persons
54 receiving expanded non-medical in-home services, non-institutional
55 respite services, case management services, and ancillary services
56 pursuant to paragraph (k) of this subdivision or moneys received from

1 the federal government for services for the elderly allocated to the
2 states or local governments according to population or other such non-
3 competitive basis.

4 (3) the director shall provide by regulation the requirements for any
5 participant contributions and fee schedules used for community service
6 projects and the manner for the accounting and use of any such revenue.

7 (c) Reimbursement pursuant to this section shall not be available for
8 expenditures for base year services otherwise provided without cost, or
9 to replace base year expenditures made by the county or any other
10 service provider irrespective of the source of funds for such services.

11 (d) Reimbursement shall not be available to community services
12 projects funded pursuant to paragraph (b) of this subdivision or to
13 expanded non-medical in-home services, non-institutional respite
14 services, case management services, and ancillary services funded pursu-
15 ant to paragraph (j) of this subdivision for services provided to elder-
16 ly persons who are eligible for or are receiving services to meet their
17 needs pursuant to titles eighteen, nineteen or twenty of the federal
18 social security act or any other governmental programs or for services
19 provided to residents in adult residential care facilities which had
20 previously been provided by the facility or which are required by law to
21 be provided by such facility.

22 (e) For the purpose of determining the amount of state reimbursement
23 for which a county is eligible pursuant to this section, the last
24 preceding federal census or other census data approved by the comp-
25 troller shall be used. Funds appropriated by the state for the purpose
26 of reimbursement for community services pursuant to this section shall
27 be apportioned among the counties pursuant to the formula set forth in
28 paragraph (b) of this subdivision by the director. Funds appropriated by
29 the state for the purpose of reimbursement for expanded non-medical
30 in-home services, non-institutional respite services, case management
31 services, and ancillary services pursuant to this section shall be
32 apportioned among the counties by the director pursuant to the formula
33 set forth in paragraph (j) of this subdivision.

34 (f) The comptroller may withhold the payment of state aid to any coun-
35 ty in the event that such county alters or discontinues the operations
36 approved by the director pursuant to this section or otherwise fails to
37 comply with the regulations or requirements of the director.

38 (g) Counties shall submit claims for reimbursement after the end of
39 each month or each quarter as required by and in accordance with proce-
40 dures prescribed by the director. Reimbursement shall be available for
41 approved expenditures incurred in accordance with an approved county
42 plan for community services.

43 (h) Reimbursement pursuant to subparagraph one of paragraph (b) or
44 paragraph (j) of this subdivision shall not be available for expendi-
45 tures for community or expanded non-medical in-home services, non-insti-
46 tutional respite services, case management services, and ancillary
47 services to elderly persons in the city of New York and in the city of
48 Staten Island unless expenditures for such services are apportioned for
49 services in each of the counties contained within such city in a manner
50 which the director has determined by regulation substantially reflects
51 the proportion that the number of elderly persons in that county bears
52 to the total number of elderly persons in [~~the~~ such city as a whole. In
53 determining whether reimbursement shall be available under paragraph (g)
54 of this subdivision, the director shall ensure that expenditures were
55 apportioned in accordance with the provisions of this paragraph.

1 (i) The director, within the amounts appropriated therefor and with
2 the approval of the director of the budget, may authorize a county which
3 has an approved home care plan for functionally impaired elderly to
4 provide expanded non-medical in-home services, non-institutional respite
5 services, case management services, and ancillary services pursuant to
6 such plan. Such services shall be limited to those services necessary to
7 meet otherwise unmet needs and which support such elderly persons'
8 continued residence in their homes. Needs will be determined pursuant to
9 a standardized evaluation of functional impairment, available resources
10 and such other relevant factors specified pursuant to regulations
11 promulgated by the director. No expanded non-medical in-home services,
12 non-institutional respite services, or ancillary services shall be
13 provided to any individual pursuant to this section unless such expanded
14 non-medical in-home services, non-institutional respite services, or
15 ancillary services are accompanied by ongoing case management services
16 in accordance with regulations promulgated by the director.

17 (j) Within the amounts appropriated therefor, counties authorized to
18 provide expanded non-medical in-home services, non-institutional respite
19 services, case management services, and ancillary services pursuant to
20 paragraph (i) of this subdivision shall be eligible for reimbursement by
21 the state of up to seventy-five percent of allowable expenditures for
22 approved services pursuant to this section up to the level authorized by
23 the director. The director shall not authorize a level of state
24 reimbursement pursuant to this paragraph which exceeds the sum of nine-
25 ty-one thousand two hundred fifty dollars or seven dollars thirty cents
26 for each elderly person residing in the county, whichever is greater,
27 and shall proportionately reduce such sum for each county in any years
28 for which appropriations are not sufficient to fully fund approved
29 expanded non-medical in-home services, non-institutional respite
30 services, case management services, and ancillary services for func-
31 tionally impaired elderly in all counties with approved home care plans;
32 provided however that in state fiscal years beginning on or after the
33 first day of April, two thousand five, the director, with the approval
34 of the director of the budget, may authorize state reimbursement in
35 excess of these levels to the extent appropriations are available there-
36 for.

37 (k) The director, with the approval of the director of the budget,
38 shall provide by regulation the extent of cost-sharing to be required of
39 elderly persons receiving expanded non-medical in-home services, non-in-
40 stitutional respite services, case management services, and ancillary
41 services pursuant to this section, which shall reflect such recipients'
42 means to pay for such services and which will not affect their ability
43 to remain in their homes; provided however that the director shall not
44 authorize or direct the withholding of state aid pursuant to paragraph
45 (f) of this subdivision prior to the first day of April, two thousand
46 five, based on any county's failure or inability to comply with regu-
47 lations promulgated pursuant to this paragraph. The full amount of cost-
48 sharing actually received by any county from elderly persons receiving
49 expanded non-medical in-home services, non-institutional respite
50 services, case management services, and ancillary services shall be used
51 by such county to expand either such county's program of community
52 services or such county's program of expanded non-medical in-home
53 services, non-institutional respite services, case management services,
54 and ancillary services pursuant to this section.

55 (l) Reimbursement pursuant to paragraph (j) of this subdivision shall
56 not be available for expenditures for base year services otherwise

1 provided without cost, or to replace base year expenditures made by the
2 county or any other service provider irrespective of the source of
3 funds, or to replace community services expenditures pursuant to para-
4 graph (b) of this subdivision.

5 (m) Counties shall submit claims for reimbursement for expanded
6 in-home services, non-institutional respite services, case management
7 services, and ancillary services to functionally impaired elderly as
8 required by and in accordance with procedures prescribed by the direc-
9 tor. Reimbursement shall be available for approved expenditures
10 incurred in accordance with an approved county home care plan for func-
11 tionally impaired elderly to the extent the director has authorized
12 state aid for such services pursuant to paragraph (i) of this subdivi-
13 sion.

14 (n) The director shall provide by regulation that certain non-county
15 moneys and in-kind equivalents may be used in part to compose the county
16 share of total allowable expenditures pursuant to paragraph (j) of this
17 subdivision, provided that such county share shall not include cost-
18 sharing received from elderly persons receiving expanded non-medical
19 in-home services, non-institutional respite services, case management
20 services, and ancillary services pursuant to paragraph (k) of this
21 subdivision or moneys received from the federal government for services
22 for the elderly allocated to the states or local governments according
23 to population or other such non-competitive basis.

24 § 8-013. Subdivision 9 of section 140 of the executive law, as amended
25 by chapter 861 of the laws of 1960, is amended to read as follows:

26 9. The clerks of the counties of New York, Kings, Queens, Richmond
27 and Bronx shall each keep a book or card index file in which shall be
28 registered the signature of the commissioners so filing such certifi-
29 cates; and the county clerk of any county in the city with whom such
30 commissioner has filed a certificate of appointment shall, upon demand
31 and upon payment of the sum of fifty cents, authenticate a certificate
32 of acknowledgment or proof of oath taken before such commissioner of
33 deeds, without regard to the county in the city in which such [~~acknowledg-~~
34 ~~ment~~] acknowledgment or proof was taken or oath administered, by
35 subjoining or attaching to the original certificate of acknowledgment or
36 proof or oath a certificate under his hand and official seal specifying
37 that at the time of taking the acknowledgment or proof or oath the offi-
38 cer taking it was duly authorized to take the same; that the authenti-
39 cating officer is acquainted with the former's handwriting, or has
40 compared the signature on the certificate of acknowledgment, proof or
41 oath with the autograph signature deposited in his office by such offi-
42 cer, and that he verily believes the signature is genuine.

43 § 8-014. Any person who resides in or maintains an office or other
44 place of business in the city of Staten Island and who resides in the
45 county of Richmond on the date of establishment of the city of Staten
46 Island who holds an appointment as a commissioner of deeds from the
47 preceding municipality shall be deemed to hold the appointment as
48 commissioner of deeds from the common council of the city of Staten
49 Island in accordance with the provisions of section 139 of the executive
50 law. Such person shall continue to hold such office until his original
51 appointment expires or is revoked pursuant to law.

52 § 8-015. Section 56 of the social services law, as amended by chapter
53 863 of the laws of 1977, is amended to read as follows:

54 § 56. City social services districts. The city of New York and the
55 city of Staten Island shall have all the powers and duties of a social
56 services district insofar as consistent with the provisions of the

1 special and local laws relating to such [~~city~~] cities. The officers
2 thereof charged with the administration of public assistance and care
3 shall have additional powers and duties of a commissioner of social
4 services not inconsistent with the laws relating to said [~~city~~] cities.

5 § 8-016. Section 57 of the social services law, as amended by chapter
6 863 of the laws of 1977, is amended to read as follows:

7 § 57. Cities in county social services districts. Each city, other
8 than the city of New York and the city of Staten Island, shall form part
9 of the county social services district of the county in which it is
10 situated and shall not assume any powers and responsibilities for the
11 administration or expense of public assistance and care, in addition to
12 those specified in subdivision two of section sixty-nine, except pursu-
13 ant to the provisions of sections seventy-four and seventy-four-a of
14 this chapter.

15 § 8-017. Section 61 of the social services law is amended by adding a
16 new subdivision 1-a to read as follows:

17 1-a. The city of Staten Island is hereby constituted a city social
18 services district.

19 § 8-018. Subdivision 1 of section 74 of the social services law, as
20 added by chapter 863 of the laws of 1977, is amended to read as follows:

21 1. Each city, other than the city of New York and the city of Staten
22 Island, which is responsible for one or more types of public assistance
23 and care on the date this section becomes effective shall function under
24 section seventy-four-a of this chapter.

25 § 8-019. Section 86-a of the social services law, as amended by chap-
26 ter 655 of the laws of 1978, is amended to read as follows:

27 § 86-a. City public welfare funds. The taxes levied for public
28 assistance and care in a city, or in a city public welfare district,
29 shall be paid to the city treasurer, [~~ex~~] the commissioner of finance in
30 the city of New York or the comptroller in the city of Staten Island,
31 and disbursed in accordance with the provisions of law relating to such
32 city for the payment of bills and claims, provided such provisions of
33 law are not inconsistent with the provisions of this chapter.

34 § 8-020. Intentionally omitted.

35 § 8-021. Subdivision 2 of section 209 of the social services law, as
36 amended by chapter 71 of the laws of 1983, paragraphs (a), (b), (c),
37 (d), (e) and (f) as amended by section 2 of part Z of chapter 56 of the
38 laws of 2023, is amended to read as follows:

39 2. The following amounts shall be the standard of monthly need for
40 determining eligibility for and the amount of additional state payments,
41 depending on the type of living arrangement and the geographic area in
42 which the eligible individual or the eligible couple resides:

43 (a) On and after January first, two thousand twenty-three, for an
44 eligible individual living alone, \$1,001.00; and for an eligible couple
45 living alone, \$1,475.00.

46 (b) On and after January first, two thousand twenty-three, for an
47 eligible individual living with others with or without in-kind income,
48 \$937.00; and for an eligible couple living with others with or without
49 in-kind income, \$1,417.00.

50 (c) On and after January first, two thousand twenty-three, (i) for an
51 eligible individual receiving family care, \$1,180.48 if he or she is
52 receiving such care in the city of New York, the city of Staten Island
53 or the county of Nassau, Suffolk, Westchester or Rockland; and (ii) for
54 an eligible couple receiving family care in the city of New York, the
55 city of Staten Island or the county of Nassau, Suffolk, Westchester or
56 Rockland, two times the amount set forth in subparagraph (i) of this

1 paragraph; or (iii) for an eligible individual receiving such care in
2 any other county in the state, \$1,142.48; and (iv) for an eligible
3 couple receiving such care in any other county in the state, two times
4 the amount set forth in subparagraph (iii) of this paragraph.

5 (d) On and after January first, two thousand twenty-three, (i) for an
6 eligible individual receiving residential care, \$1,349.00 if he or she
7 is receiving such care in the city of New York, the city of Staten
8 island or the county of Nassau, Suffolk, Westchester or Rockland; and

9 (ii) for an eligible couple receiving residential care in the city of
10 New York, the city of Staten Island or the county of Nassau, Suffolk,
11 Westchester or Rockland, two times the amount set forth in subparagraph
12 (i) of this paragraph; or (iii) for an eligible individual receiving
13 such care in any other county in the state, \$1,319.00; and (iv) for an
14 eligible couple receiving such care in any other county in the state,
15 two times the amount set forth in subparagraph (iii) of this paragraph.

16 (e) On and after January first, two thousand twenty-three, (i) for an
17 eligible individual receiving enhanced residential care, \$1,608.00; and
18 (ii) for an eligible couple receiving enhanced residential care, two
19 times the amount set forth in subparagraph (i) of this paragraph.

20 (f) The amounts set forth in paragraphs (a) through (e) of this
21 subdivision shall be increased to reflect any increases in federal
22 supplemental security income benefits for individuals or couples which
23 become effective on or after January first, two thousand twenty-four but
24 prior to June thirtieth, two thousand twenty-four.

25 § 8-022. Subdivision 1 of section 368-e of the social services law, as
26 amended by section 55 of part B of chapter 58 of the laws of 2009, is
27 amended to read as follows:

28 1. The department of health shall review claims for expenditures made
29 by counties, the city of Staten Island and the city of New York for
30 medical care, services and supplies which are furnished to preschool
31 children with handicapping conditions or such preschool children
32 suspected of having handicapping conditions, as such children are
33 defined in the education law. If approved by the department, payment for
34 such medical care, services and supplies which would otherwise qualify
35 for reimbursement under this title and which are furnished in accordance
36 with this title and the regulations of the department to such children,
37 shall be made in accordance with the department's approved medical
38 assistance fee schedules by payment to such county or [~~city~~] cities
39 which furnished the care, services or supplies either directly or by
40 contract. Notwithstanding any provisions of law, rule or regulation to
41 the contrary, any clinic or diagnostic and treatment center licensed
42 under article twenty-eight of the public health law, which as determined
43 by the state education department, in conjunction with the department of
44 health, has a less than arms length relationship with the provider
45 approved under section forty-four hundred ten of the education law
46 shall, subject to the approval of the department and based on standards
47 developed by the department, be authorized to directly submit such
48 claims for medical assistance, services or supplies so furnished for any
49 period beginning on or after July first, nineteen hundred ninety-seven.
50 The actual full cost of the individualized education program (IEP)
51 related services incurred by the clinic shall be reported on the New
52 York State Consolidated Fiscal Report in the education law section
53 forty-four hundred ten program cost center in which the student is
54 placed and the associated medical assistance revenue shall be reported
55 in the same manner.

1 § 8-023. Subdivision 13 of section 390 of the social services law, as
2 amended by chapter 160 of the laws of 2003, is amended to read as
3 follows:

4 13. Notwithstanding any other provision of law, this section[~~, except~~
5 ~~for paragraph (a-1) of subdivision two-a of this section,~~] shall not
6 apply to child day care centers in the city of New York or in the city
7 of Staten Island.

8 § 9-001. Subdivision 1 of section 214 of the county law, as amended by
9 chapter 967 of the laws of 1973, is amended to read as follows:

10 1. Concurrent resolutions, election notices and official canvass.
11 The members of the county legislative body, whether such body be denomi-
12 nated board of supervisors, county legislature or otherwise, or, in the
13 [~~city~~] cities of New York and Staten Island, of the council of each such
14 city representing respectively each of the two principal political
15 parties into which the people of the state are divided, shall designate
16 annually the newspaper published within the county to publish the
17 concurrent resolutions of the legislature. Such designation shall be in
18 writing and signed by a majority of the members representing each of
19 said political parties. In making such designation, consideration shall
20 be given to the newspapers advocating the principles of such political
21 party, the support of its nominees and the extent of the circulation in
22 the county. However the fact that a newspaper is an independent newspa-
23 per not advocating the principles of any political party shall not
24 disqualify it from consideration. If there be but one newspaper
25 published in the county, such newspaper shall be designated. The desig-
26 nation shall be filed with the clerk of the county legislative body or,
27 in the [~~city~~] cities of New York and Staten Island, with the clerk of
28 the council of each such city, who shall not later than January tenth
29 cause notice of the name and address of such newspaper or newspapers to
30 be forwarded to the secretary of state. In like manner the members of
31 the county legislative body or, in the [~~city~~] cities of New York and
32 Staten Island, of the council of each such city representing each of the
33 two principal political parties into which the people of the state are
34 divided, shall designate the newspaper published within the county to
35 publish the election notices issued by the secretary of state and the
36 newspaper to publish the official canvass. In the event of a failure so
37 to designate in any year, or if either of such political parties has no
38 representatives among the body or, in the [~~city~~] cities of New York and
39 Staten Island, council membership, the last newspaper designated by the
40 members of such party shall be deemed duly designated.

41 § 9-002. Section 226-a of the county law, as added by chapter 80 of
42 the laws of 1969, is amended to read as follows:

43 § 226-a. Patriotic observances. The county legislature and/or board
44 of supervisors, as the case may be, of any county or borough outside the
45 city of New York or the city of Staten Island, is hereby authorized to
46 appropriate and set aside each year such sums it may deem proper for the
47 purpose of providing for the due and proper observance of any legal
48 holiday, including Columbus day.

49 § 9-003. Section 361-a of the county law, as amended by chapter 359 of
50 the laws of 1989, is amended to read as follows:

51 § 361-a. Expenses of boards of elections outside New York City and the
52 city of Staten Island; apportionment of. The board of elections in each
53 county, outside of the [~~city~~] cities of New York and Staten Island, on
54 or before the fifteenth day of December and not earlier than the first
55 day of October, in each year, shall certify to the clerk of the legisla-
56 tive body of the county, the total amount of the expenses of such board

1 of elections, including salaries for the preceding year, and, if the
2 legislative body of any county shall so direct, shall certify to such
3 clerk the portions of such expenses which under provisions of law are to
4 be borne by any city or cities in said county and the portion thereof
5 which is to be borne by the rest of such county and such clerk shall
6 thereupon notify the proper local official or officials, who, in spread-
7 ing upon the assessment-rolls the taxes to be levied upon the taxable
8 property in the city or any such cities, and in the rest of the county,
9 shall include in the amount so spread the amounts certified by the board
10 of elections to be borne by such city or cities, respectively, and in
11 the amount spread upon the assessment-rolls of the taxable property in
12 the several towns or other political subdivisions of the rest of the
13 county the amount so certified by said board of elections to be borne by
14 such towns or political subdivisions respectively. Whenever any addi-
15 tional expenses either for salaries or supplies in addition to the regu-
16 lar county-wide primary and election expenses are incurred by a board of
17 elections incidental to any election in any city, town or village, such
18 board of elections shall certify to the county legislative body a
19 detailed statement of such expenses and said county legislative body may
20 cause the amount thereof to be levied against such city, town or village
21 or may certify the amount thereof to such city, town or village and such
22 city, town or village shall upon such certification, include the amount
23 so certified in the next budget and tax levy and shall pay the same to
24 the county.

25 § 9-004. Subdivision 2 of section 390 of the county law, as added by
26 chapter 1 of the laws of 1951, is amended to read as follows:

27 2. Whenever a patient admitted to said hospital has local residence,
28 as defined in the public health law, in the county in which the hospital
29 is situated, he shall be a charge upon such county. If such patient
30 admitted to said hospital has local residence in some other county or in
31 the city of New York or the city of Staten Island, he shall be a charge
32 upon such other county or the city of New York or the city of Staten
33 Island, as the case may be, and the superintendent shall send a bill for
34 such charge to the clerk of the board of supervisors of such other coun-
35 ty or to the comptroller of the city of New York or of the city of
36 Staten Island. Such charge shall be at a rate to be fixed by the board
37 of managers, which shall not exceed the per diem per capita cost of care
38 and treatment in said hospital, and if the county operating said hospi-
39 tal is currently receiving state aid for the care and treatment of
40 tuberculosis patients pursuant to the public health law, such charge may
41 be an amount for each day of such patient's care equivalent to the
42 balance of the total per diem per capita cost of operating such hospital
43 during the preceding fiscal year, as computed and approved by the state
44 commissioner of health [~~pursuant to subdivision three of section fifty-~~
45 ~~four of the public health law~~]. Such bill shall be audited and paid by
46 the board of supervisors of said county, except that a bill so submitted
47 to the city of New York or the city of Staten Island shall be paid by
48 such city after audit and upon warrant of the comptroller of such city.
49 Any patient admitted to said hospital may pay for his care and treatment
50 in whole or in part if he volunteers to do so.

51 § 9-005. Section 391 of the county law, as added by chapter 1 of the
52 laws of 1951, is amended to read as follows:

53 § 391. Admission of out of county patients. 1. Exclusive of the
54 city of New York and the city of Staten Island, and exclusive of coun-
55 ties served by state tuberculosis hospitals, any person in a county not
56 having a county hospital for the care and treatment of persons suffering

1 from tuberculosis may apply in person to the clerk of the board of
2 supervisors of such county or to the state commissioner of health for
3 admission to a tuberculosis hospital, providing that such person submit
4 with such application a statement signed by a reputable physician that
5 such physician has, within the ten days preceding the date of such
6 application, examined such person and that, in his opinion, such person
7 is suffering from tuberculosis or is suspected of having tuberculosis
8 and is in need of care and treatment therefor. Upon receipt of such
9 application, the clerk of the board of supervisors or the state commis-
10 sioner of health, as the case may be, shall forward the same to the
11 superintendent of any state, county or city hospital for the care and
12 treatment of tuberculosis.

13 2. Whenever the superintendent of such a hospital shall receive an
14 application for the admission of a patient in accordance with the
15 provisions of subdivision one of this section, if it appear from such
16 application that the person therein referred to is suffering from tuber-
17 culosis or is suspected of having tuberculosis and is in need of care
18 and treatment therefor, the superintendent shall notify said person to
19 appear in person at the hospital, provided there be a vacancy in such
20 hospital and there be no pending application from a patient living in
21 the county in which the hospital is located. If, upon personal examina-
22 tion of the patient, the superintendent is satisfied that such patient
23 is in need of care and treatment for tuberculosis, he shall admit him to
24 the hospital. Every patient so admitted shall be a charge against the
25 county in which he was living immediately prior to such admission. Such
26 charge shall be at a rate to be fixed by the board of managers, which
27 shall not exceed the per diem per capita cost of maintenance therein and
28 any cost of transportation to or from the hospital, except that if the
29 county operating said hospital is currently receiving state aid for the
30 care and treatment of tuberculosis patients pursuant to the public
31 health law, such charge shall be an amount for each day of such
32 patient's care equivalent to the balance of the total per diem per capi-
33 ta cost of operating such hospital during the preceding fiscal year, as
34 computed and approved by the state commissioner of health [~~pursuant to~~
35 ~~subdivision three of section fifty-four of the public health law~~]; and
36 the bill therefor shall be audited and paid by the board of supervisors
37 of the said county. However, if such patient has local residence, as
38 defined in the public health law, in some county other than the one in
39 which he was living immediately prior to such admission or in the city
40 of New York or the city of Staten Island, he shall be a charge upon such
41 other county or the city of New York or the city of Staten Island, as
42 the case may be, and in this event any amounts for the cost of such care
43 and treatment which shall have been paid by the county from which he was
44 admitted shall be charged back and reimbursed to such county by the
45 aforesaid other county or the city of New York or the city of Staten
46 Island in which the patient has local residence. Any patient admitted
47 to a hospital in accordance with the provisions of subdivision one of
48 this section may pay for his care and treatment in whole or in part if
49 he volunteers to do so.

50 § 9-006. Section 901 of the county law is amended by adding a new
51 subdivision 1-a to read as follows:

52 1-a. The commissioner of corrections of the city of Staten Island
53 shall have custody of the civil jails and persons lawfully committed to
54 his or her custody and such jails shall be kept by him or her, or by
55 keepers appointed by him or her, for whose acts he or she shall be
56 responsible.

1 § 9-007. Subdivision 1 of section 902 of the county law, as amended by
2 chapter 950 of the laws of 1956, is amended to read as follows:

3 1. The offices of the county clerk in the counties constituting the
4 city of New York and the office of the Richmond county clerk shall
5 remain open for the transaction of business from nine o'clock in the
6 forenoon to four o'clock in the afternoon every day except Saturdays,
7 Sundays and holidays and except in the months of July and August when
8 said offices shall remain open for the transaction of business from nine
9 o'clock in the forenoon to two o'clock in the afternoon except Satur-
10 days, Sundays and holidays.

11 § 9-008. Section 904 of the county law, as amended by chapter 655 of
12 the laws of 1978, is amended to read as follows:

13 § 904. Court and trust fund register and liability of officers. The
14 county clerks of the counties comprising the city of New York and the
15 Richmond county clerk shall perform the same duties and shall be subject
16 to the same penalties imposed by the provisions of this chapter upon
17 other county clerks of the state with relation to court and trust fund
18 registers and the delivery of property or moneys to the commissioner of
19 finance in pursuance of any judgment, decree or order of a court of
20 record of this state.

21 § 9-009. The county law is amended by adding a new section 905-a to
22 read as follows:

23 § 905-a. Liability for loss of court and trust funds in the city of
24 Staten Island. The officer responsible for collection and management of
25 public funds for the city of Staten Island and such officer's surety or
26 sureties shall be liable in the same manner as county treasurers are
27 made liable under the provisions of this chapter for the loss of court
28 and trust funds.

29 § 9-010. The county law is amended by adding a new section 906-a to
30 read as follows:

31 § 906-a. Liability of city of Staten Island for loss of court and
32 trust funds. The city of Staten Island shall be responsible for all
33 property or moneys deposited with the officer responsible for collection
34 and management of public funds for the city of Staten Island by virtue
35 of any judgment, decree or order of a court of record in this state
36 provided, however, that the city shall not be held liable for any loss
37 due to the depreciated value of an investment legal at the time of its
38 purchase and which continued to be a legal investment during the period
39 of the trust. An action to recover any loss to or of such fund may be
40 brought against the city by any party aggrieved or by the state comp-
41 troller in a court of competent jurisdiction.

42 § 9-011. The county law is amended by adding a new section 931-a to
43 read as follows:

44 § 931-a. Employees of the district attorney of the county of Rich-
45 mond. The district attorney of Richmond county is vested with the power
46 to appoint any person to any position for which there is now provision
47 by appropriation or which shall hereafter be established. All positions
48 in the district attorney's office of Richmond county for which there is
49 now provision by appropriation shall be continued, except that the mayor
50 of the city of Staten Island may with the consent of the district attor-
51 ney increase or decrease the number of positions and the term, grade,
52 salary and compensation of any position.

53 § 9-012. The county law is amended by adding a new section 944 to read
54 as follows:

55 § 944. Applicability of article to the county of Richmond. For the
56 purposes of continuing the application of this article within the city

1 of Staten Island on and after the date of establishment of the city of
2 Staten Island, the county of Richmond shall be deemed to continue as a
3 county within the city of New York for the purposes of exercising those
4 powers and duties devolved upon said county of Richmond pursuant to this
5 article.

6 § 9-013. Subdivision 2 and paragraphs (a) and (c) of subdivision 3 of
7 section 9-124 of the election law, subdivision 2 as amended by chapter
8 437 of the laws of 2019, paragraphs (a) and (c) of subdivision 3 as
9 amended by chapter 481 of the laws of 2023, are amended to read as
10 follows:

11 2. Each box, envelope, or container containing the ballots and stubs,
12 if any, and all items described in subdivision one of this section shall
13 be deposited by an inspector designated for that purpose with the offi-
14 cer or board from whom or which the board of inspectors received it. In
15 the city of New York and the city of Staten Island, every such box,
16 envelope, or container shall be delivered at the polling place to police
17 or peace officers designated by the police commissioner of such [~~city~~]
18 cities, who shall deposit them with the appropriate board of elections.

19 (a) Except in the city of New York or the city of Staten Island, the
20 registration poll records or computer generated registration lists, the
21 returns of canvass with results tapes and tally sheets, if any, annexed,
22 the voted ballots, stubs, opened packages of unused ballots and ballot
23 envelopes, any early mail, absentee, military, special federal, or
24 special presidential ballots which may have been delivered to the poll
25 site during election day, the challenge report records, keys and the
26 package of protested and void ballots shall be filed with the appropri-
27 ate board of elections.

28 (c) In the city of New York and the city of Staten Island, the board
29 of inspectors shall deliver to police or peace officers designated by
30 the police commissioner of such [~~city~~] cities, at the polling place the
31 registration poll records or computer generated registration lists,
32 challenge report, records, keys, other election supplies, including two
33 copies of the returns of the canvass and any early mail, absentee, mili-
34 tary, special federal, or special presidential ballots which may have
35 been delivered to the poll site during election day, voted ballots,
36 stubs, open packages of unused ballots and ballot envelopes. Such police
37 or peace officers shall file the returns, the package of void and
38 protested ballots, if any, and the early mail, absentee, military,
39 special federal, or special presidential ballots which may have been
40 delivered to the poll site during election day; and emergency ballots,
41 stubs and ballot envelopes, if any, within twenty-four hours after the
42 close of the polls, in the office of the appropriate board of elections
43 or its branch office within the borough, as the case may be.

44 § 9-014. Subdivision 3 of section 9-124 of the election law is amended
45 by adding a new paragraph (d) to read as follows:

46 (d) In the city of Staten Island the board of inspectors, shall deliv-
47 er to the police or peace officer at the polling place the registration
48 poll records or computer generated registration lists, challenge report,
49 records, keys, the flag, other election supplies, the returns of the
50 canvass and the absentee and military, special federal, special presi-
51 dential and emergency ballots, stubs and ballot envelopes. The police
52 or peace officer shall file the returns, the package of void, protested
53 and wholly blank ballots, if any, and the absentee and military, special
54 federal, special presidential and emergency ballots, stubs and ballot
55 envelopes, if any, within twenty-four hours after the close of the
56 polls, in the office of the board of elections.

1 § 9-015. Section 88-b of the state finance law, as added by chapter 13
2 of the laws of 1987, subdivisions 2 and 6 as amended by chapter 65 of
3 the laws of 1988, is amended to read as follows:

4 § 88-b. Suburban transportation fund. 1. There is hereby established
5 in the joint custody of the commissioner of taxation and finance and the
6 comptroller a fund to be known as the "suburban transportation fund".

7 2. The suburban transportation fund shall consist of moneys from the
8 commuter railroad account of the metropolitan transportation authority
9 special assistance fund required to be paid by such authority to the
10 suburban transportation fund pursuant to subdivision three of section
11 twelve hundred seventy-a of the public authorities law and any moneys
12 from the metropolitan transportation authority Dutchess, Orange and
13 Rockland fund transferred pursuant to subdivision four of section twelve
14 hundred seventy-a of the public authorities law.

15 3. Moneys in the suburban transportation fund shall be kept separate
16 from and shall not be commingled with any other moneys in the custody of
17 the commissioner of taxation and finance and the comptroller. All depos-
18 its of such money shall, if required by the comptroller, be secured by
19 obligations of the United States or of the state of market value equal
20 at all times to the amount of the deposit and all banks and trust compa-
21 nies are authorized to give such securities for such deposits.

22 4. Moneys of the fund shall be made available for financing any of the
23 following types of capital projects within the counties comprising the
24 metropolitan commuter transportation district, except those counties
25 comprising the city of New York or the city of Staten Island, but only
26 to the extent that such projects are on an adopted transportation plan
27 and approved by a designated transportation coordinating committee, if
28 one exists, or by the metropolitan planning organization as created
29 pursuant to section fifteen-a of the transportation law if no designated
30 transportation coordinating committee exists: capacity and infrastruc-
31 ture improvements to state, county, town, city, village roads, highways,
32 parkways and bridges; or state, county, town, city or village mass
33 transportation projects; provided, however, that in Nassau and Suffolk
34 counties such moneys shall be available only for capacity improvements
35 to state roads, highways, parkways and bridges. The amount of state
36 funds historically appropriated statewide, other than bond funds, for
37 transportation capital purposes from other sources shall not be reduced
38 because of the availability of such moneys made available pursuant to
39 this chapter, nor shall such moneys be used to match federal aid. Prior
40 to the allocation of state advance funds appropriated pursuant to this
41 section, the municipality responsible for the project shall certify to
42 the commissioner of transportation that the amount of funds appropriated
43 for transportation capital purposes by that municipality shall not be
44 reduced because of the availability of such state advance funds, and
45 that such moneys shall not be used to match federal aid.

46 The designated transportation coordinating committee, if one exists,
47 or the metropolitan planning organization if no designated transporta-
48 tion coordinating committee exists, shall notify the municipalities
49 within its jurisdiction of which projects it has approved.

50 5. In the event that any county withdraws from the metropolitan commu-
51 ter transportation district, the withdrawing county shall pay to the
52 state comptroller any amount that is required so that the state is fully
53 reimbursed for funds advanced in anticipation of reimbursement from the
54 suburban transportation fund. In the event that any withdrawing county
55 shall fail to make a payment pursuant to this subdivision, the state
56 comptroller shall withhold and pay to the capital projects fund an

1 amount equal to the amount owed from the next general or specific state
2 aid payment and scheduled to be paid to that county.

3 6. Moneys in the suburban transportation fund transferred pursuant to
4 section twelve hundred seventy-a of the public authorities law shall be
5 made available to the state department of transportation for capital
6 projects in the counties of Nassau, Suffolk, Westchester, Putnam, Dutch-
7 ess, Orange and Rockland on the basis of each county's average pro rata
8 share of the mortgage recording tax receipts raised in such counties
9 pursuant to subdivision one of section two hundred sixty-one of the tax
10 law during the period January first, nineteen hundred eighty-four
11 through December thirty-first, nineteen hundred eighty-six as certified
12 by the metropolitan transportation authority. Moneys transferred to the
13 suburban transportation fund at the request of Dutchess, Orange or Rock-
14 land county pursuant to subdivision three of section twelve hundred
15 seventy-b of the public authorities law shall be used by the state
16 department of transportation to increase the proportionate share of such
17 capital projects in such county. Such projects shall be financed by
18 means of a state advance to be reimbursed by the New York state thruway
19 authority, or its successor agency, through the issuance of its bonds or
20 notes in the manner set forth in subdivision seven of this section, or
21 by means of a state advance to be reimbursed directly from the suburban
22 transportation fund.

23 7. (a) For projects funded by the suburban transportation fund, the
24 state department of transportation may enter into an agreement with the
25 New York state thruway authority, or its successor agency, for the
26 purpose of having the thruway authority, or its successor agency, issue
27 bonds or notes to pay the capital costs of such project. Such agreement
28 shall be subject to approval by the director of the division of the
29 budget.

30 (b) For projects funded pursuant to this subdivision, the affected
31 municipality shall enter into an agreement with the department of trans-
32 portation for the conveyance of all affected real property including
33 highways, roads and bridges to the thruway authority, or its successor
34 agency, for the term of the bonds or notes issued by the thruway author-
35 ity, or its successor agency, for such project or for such lesser period
36 that such bonds or notes are outstanding. During the period of such
37 conveyance to the thruway authority, or its successor agency, the
38 department of transportation or the municipality shall agree to maintain
39 the facility in a state of good repair, the responsibility for which
40 shall be with the state, or municipality, which had jurisdiction over
41 said facility prior to such agreement.

42 (c) Upon the final retirement of all bonds and notes issued by the
43 thruway authority, or its successor agency, for such purpose, such prop-
44 erty shall automatically revert to the conveying entity.

45 8. Payments to the thruway authority, or its successor agency, pursu-
46 ant to this section shall be subject to appropriation from the suburban
47 transportation fund. The thruway authority, or its successor agency,
48 shall utilize such moneys to pay the debt service on such bonds or notes
49 and to meet administrative costs in connection therewith.

50 § 9-016. Section 2302 of the surrogate's court procedure act, as
51 amended by chapter 460 of the laws of 1999, is amended to read as
52 follows:

53 § 2302. Award of costs and allowances

54 1. Upon a motion the court may award costs to any party in such
55 amount as it determines not exceeding \$20 to each party, except in coun-

1 ties within the City of New York and in the city of Staten Island, where
2 such amount shall not exceed \$40.

3 2. Upon rendering a decree or in granting or denying an application
4 to vacate a decree the court may award as costs such sum as it deems
5 reasonable to the petitioner and to any other party who has succeeded in
6 whole or in part in a contest or whose attorney, in the absence of a
7 contest, has rendered services of substantial benefit to him, her or it,
8 or to the estate, not exceeding

9 (a) in counties within the City of New York and in the city of Staten
10 Island:

11 (i) \$100 where there has not been a contest, or

12 (ii) \$300 where there has been a contest and \$300 for each day, less
13 one, necessarily occupied in the trial or hearing and in addition \$100
14 for each day necessarily occupied in preparing therefore and \$100 addi-
15 tional if a motion for a new trial is granted.

16 (b) in all other counties:

17 (i) \$50 where there has not been a contest, or

18 (ii) \$150 where there has been a contest and \$150 for each day, less
19 one, necessarily occupied in the trial or hearing and in addition \$50
20 for each day necessarily occupied in preparing therefore and \$50 addi-
21 tional if a motion for a new trial is granted.

22 3. In a contested probate proceeding:

23 (a) Costs payable out of the estate or otherwise may be awarded (1) to
24 an unsuccessful contestant only if he, she or it be a guardian ad litem
25 or guardian, committee or conservator of a person under disability; (2)
26 to an unsuccessful proponent named as executor in the will when
27 propounded by him, her or it in good faith as the last will of the dece-
28 dent; and (3) to a person named as executor in a prior will on file in
29 the court that is not admitted to probate when such person participates
30 in the proceeding in good faith. Such nominated executor, guardian ad
31 litem, guardian, committee or conservator, whether successful or not may
32 be awarded costs and an allowance in such sum as the court deems reason-
33 able for his, her or its counsel fees and other expenses incurred in the
34 contest or attempt to sustain the will. The court may direct that such
35 costs and allowances in whole or in part be payable by an unsuccessful
36 contestant except that an award of the successful proponent's counsel's
37 fees may only be allowed where the court finds that the contest was
38 brought in bad faith or was frivolous.

39 (b) Either before or after the decree granting probate the court may
40 order that a copy of the minutes of the trial be furnished to a contes-
41 tant for the purposes of appeal and charge the expense thereof initially
42 to the estate if satisfied that the contest is in good faith. If the
43 contestant be unsuccessful upon the appeal and he, she or it is not the
44 guardian of an infant, the committee of an incompetent, the conservator
45 of a conservatee or a guardian ad litem he, she or it shall refund to
46 the estate any amount so paid by the estate for the minutes.

47 4. In a proceeding for probate of a will when the public administra-
48 tor or county treasurer has been directed to probate a will or continue
49 the proceedings for the probate thereof, the court may award to either
50 of them such sum as it deems reasonable for his, her or its counsel fees
51 and other expenses necessarily incurred therein.

52 5. After appeal, pursuant to the direction of the appellate court the
53 court may award a fiduciary such sum as it deems reasonable for counsel
54 fees and other expenses necessarily incurred on the appeal.

55 6. In a proceeding to construe a will or after appeal in such a
56 proceeding, pursuant to the direction of the appellate court the court

1 may award to a fiduciary or any party to the proceeding such sum as it
2 deems reasonable for his, her or its counsel fees and other expenses
3 necessarily incurred in the proceeding or on the appeal.

4 7. Upon a final or intermediate judicial settlement a fiduciary may
5 be awarded for his, her or its expenses and counsel fees such sum as the
6 court deems reasonable not exceeding:

7 (a) within the counties of the City of New York and in the city of
8 Staten Island: \$100 for each day necessarily occupied in preparing the
9 account and in drawing, entering and executing the decree. Any sum so
10 awarded may be in addition to any costs, allowances or commissions
11 otherwise authorized and awarded by the court.

12 (b) in all other counties: \$ 50 for each day necessarily occupied in
13 preparing the account and in drawing, entering and executing the decree.
14 Any sum so awarded may be in addition to any costs, allowances or
15 commissions otherwise authorized and awarded by the court.

16 8. In a proceeding for disposition of real property a fiduciary may
17 be awarded out of the proceeds of sale his, her or its commissions and
18 such sum as the court deems reasonable for counsel fees and expenses
19 necessarily incurred in the proceeding.

20 § 9-017. The general municipal law is amended by adding a new section
21 929 to read as follows:

22 § 929. City of Staten Island industrial development agency. (a)
23 Legislative intent. It is the policy and intent of the city of Staten
24 Island to promote the economic welfare of its inhabitants and to active-
25 ly promote, attract, encourage and develop economically sound commerce
26 and industry through governmental action for the purpose of preventing
27 unemployment and economic deterioration by the creation of a city of
28 Staten Island industrial development agency. It is recognized that the
29 viability and integrity of the residential communities in the city of
30 Staten Island should be protected and maintained so that no person be
31 deprived of his or her place of residence by any condemnation for
32 economic or industrial development undertaken pursuant to this article.

33 (b) For the purpose of this section "city" means the city of Staten
34 Island.

35 (c) For the benefit of the city and the inhabitants thereof an indus-
36 trial development agency, to be known as the city of Staten Island
37 industrial development agency, is hereby established for the accomplish-
38 ment of any or all of the purposes specified in title one of this arti-
39 cle, except that it shall not have the power to construct or rehabili-
40 tate any residential facility or housing of any nature and kind
41 whatsoever, nor shall it use any of its funds to further the
42 construction or rehabilitation of any residential facility or housing of
43 any nature and kind whatsoever. It shall constitute a body corporate
44 and politic, and be perpetual in duration. It shall only have the
45 powers and duties conferred by title one of this article upon industrial
46 development agencies as of January first, nineteen hundred seventy-three
47 except it shall not have the power of condemnation. In the exercise of
48 the powers conferred upon such agency with respect to the acquisition of
49 real property by this article such agency shall be limited to the
50 geographical jurisdictional limits of the city.

51 (d) It shall be organized in a manner prescribed by and be subject to
52 the provisions of title one of this article, except that its board shall
53 consist of ten members. Among its membership shall be the city comp-
54 troller, the city commissioner of economic development, the corporation
55 counsel of such city and the director of the city planning commission of
56 such city, each of whom shall have the power to designate an alternate

1 to represent them at board meetings with all the rights and powers,
2 including the right to vote, reserved to all board members, provided
3 that such designation be in writing to the chairperson of the board.
4 The remaining six members shall be appointed by the mayor of such city.

5 (e) The mayor shall designate the chairperson of the board, who shall
6 serve at the pleasure of the mayor.

7 (f) The terms of the directors first appointed by the mayor, other
8 than the chairperson of the board shall be as follows:

9 (1) two shall serve for terms of one year each;

10 (2) two shall serve for terms of two years each;

11 (3) two shall serve for terms of three years each, thereafter the
12 successors of all such directors shall serve for terms of three years
13 each. The mayor shall fill any vacancy which may occur by reason of
14 death, resignation, or otherwise in a manner consistent with the
15 original appointment. Members may be removed by the mayor for cause
16 after a hearing upon ten days' written notice. Such members shall
17 receive no compensation for their services but shall be entitled to the
18 necessary expenses, including traveling expenses, incurred in the
19 discharge of their duties.

20 (g) The chief executive officer of the agency shall be appointed by a
21 two-thirds vote of the board of directors.

22 (h) The agency, its members, officers, and employees, shall be
23 subject to article fourteen of the civil service law and for all such
24 purposes the agency shall be deemed the "public employer" and its
25 members, officers and employees shall be deemed "public employees".

26 (i) The city shall have the power to make, or contract to make grants
27 or loans including, but not limited to grants or loans of money, to the
28 agency in such amounts, upon such terms and conditions and for such
29 period or periods of time as in the judgment of the city and the agency
30 are necessary or appropriate for the accomplishment of any of the
31 purposes of the agency.

32 (j) The city shall have the power to condemn property for transfer to
33 the city of Staten Island industrial development agency under title one
34 of this article upon the request of two-thirds of the members of the
35 board of directors of the city of Staten Island industrial development
36 agency. No property shall be condemned on behalf of the agency which is
37 zoned "residential" as defined in the zoning resolution of the city, if
38 any, or which is occupied in whole or in part as a dwelling or resi-
39 dence.

40 (k) For the purpose of this section "governing body" as used in title
41 one of this article shall mean the mayor of the city. Except as other-
42 wise provided in this section, the agency, its members, officers and
43 employees, and its operations and activities shall be governed by the
44 provisions of title one of this article.

45 (l) The city shall save harmless and indemnify any person who is
46 serving or has served as a director or officer or as employee of the
47 city of Staten Island industrial development agency against any finan-
48 cial loss arising out of or in connection with any claim, demand, suit
49 or judgment, based on a cause of action involving allegations that pecu-
50 niary harm was sustained by any person as a result of any transaction,
51 act or omission to act of the city of Staten Island industrial develop-
52 ment agency or of any action or inaction or vote of any director, offi-
53 cer or employee of such agency unless such individual is found by a
54 final judicial determination not to have acted in good faith for a
55 purpose such individual reasonably believed to be in the best interests
56 of the agency or not to have had reasonable cause to believe that such

1 conduct was lawful. Provided, however, that such individual must trans-
2 mit to the corporation counsel of the city of Staten Island any notice
3 of claim, summons or complaint or other analogous paper served on such
4 individual within ten days of its receipt unless prevented from doing so
5 by compelling circumstances. The corporation counsel shall, without
6 charge, represent any such individual unless unable to do so by reason
7 of conflict of interest. In the event that the corporation counsel is
8 unable to give such representation, the city of Staten Island shall
9 indemnify the individual for any reasonable litigation expense incurred
10 by such individual.

11 § 10-001. Legislative findings. It is the intention of the legisla-
12 ture that the incorporation of the city of Staten Island shall not alter
13 the existing landlord-tenant relationships within such city and that the
14 state and local laws regulating landlord-tenant relationships such as
15 legal regulated rents, maximum rents and tenancy issues shall continue
16 to provide such regulation until superseded by state law or local law of
17 the city of Staten Island and in accordance with such intent, such laws
18 and regulations are hereby continued. It is further provided that all
19 real property tax exemptions provided under article 4 of the real prop-
20 erty tax law shall be continued as shall all rent regulations and other
21 regulations and duties imposed on the owners of property receiving
22 exemptions pursuant to such article until superseded by state law or
23 local law of the city of Staten Island.

24 § 10-002. Section 1 of chapter 21 of the laws of 1962, constituting
25 the local emergency housing rent control act, is amended by adding a new
26 subdivision 2-a to read as follows:

27 2-a. Applicability. For the purposes of this act, a city which is
28 incorporated on or after the first of January next succeeding the date
29 on which this subdivision shall have become a law and which is comprised
30 of a geographical area with respect to which provisions of this act were
31 in effect on the date immediately prior to such incorporation and which
32 city had been wholly contained within a city with a population of one
33 million or more shall continue to be treated as a city with a population
34 of one million or more.

35 § 10-003. Section 4 of section 4 of chapter 576 of the laws of 1974,
36 constituting the emergency tenant protection act of nineteen seventy-
37 four, is amended by adding a new subdivision f to read as follows:

38 f. In the city of Staten Island, the rent guidelines board shall be
39 the rent guidelines board established pursuant to the local law enacted
40 as a successor to the New York city rent stabilization law of nineteen
41 hundred sixty-nine and provided with such powers under such local law.

42 § 10-004. Subdivision b of section 14 of section 4 of chapter 576 of
43 the laws of 1974, constituting the emergency tenant protection act of
44 nineteen seventy-four, is relettered subdivision c and a new subdivision
45 b is added to read as follows:

46 b. in the city of Staten Island; provided that for the purposes of
47 this act, the city of Staten Island shall continue to be treated as a
48 city with a population of one million or more and the reference to any
49 local law applicable to the geographical area of such city prior to its
50 incorporation shall refer to the appropriate successor legislation
51 enacted by the city of Staten Island; and

52 § 10-005. The section heading and subdivision 8 of section 352-eeee of
53 the general business law, as amended by section 1 of part N of chapter
54 36 of the laws of 2019, are amended to read as follows:

55 Conversions to cooperative or condominium ownership in the city of New
56 York or in the city of Staten Island.

1 8. The provisions of this section shall only be applicable in the city
2 of New York and the city of Staten Island.

3 § 10-006. Section 467-b of the real property tax law is amended by
4 adding a new subdivision 14 to read as follows:

5 14. For the purposes of this section, the city of Staten Island shall
6 continue to be treated as a city with a population of one million or
7 more and any reference to a local law enacted pursuant to the local
8 emergency housing rent control act shall also refer to the successor
9 local law enacted by the city of Staten Island.

10 § 10-007. The real property tax law is amended by adding a new section
11 498 to read as follows:

12 § 498. City of Staten Island. For the purposes of this article, the
13 city of Staten Island shall continue to be treated as a city with a
14 population of one million or more and the reference to any local law
15 applicable to the geographical area of such city prior to its incorpo-
16 ration shall be deemed to refer to the appropriate successor legislation
17 enacted by the city of Staten Island.

18 § 10-008. Applicability. It is the intention of the legislature that
19 the state and local laws regulating landlord-tenant relationships such
20 as legal regulated rents, maximum rents and tenancy issues shall contin-
21 ue to provide such regulation; provided, however, that within one
22 hundred twenty days after the date of establishment of the city of
23 Staten Island, the common council of such city must make a determination
24 of whether or not a public emergency exists requiring the continuation
25 of such regulations.

26 § 11-001. Legislative findings. The legislature recognizes that the
27 formation of the city of Staten Island was not contemplated in the
28 establishment of the constitutional real property tax limitations. To
29 the greatest extent practicable, the establishment of the city of Staten
30 Island is formulated to preserve existing local laws, regulations and
31 instrumentalities of government to preserve the status quo and prevent a
32 disruption of government injurious to the public good.

33 The unique factor which determined the establishment of the constitu-
34 tional real property tax limits for the city of New York was the inclu-
35 sion of counties wholly within the city with the city assuming the
36 responsibilities and expenditures for functions normally exercised by
37 the counties in areas outside the city of New York. Staten Island will
38 now share this unique factor with New York city, as the county of Rich-
39 mond is wholly contained within the city of Staten Island.

40 Real property located in cities outside the city of New York is
41 subject to a real property tax limit of four percent, of which two
42 percent is city tax and two percent is county tax. Real property located
43 within New York city is subject to a more restrictive real property tax
44 limit of two and one-half percent, all of which is city tax. County real
45 property tax is not permitted within the city of New York.

46 The people of the city of Staten Island and county of Richmond and the
47 New York state legislature have adopted a charter for the city of Staten
48 Island which continues the New York city form of government placing
49 governmental responsibility on the city rather than the county. The
50 county of Richmond has not assumed new responsibilities justifying an
51 interpretation of the constitutional real property tax limits which
52 would permit the county of Richmond to impose a real property tax. Like-
53 wise the maintenance of the New York city form of government with the
54 usual county responsibilities being a function of city government when
55 combined with the prohibition of a county real property tax, requires an

1 interpretation providing a city real property tax limit of two and one-
2 half percent for the city of Staten Island.

3 Therefore the legislature finds and declares that the existing more
4 restrictive real property tax limits for real property located within
5 the county of Richmond remain in effect, providing a city real property
6 tax limit of two and one-half percent for the city of Staten Island and
7 prohibiting the imposition of a real property tax by the county of Rich-
8 mond.

9 § 12-001. Subdivision (a) of section 1107 of the tax law, as amended
10 by section 1 of part C of chapter 407 of the laws of 1999, is amended to
11 read as follows:

12 (a) General. On the first day of the first month following the month
13 in which a municipal assistance corporation is created under article ten
14 of the public authorities law for a city of one million or more, in
15 addition to the taxes imposed by sections eleven hundred five and eleven
16 hundred ten, there is hereby imposed on such date, within the territo-
17 rial limits of such city (including, in the case of the municipal
18 assistance corporation for the city of New York, the city of Staten
19 Island), and there shall be paid, additional taxes, at the rate of four
20 percent, which except as provided in subdivision (b) of this section,
21 shall be identical to the taxes imposed by sections eleven hundred five
22 and eleven hundred ten. Such sections and the other sections of this
23 article, including the definition and exemption provisions, shall apply
24 for purposes of the taxes imposed by this section in the same manner and
25 with the same force and effect as if the language of those sections had
26 been incorporated in full into this section and had expressly referred
27 to the taxes imposed by this section.

28 § 12-002. Subdivision (c) of section 1107 of the tax law, as amended
29 by chapter 588 of the laws of 2000, is amended to read as follows:

30 (c) Tax on sale of service of parking, garaging or storing of motor
31 vehicles. On the first day of the first month following the month in
32 which a municipal assistance corporation is created under article ten of
33 the public authorities law for a city of one million or more, in addi-
34 tion to the taxes imposed by sections eleven hundred five, eleven
35 hundred ten and subdivision (a) of this section, there is hereby imposed
36 on such date, within the territorial limits of such city (including, in
37 the case of the municipal assistance corporation for the city of New
38 York, the city of Staten Island), and there shall be paid, additional
39 taxes at the rate of six percent on receipts from every sale of the
40 service of providing parking, garaging or storing for motor vehicles by
41 persons operating a garage (other than a garage which is part of prem-
42 ises occupied solely as a private one or two family dwelling), parking
43 lot or other place of business engaged in providing parking, garaging or
44 storing of motor vehicles provided, however, that this subdivision shall
45 not apply to such facilities owned and operated by such city or an agen-
46 cy or instrumentality of such city or a public corporation the majority
47 of whose members are appointed by the chief executive officer of such
48 city or the legislative body of such city or both of them; provided,
49 however, that receipts for such services paid to a homeowner's associ-
50 ation by its members or receipts paid by members of a homeowner's asso-
51 ciation to a person leasing the parking facility from the homeowner's
52 association shall not be subject to the tax imposed by this subdivision.
53 For purposes of this subdivision, a homeowner's association is an asso-
54 ciation (including a cooperative housing or apartment corporation) (i)
55 the membership of which is comprised exclusively of owners or residents
56 of residential dwelling units, including owners of units in a condomin-

1 ium, and including shareholders in a cooperative housing or apartment
2 corporation, where such units are located in a defined geographical area
3 such as a housing development or subdivision; and (ii) which owns or
4 operates a garage, parking lot or other place of business engaged in
5 providing parking, garaging or storing for motor vehicles located in
6 such area for use (whether or not exclusive) by such owners or resi-
7 dents. All provisions set forth in this article applicable to the taxes
8 imposed under section eleven hundred five, including the definition and
9 exemption provisions of this article, shall apply with respect to a tax
10 imposed under this subdivision, except as to rate and except as other-
11 wise provided herein. The transitional provisions contained in section
12 eleven hundred six shall not apply to the taxes imposed by this section.

13 § 12-003. Intentionally omitted.

14 § 12-004. Section 1210 of the tax law is amended by adding two new
15 subdivisions (k) and (l) to read as follows:

16 (k) In the case of the municipal assistance corporation for the city
17 of New York the power of the city of Staten Island to adopt and amend
18 local laws, ordinances or resolutions imposing taxes pursuant to the
19 authority of such section shall, notwithstanding any provisions of arti-
20 cle twenty-nine of this chapter to the contrary, be suspended until all
21 the notes and bonds of such municipal assistance corporation shall have
22 been fully paid and discharged together with interest on unpaid install-
23 ments of interest.

24 (l) Notwithstanding the provisions of subdivision (k) of this section,
25 the city of Staten Island is hereby authorized and empowered to adopt
26 and amend local laws, imposing taxes, at a rate not to exceed two
27 percent on the receipts of sales from the services of laundering, dry-
28 cleaning, tailoring, weaving, pressing, shoe repairing and shoe shining,
29 and charges to a patron for admission to, or use of, facilities for
30 sporting activities in which the patron is to be a participant such as
31 bowling alleys and swimming pools. Such taxes shall be administered,
32 collected and distributed by the state tax commission as provided in
33 subpart B of part three and in part four of this article.

34 § 12-005. Subdivisions 3 and 4 of section 92-d of the state finance
35 law, subdivision 3 as amended by section 4 of part A of chapter 88 of
36 the laws of 2000 and subdivision 4 as amended by section 11 of part SS1
37 of chapter 57 of the laws of 2008, are amended to read as follows:

38 3. The taxes, interest and penalties imposed, pursuant to sections
39 eleven hundred seven or eleven hundred eight (as the case may be) of the
40 tax law within the territorial limits of a city in aid of which a munic-
41 ipal assistance corporation has been created (including, in the case of
42 the municipal assistance corporation for the city of New York, the city
43 of Staten Island), and received by the commissioner of taxation and
44 finance, after deducting the amount which the commissioner of taxation
45 and finance shall determine to be necessary for reasonable costs of the
46 commissioner of taxation and finance in administering, collecting and
47 distributing such taxes, shall be appropriated (i) to the municipal
48 assistance corporation which has been created in aid of such city in
49 order to enable such corporation to fulfill the terms of any agreements
50 made with the holders of its notes and bonds and to carry out its corpo-
51 rate purposes, including the maintenance of the capital reserve fund,
52 and (ii) the balance, if any, to the city in aid of which such corpo-
53 ration has been created, or to a public benefit corporation to which the
54 tax may be otherwise payable pursuant to law, as hereinafter provided.
55 Notwithstanding the provisions of this subdivision, in the case of the
56 municipal assistance corporation for the city of New York, such balance,

1 if any, shall be divided between the city of New York and the city of
2 Staten Island and paid, as hereinafter provided.

3 4. On or before the twelfth day of each month, the commissioner of
4 taxation and finance shall certify to the comptroller the amount of all
5 revenues so received during the prior month as a result of the taxes,
6 interest and penalties so imposed and in addition on or before the last
7 day of June the commissioner shall certify the amount of such revenues
8 received during and including the first twenty-five days of June. In
9 the case of the municipal assistance corporation for the city of New
10 York, the commissioner of taxation and finance shall certify separately
11 the amounts of such revenues received from within the territorial limits
12 of the city of New York and the territorial limits of the city of Staten
13 Island. The amount of revenues so certified shall be deposited by the
14 comptroller in the municipal assistance tax fund and the amount attrib-
15 utable to the taxes, interest and penalties imposed within the territo-
16 rial limits of a city in aid of which a municipal assistance corporation
17 has been created including, in the case of the municipal assistance
18 corporation for the city of New York, the city of Staten Island shall be
19 credited to a special account established in such fund for such corpo-
20 ration. Notwithstanding the foregoing provisions, the commissioner of
21 taxation and finance may prorate revenue attributable to the first or
22 last quarterly return period during which the taxes imposed by section
23 eleven hundred seven or eleven hundred eight (as the case may be) of the
24 tax law apply so as to separate from the revenue collected for that
25 quarter pursuant to such taxes the revenue collected pursuant to local
26 legislation adopted by a city pursuant to section twelve hundred ten or
27 twelve hundred twelve-A of the tax law. Such a proration by the commis-
28 sioner of taxation and finance shall be made on the basis of the ratio
29 of the number of months during which such taxes were imposed during such
30 quarterly return period to the total number of months in such quarterly
31 return period when such proration is reasonably necessary to ascertain
32 the amount of such money which must be deposited by the comptroller in
33 such special account and the amount of such money which must be deposit-
34 ed pursuant to section twelve hundred sixty-one of the tax law. The
35 commissioner of taxation and finance shall not be held liable for any
36 inaccuracy in any certification under this subdivision.

37 § 12-006. Subdivision 6 of section 92-d of the state finance law, as
38 amended by section 4 of part A of chapter 88 of the laws of 2000, is
39 amended to read as follows:

40 6. Upon receipt by the comptroller of a certificate or certificates
41 from the [~~chairman~~] chairperson of a municipal assistance corporation
42 that such corporation requires a payment or payments in order to comply
43 with any agreement with the holders of its notes and bonds and to carry
44 out its corporate purposes, including the maintenance of the capital
45 reserve fund, from the special account established for such corporation,
46 each of which certificates shall specify the required payment or
47 payments and the date when the payment or payments is required, the
48 comptroller shall pay from such special account on or before the speci-
49 fied date or within thirty days after such receipt, whichever is later,
50 to such corporation, as the [~~chairman~~] chairperson thereof may direct in
51 any such certificate, the amount or amounts so certified. In the case
52 of the municipal assistance corporation for the city of New York, each
53 amount so paid shall be comprised of revenues attributable to receipts
54 from both the city of New York and the city of Staten Island in the same
55 proportion that such revenues were received during the period covered by
56 each such certification. The [~~chairman~~] chairperson of such corporation

1 shall furnish the commissioner of taxation and finance with copies of
2 such certificates. The comptroller shall from time to time, but in no
3 event later than the fifteenth day of October, January and April and the
4 last day of June of each fiscal year, pay over and distribute to the
5 chief fiscal officer of the city in aid of which such municipal assist-
6 ance corporation has been created to be paid into the treasury of such
7 city to the credit of the general fund, or pay over and distribute to a
8 public benefit corporation to which the tax may otherwise be payable
9 pursuant to law, all revenues in the special account established for
10 such corporation in the municipal assistance tax fund, if any, in excess
11 of the aggregate amount which the [~~chairman~~] chairperson of such corpo-
12 ration has certified to the comptroller and which has been previously
13 appropriated and paid to such corporation as hereinabove authorized.
14 Notwithstanding the provisions of this subdivision, in the case of the
15 municipal assistance corporation for the city of New York, the comp-
16 troller shall from time to time, but in no event later than the
17 fifteenth of October, January, and April and the last day of June of
18 each fiscal year, (a) apportion between the city of New York and the
19 city of Staten Island the revenues, if any, in the special account
20 established for such corporation in the municipal assistance tax fund on
21 the basis of the locus of their receipt and (b) pay over and distribute
22 to the chief fiscal officers of such cities to pay into their respective
23 treasuries to the credit of the general fund all such respective reven-
24 ues in excess of the aggregate amount which the chairperson of such
25 corporation has certified to the comptroller and which has been previ-
26 ously appropriated and paid to such corporation as hereinabove author-
27 ized. In no event shall the comptroller pay over and distribute any
28 revenues (other than the amount to be deducted for administering,
29 collecting and distributing such sales and compensating use taxes) to
30 any person other than the municipal assistance corporation unless and
31 until the aggregate of all payments certified to the comptroller as
32 required by such corporation as of such date in order to comply with its
33 agreements with the holders of its notes and bonds and to carry out its
34 corporate purposes, including the maintenance of the capital reserve
35 fund, which remain unappropriated or unpaid to such corporation shall
36 have been appropriated to such corporation and shall have been paid in
37 full; provided, however, that no person, including such corporation or
38 the holders of its notes or bonds shall have any lien on such revenues
39 and such agreement shall be executory only to the extent of such reven-
40 ues available to the state in such special account. On the day on which
41 the comptroller pays over and distributes to the chief fiscal officer of
42 such city or cities any revenues from such special account the commis-
43 sioner of taxation and finance shall certify to the comptroller the
44 amount to be deducted for administering, collecting and distributing the
45 tax imposed pursuant to section eleven hundred seven or eleven hundred
46 eight (as the case may be) of the tax law within the territorial limits
47 of such city or cities since he or she last certified such amount and
48 the comptroller shall pay such amount into the general fund of the state
49 treasury to the credit of the state purposes fund therein.

50 § 12-007. Subdivision 3 of section 92-e of the state finance law, as
51 amended by chapter 187 of the laws of 1995, is amended to read as
52 follows:

53 3. Such amounts, including per capita aid apportioned to a city in aid
54 of which a municipal assistance corporation has been created (including,
55 in the case of the municipal assistance corporation for the city of New
56 York, the city of Staten Island), shall be deposited by the comptroller

1 to the credit of the special account established for the municipal
2 assistance corporation which has been created in aid of such city in
3 order to enable such corporation to fulfill the terms of any agreements
4 made with the holders of its notes and bonds and to carry out its corpo-
5 rate purposes, including the maintenance of the capital reserve fund
6 securing such bonds and notes, and, subject to the provisions of section
7 fifty-four of this chapter, and subdivisions five and five-a of this
8 section, the balance, if any, shall be paid to the chief fiscal officer
9 of the city in aid of which such corporation has been created as herein-
10 after provided. Notwithstanding the provisions of this subdivision, in
11 the case of the municipal assistance corporation for the city of New
12 York, such balance, if any, shall be divided between the city of New
13 York and the city of Staten Island and paid, as hereinafter provided.

14 § 12-008. Subdivision 5 of section 92-e of the state finance law, as
15 amended by chapter 55 of the laws of 1992, is amended to read as
16 follows:

17 5. Upon receipt by the comptroller of a certificate or certificates
18 from the [~~chairman~~] chairperson of a municipal assistance corporation
19 that such corporation requires a payment or payments in order to comply
20 with any agreement with the holders of its notes and bonds and to carry
21 out its corporate purposes, including the maintenance of the capital
22 reserve fund securing such bonds, from the appropriate special account
23 established for such corporation, each of which certificates shall spec-
24 ify the required payment or payments and the date when the payment or
25 payments is required, the comptroller shall pay from such special
26 account on or before the specified date or within thirty days after
27 receipt of such certificate or certificates, whichever is later, to such
28 corporation, as the [~~chairman~~] chairperson thereof may direct in any
29 such certificate, the amount or amounts so certified. In the case of
30 the municipal assistance corporation for the city of New York, each
31 amount so paid shall be comprised of per capita aid apportioned to the
32 city of New York and the city of Staten Island in the same proportion
33 that such amounts were so apportioned during the period covered by each
34 such certification. The comptroller shall from time to time, but in no
35 event later than the fifteenth day of October, January and April and the
36 last day of June of each fiscal year, pay over and distribute to the
37 chief fiscal officer of the city in aid of which such municipal assist-
38 ance corporation has been created to be paid into the treasury of such
39 city to the credit of the general fund all revenues in the special
40 account established for such corporation in the municipal assistance
41 state aid fund, if any, in excess of (i) the aggregate amount which the
42 [~~chairman~~] chairperson of such corporation has certified to the comp-
43 troller and which has been previously paid to such corporation as herein
44 above authorized, and (ii) amounts to be refunded to the general fund of
45 the state of New York pursuant to subdivision five-a of this section.
46 Notwithstanding the provisions of this subdivision, in the case of the
47 municipal assistance corporation for the city of New York, the comp-
48 troller shall from time to time, but in no event later than the
49 fifteenth of October, January and April and the last day of June of each
50 fiscal year, (a) apportion between the city of New York and the city of
51 Staten Island the revenues, if any, in the special account established
52 for such corporation in the municipal assistance state aid fund on the
53 basis of the amounts apportioned to each such city pursuant to section
54 fifty-four of this chapter and (b) pay over and distribute to the chief
55 fiscal officers of such cities to be paid into their respective treas-
56 uries to the credit of the general fund all such respective revenues in

1 excess of the aggregate amount which the chairperson of such corporation
2 has certified to the comptroller and which has been previously paid to
3 such corporation as hereinabove authorized. In no event shall the comp-
4 troller pay over and distribute any revenues to any person other than
5 the municipal assistance corporation unless and until the aggregate of
6 all payments certified to the comptroller as required by such corpo-
7 ration as of such date in order to comply with its agreements with the
8 holders of its notes and bonds and to carry out its corporate purposes,
9 including the maintenance of the capital reserve fund securing such
10 bonds, which remain unpaid to such corporation shall have been paid in
11 full to such corporation; provided, however, that no person, including
12 such corporation or the holders of its notes or bonds shall have any
13 lien on such revenues and such agreement shall be executory only to the
14 extent of such revenues available to the state in such special account.

15 § 12-009. Paragraph c of subdivision 6 of section 54 of the state
16 finance law, as added by chapter 430 of the laws of 1997, is amended to
17 read as follows:

18 c. Upon such certification of the amounts payable to counties, cities,
19 villages and towns for town-wide and town outside village purposes, such
20 per capita aid shall be apportioned and paid to the chief fiscal officer
21 of each such locality pursuant to this section on audit and warrant of
22 the state comptroller out of moneys appropriated by the legislature for
23 such purpose to the credit of the local assistance account in the gener-
24 al fund of the state treasury; provided however that upon such certifi-
25 cation of amounts payable to the city of New York or, the city of
26 Staten Island, if applicable, such per capita aid shall be apportioned
27 and paid as follows: (i) any amounts required to be paid to the city
28 university construction fund pursuant to the city university
29 construction fund act, (ii) any amounts required to be paid to the New
30 York city housing development corporation pursuant to the New York city
31 housing development corporation act, (iii) any amounts required to be
32 paid by the city to the New York city transit authority pursuant to the
33 provisions of chapter seven of the laws of nineteen hundred seventy-two,
34 (iv) any amounts required to be paid by the city to the state to repay
35 an advance made in nineteen hundred seventy-four to subsidize the fare
36 of the New York city transit authority, (v) five hundred thousand
37 dollars to the chief fiscal officer of the city of New York for payment
38 to the trustees of the police pension fund of such city pursuant to the
39 provisions of paragraph e of this subdivision, (vi) eighty million
40 dollars to the special account for the municipal assistance corporation
41 for the city of New York in the municipal assistance tax fund created
42 pursuant to section ninety-two-d of this chapter to the extent that such
43 amount has been included by the municipal assistance corporation for the
44 city of New York in any computation for the issuance of bonds on a pari-
45 ty with outstanding bonds pursuant to a contract with the holders of
46 such bonds prior to the issuance of any other bonds secured by payments
47 from the municipal assistance state aid fund created pursuant to section
48 ninety-two-e of this chapter, (vii) the balance to the special account
49 for the municipal assistance corporation for the city of New York in the
50 municipal assistance state aid fund created pursuant to section ninety-
51 two-e of this chapter, and (viii) any amounts to be refunded to the
52 general fund of the state of New York pursuant to the annual appropri-
53 ation enacted for the municipal assistance state aid fund. Notwithstand-
54 ing any existing law, no payments of per capita aid payable to the city
55 of New York shall be paid to the state of New York municipal bond bank
56 agency, the New York state sports authority or the transit construction

1 fund so long as amounts of such aid are required to be paid into the
2 municipal assistance state aid fund, and thereafter, after payment of
3 the amounts described in subparagraphs (i) through (viii) of this para-
4 graph the balance shall be paid (A) to the state in repayment of the
5 appropriation of two hundred fifty million dollars made to the city
6 pursuant to chapter two hundred fifty-seven of the laws of nineteen
7 hundred seventy-five providing emergency financial assistance to the
8 city of New York at the extraordinary session held in such year, as
9 amended, (B) to the state of New York municipal bond bank agency to the
10 extent provided by section twenty-four hundred thirty-six of the public
11 authorities law, (C) to the New York state sports authority to the
12 extent provided by section twenty-four hundred sixty-three of the public
13 authorities law, (D) to the transit construction fund to the extent
14 provided by section twelve hundred twenty-five-i of the public authori-
15 ties law, and thereafter (E) to the city of New York.

16 § 12-010. Subparagraphs 1 and 2 of paragraph d of subdivision 6 of
17 section 54 of the state finance law, as added by chapter 430 of the laws
18 of 1997, are amended to read as follows:

19 (1) to the city of New York and the city of Staten Island, on the
20 twenty-fifth days of April, June, October and February;

21 (2) to every county, city, village or town, other than the city of
22 New York and the city of Staten Island, whose fiscal year commences on
23 the first day of June or July, on the twenty-fifth days of April, May,
24 September and December;

25 § 12-011. Subdivisions 1 and 2 of section 3034 of the public authori-
26 ties law, as added by chapter 169 of the laws of 1975, are amended to
27 read as follows:

28 1. The corporation shall be administered by a board of directors,
29 consisting of nine directors, none of whom shall be officers or employ-
30 ees of the federal government or of the state or political subdivisions
31 thereof. All of the directors shall be appointed by the governor with
32 the advice and consent of the senate, provided that four of such direc-
33 tors shall be appointed upon written recommendation of the mayor. Of
34 the directors initially appointed upon the written recommendation of the
35 mayor, one shall serve for a term ending December thirty-first, nineteen
36 hundred seventy-six; one shall serve for a term ending December thirty-
37 first, nineteen hundred seventy-seven; one shall serve for a term ending
38 December thirty-first, nineteen hundred seventy-eight; and one shall
39 serve for a term ending December thirty-first, nineteen hundred seven-
40 ty-nine. The provisions of this subdivision notwithstanding, of the
41 directors appointed upon the recommendation of the mayor, the director
42 whose term expires on the December thirty-first next preceding the
43 establishment of a city of Staten Island, and any successor thereto,
44 shall be appointed only upon the written recommendation of the mayor of
45 the city of Staten Island. Of the remaining directors initially
46 appointed by the governor, one shall serve for a term ending December
47 thirty-first, nineteen hundred seventy-six; one shall serve for a term
48 ending December thirty-first, nineteen hundred seventy-seven; one shall
49 serve for a term ending December thirty-first, nineteen hundred seven-
50 ty-eight; and two shall serve for a term ending December thirty-first,
51 nineteen hundred seventy-nine. Each director shall hold office until
52 his or her successor has been appointed and qualified. Thereafter each
53 director appointed by the governor shall serve a term of four years,
54 except that any director appointed to fill a vacancy shall serve only
55 until the expiration of his predecessor's term.

1 2. The speaker and the minority leader of the assembly, the president
2 pro-tem and the minority leader of the senate, the city board of esti-
3 mate acting by majority vote, [~~and~~] the [~~vice-chairman~~] vice-chairperson
4 of the city council, the comptroller of the city of Staten Island and
5 the common council of the city of Staten Island shall each be entitled
6 to appoint a representative to the board of directors. Each such
7 representative shall be entitled to receive notice of and to attend all
8 meetings of the board of directors but shall not be entitled to vote.
9 No representative shall be an employee or officer of the federal, state
10 or city governments. Each representative shall serve at the pleasure of
11 the appointing official or body, shall be eligible for reappointment,
12 and shall hold office until his or her successor has been appointed.

13 § 12-012. Subdivision 1 of section 3036 of the public authorities law,
14 as amended by chapter 201 of the laws of 1978, is amended to read as
15 follows:

16 1. Not less than one hundred twenty days before the beginning of each
17 fiscal year of the corporation (but not later than July 1, 1975 for the
18 fiscal year ending June 30, 1976), the [~~chairman~~] chairperson of the
19 board of directors of the corporation shall certify to the state comp-
20 troller and to the mayor a schedule setting forth the cash requirements
21 of the corporation for such fiscal year and the time or times when such
22 cash is required. The total amount so certified by such [~~chairman~~]
23 chairperson for such fiscal year shall be equal to: (i) the amounts
24 which are required to be deposited in the capital reserve fund author-
25 ized to be created and established pursuant to subdivision three of this
26 section during such fiscal year in order to maintain such capital
27 reserve fund of the corporation at the level required in accordance with
28 subdivision five of this section; (ii) the amounts required to be depos-
29 ited in the debt service fund of the corporation to pay all interest and
30 all payments of principal and redemption premium, if any, on notes and
31 bonds secured by such debt service fund maturing or otherwise coming due
32 during such fiscal year; and (iii) the amounts required to be deposited
33 in the operating fund of the corporation, as determined by the corpo-
34 ration, to meet the operating requirements and other expenses of the
35 corporation during such fiscal year. If any increase shall occur in the
36 cash requirements specified above, or if payments are required at a time
37 or times earlier than previously certified or if the city shall for any
38 reason fail to make timely payment of the principal and accrued interest
39 due on any obligation issued by the city to the corporation and maturing
40 within the same fiscal year, such [~~chairman~~] chairperson shall certify a
41 revised schedule of cash requirements for such fiscal year to the state
42 comptroller and to the mayor. The schedule accompanying each certifi-
43 cation (or revision thereof) shall provide for such payment dates as
44 the corporation deems appropriate to assure that sufficient funds will
45 be available from the sources identified below to enable it to meet its
46 current obligations as they come due. Upon receipt of such certifi-
47 cation, or any revision thereof, the state comptroller shall pay such
48 amount to the corporation for deposit in the appropriate funds, in
49 accordance with such certification from the special account established
50 for the corporation in the municipal assistance tax fund, in accordance
51 with subdivision one of section ninety-two-d of the state finance law,
52 including any amount transferred to the municipal assistance tax fund
53 from the stock transfer tax fund pursuant to subdivision four of section
54 [~~92-b~~] ninety-two-b of the state finance law. Any such payment shall
55 be made within thirty days of receipt of the certification or at the
56 time specified in the certification, whichever is later; provided that

1 any such amounts shall have been first appropriated by the state for
2 such purpose or shall have been otherwise made available. Any amount so
3 paid to the corporation shall be deducted from the amount otherwise
4 payable to the city or the city of Staten Island, as the case may be,
5 from the municipal assistance tax fund established by section ninety-
6 two-d of the state finance law and shall not obligate the state to make,
7 nor entitle the city or the city of Staten Island, as the case may be,
8 to receive, any additional payments.

9 § 12-013. Subdivision 1 of section 3036-a of the public authorities
10 law, as amended by chapter 55 of the laws of 1992, is amended to read as
11 follows:

12 1. In addition to the total amount certified by such [~~chairman~~] chair-
13 person for such fiscal year, all as referred to in subdivision one of
14 section three thousand thirty-six, the [~~chairman~~] chairperson shall at
15 the same time certify to the state comptroller and to the mayor a sched-
16 ule setting forth additional cash requirements of the corporation which
17 shall be equal to: (i) the amounts which are required to be deposited in
18 the capital reserve fund authorized to be created and established pursu-
19 ant to subdivision two of this section (in this section called the capi-
20 tal reserve fund) during such fiscal year in order to maintain the capi-
21 tal reserve fund at the level required in accordance with subdivision
22 four of this section; (ii) the amounts required to be deposited in the
23 bond service fund of the corporation to pay all interest and all
24 payments of principal and redemption premium, if any, on notes and bonds
25 payable from the sources hereinafter identified in this section and
26 maturing or otherwise coming due during such fiscal year; and (iii) the
27 amounts required to be deposited in the operating fund of the corpo-
28 ration heretofore established, as determined by the corporation, to meet
29 the operating requirements and other expenses of the corporation during
30 such fiscal year. If any increase shall occur in such additional cash
31 requirements specified above, or if payments are required at a time or
32 times earlier than previously certified or if the city shall for any
33 reason fail to make timely payment of the principal and accrued interest
34 due on any obligation issued by the city to the corporation and maturing
35 within the same fiscal year, such [~~chairman~~] chairperson shall certify a
36 revised schedule of such additional cash requirements for such fiscal
37 year to the state comptroller and to the mayor. The schedule accompany-
38 ing each certification (or revision thereof) shall provide for such
39 payment dates as the corporation deems appropriate to assure that suffi-
40 cient funds will be available from the sources identified below to
41 enable it to meet its current obligations under this section as they
42 come due. Upon receipt of such certification, or any revision thereof,
43 the state comptroller shall pay such amount to the corporation for
44 deposit in the appropriate funds referred to in this section, in accord-
45 ance with such certification from the special account established for
46 the corporation in the municipal assistance state aid fund in accord-
47 ance with subdivision one of section ninety-two-e of the state finance
48 law and, subject to agreements with outstanding bond and note holders of
49 the corporation, from the special account established for the corpo-
50 ration in the municipal assistance tax fund, in accordance with subdivi-
51 sion one of section ninety-two-d of the state finance law, including any
52 amount transferred to the municipal assistance tax fund from the stock
53 transfer tax fund pursuant to subdivision four of section ninety-two-b
54 of the state finance law. Any such payment shall be made within thirty
55 days of receipt of the certification or at the time specified in the
56 certification, whichever is later; provided that any such amounts shall

1 have been first appropriated by the state for such purpose or shall have
2 been otherwise made available. Any amount paid to the corporation from
3 such municipal assistance state aid fund shall be deducted from the
4 amount otherwise payable to the city or the city of Staten Island, as
5 the case may be, as per capita aid pursuant to sections fifty-four and
6 ninety-two-e of the state finance law and shall not obligate the state
7 to make, nor entitle the city or the city of Staten Island, to receive,
8 any additional payments of per capita aid. Any amount so paid to the
9 corporation from the municipal assistance tax fund shall, in addition to
10 the amount deducted pursuant to subdivision one of section three thou-
11 sand thirty-six, be deducted from the amount otherwise payable to the
12 city or the city of Staten Island, as the case may be, from the munici-
13 pal assistance tax fund and shall not obligate the state to make, nor
14 entitle the city or the city of Staten Island to receive, any additional
15 payments from such municipal assistance tax fund.

16 § 12-014. Subdivision 1 of section 3036-b of the public authorities
17 law, as amended by chapter 55 of the laws of 1992, is amended to read as
18 follows:

19 1. In addition to the total amount certified by such [~~chairman~~] chair-
20 person for such fiscal year, all as referred to in subdivision one of
21 each of sections three thousand thirty-six and three thousand thirty-
22 six-a of this title, the [~~chairman~~] chairperson shall at the same time
23 certify to the state comptroller and to the mayor a schedule setting
24 forth additional cash requirements of the corporation which shall be
25 equal to: (i) the amounts required to be deposited in the bond payment
26 fund of the corporation to pay all interest and all payments of princi-
27 pal and redemption premium, if any, on bonds and notes payable from the
28 sources hereinafter identified in this section and maturing or otherwise
29 coming due during such fiscal year; (ii) the amounts required to be
30 deposited in the operating fund of the corporation heretofore estab-
31 lished, as determined by the corporation, to meet the operating require-
32 ments and other expenses of the corporation during such fiscal year to
33 the extent not otherwise provided for; and (iii) the amounts required to
34 be deposited in the bond reserve fund created and established pursuant
35 to the agreements of the corporation made with the holders of its bonds
36 or notes issued pursuant to subdivision two-b of section three thousand
37 thirty-three of this title during such fiscal year in order to maintain
38 the bond reserve fund at the level required in accordance with the
39 agreements of the corporation made with the holders of its bonds or
40 notes issued pursuant to subdivision two-b of section three thousand
41 thirty-three of this title. If any increase shall occur in such addi-
42 tional cash requirements specified above, or if payments are required at
43 a time or times earlier than previously certified or if the city shall,
44 for any reason, fail to make timely payment of the principal and accrued
45 interest due on any obligation issued by the city to the corporation and
46 maturing within the same fiscal year, such [~~chairman~~] chairperson shall
47 certify a revised schedule of such additional cash requirements for such
48 fiscal year to the state comptroller and to the mayor. The schedule
49 accompanying each certification, or revision thereof, shall provide for
50 such payment dates as the corporation deems appropriate to assure that
51 sufficient funds will be available from the sources identified below to
52 enable it to meet its current obligations under this section as they
53 come due. Upon receipt of such certification, or any revision thereof,
54 the state comptroller shall pay such amount to the corporation for
55 deposit in the appropriate funds referred to in this section, in accord-
56 ance with such certification and subject to agreements with holders of

1 outstanding bonds and notes of the corporation, from the special account
2 established for the corporation in the municipal assistance state aid
3 fund in accordance with subdivision one of section ninety-two-e of the
4 state finance law and from the special account established for the
5 corporation in the municipal assistance tax fund in accordance with
6 subdivision one of section ninety-two-d of the state finance law,
7 including any amount transferred to the municipal assistance tax fund
8 from the stock transfer tax fund pursuant to subdivision four of section
9 ninety-two-b of the state finance law. Any such payment shall be made
10 within thirty days of receipt of the certification or at the time speci-
11 fied in the certification, whichever is later; provided that any such
12 amounts shall have been first appropriated by the state for such purpose
13 or shall have been otherwise made available. Any amount paid to the
14 corporation from such municipal assistance state aid fund, in addition
15 to the amount deducted pursuant to subdivision one of section three
16 thousand thirty-six-a of this title, shall be deducted from the amount
17 otherwise payable to the city or the city of Staten Island, as the case
18 may be, as per capita aid pursuant to sections fifty-four and ninety-
19 two-e of the state finance law and shall not obligate the state to make,
20 nor entitle the city or the city of Staten Island to receive, any addi-
21 tional payments of per capita aid. Any amount so paid to the corporation
22 from the municipal assistance tax fund, in addition to the amount
23 deducted pursuant to subdivision one of each of section three thousand
24 thirty-six or three thousand thirty-six-a of this title, shall be
25 deducted from the amount otherwise payable to the city or the city of
26 Staten Island, as the case may be, from the municipal assistance tax
27 fund and shall not obligate the state to make, nor entitle the city or
28 the city of Staten Island to receive, any additional payments from such
29 municipal assistance tax fund.

30 § 12-015. Section 6 of section 2 of chapter 868 of the laws of 1975,
31 constituting the New York state financial emergency act for the city of
32 New York, subdivision 1 as amended by chapter 777 of the laws of 1978,
33 subdivision 3 as amended by chapter 869 of the laws of 1975 and subdivi-
34 sion 4 as amended by chapter 201 of the laws of 1978, is amended to read
35 as follows:

36 § 6. Administration of the board. 1. The membership of the board
37 shall be the governor, the state comptroller (pursuant to [~~his~~] such
38 official's authority to supervise the accounts of any political subdivi-
39 sion of the state), the mayor, the city comptroller, the mayor of the
40 city of Staten Island, the comptroller of the city of Staten Island, and
41 three members appointed by the governor with the advice and consent of
42 the senate. At least two of the appointed members shall be residents of
43 the city or have their principal place of business in the city. The
44 mayor of the city of Staten Island may recommend to the governor the
45 appointment of one such appointed member. Such appointed members shall
46 serve at the pleasure of the governor. The governor shall be the [~~chair-~~
47 ~~man~~] chairperson of the board and the governor or [~~his~~] the governor's
48 representative shall preside over all meetings of the board. The board
49 shall act by majority vote of the entire board, provided, however, on
50 matters affecting only the city, as determined by the governor, the
51 state comptroller and the appointed members, the mayor of the city of
52 Staten Island and the comptroller of the city of Staten Island shall not
53 vote, and on matters affecting only the city of Staten Island, as deter-
54 mined by the governor, the state comptroller and the appointed members,
55 the mayor and the city comptroller shall not vote. Such officials not
56 voting shall not be considered members of the board for determining a

1 majority. The board shall maintain a record of its proceedings in such
2 form as it may determine, but such record shall indicate attendance and
3 all votes cast by each member. Every member of the board, who is other-
4 wise an elected official of the state or city, shall be entitled to
5 designate a representative to attend, in [~~his~~] such official's place,
6 meetings of the board and to vote or otherwise act in [~~his~~] such offi-
7 cial's behalf. Written notice of such designation shall be furnished to
8 the board by the designating member prior to any meeting attended by
9 [~~his~~] such official's representative. Any such representative shall
10 serve at the pleasure of the designating member. No such representative
11 shall be authorized to delegate any of [~~his~~] such representative's
12 duties or functions to any other person. The lieutenant governor,
13 temporary president of the senate, the minority leader of the senate,
14 speaker and minority leader of the assembly, the president of the coun-
15 cil of the city of New York, the city board of estimate acting by major-
16 ity vote, the speaker and the minority leader of the common council of
17 the city of Staten Island and the [~~vice-chairman~~] vice-chairperson and
18 the minority leader of the council of the city of New York, shall each
19 be entitled to appoint a representative to the board. Each such repre-
20 sentative shall be entitled to receive notice of and to attend all meet-
21 ings of the board but shall not be entitled to vote. No representative
22 shall be an employee or officer of the federal, state or city govern-
23 ments. Each representative shall serve at the pleasure of the appoint-
24 ing official or body, shall be eligible for reappointment, and shall
25 hold office until [~~his~~] such representative's successor has been
26 appointed.

27 2. Notwithstanding any inconsistent provisions of law, general,
28 special or local, no officer or employee of the state, or political
29 subdivision of the state, any governmental entity operating any public
30 school or college or other public agency or instrumentality or unit of
31 government which exercises governmental powers under the laws of the
32 state, shall forfeit [~~his~~] such person's office or employment by reason
33 of [~~his~~] such person's acceptance or appointment as a member, represen-
34 tative, officer, employee or agent of the board nor shall service as
35 such member, representative, officer, employee or agent of the board be
36 deemed incompatible or in conflict with such office or employment.

37 3. The members of the board appointed by the governor and all repre-
38 sentatives designated by members of the board shall serve without salary
39 or per diem allowance but shall be entitled to reimbursement for actual
40 and necessary expenses incurred in the performance of official duties
41 under this act, provided however that such members and representatives
42 are not, at the time such expenses are incurred, public employees other-
43 wise entitled to such reimbursement.

44 4. The governor and the mayor, jointly, shall appoint an executive
45 director of the board who shall serve at the pleasure of the board and
46 may be removed by the board. The board may delegate to the executive
47 director or to one or more of its other officers, employees or agents,
48 such powers and duties as the board may deem proper, except any duties
49 inconsistent with the duties and functions prescribed by any other
50 office or position any such person may hold.

51 § 12-016. Section 7 of section 2 of chapter 868 of the laws of 1975,
52 constituting the New York state financial emergency act for the city of
53 New York, paragraphs a, b, c, e, f and g of subdivision 1, paragraphs
54 (b) and (f) of subdivision 3 and subdivisions 4 and 6 as amended and
55 subdivision 7 as added by chapter 777 of the laws of 1978, paragraph h
56 of subdivision 1 as amended by chapter 870 of the laws of 1975, para-

1 graphs d and i of subdivision 1 as amended by chapter 830 of the laws of
2 1987, subdivisions 3 and 5 as added by chapter 201 of the laws of 1978,
3 and paragraph (i) of subdivision 3 as amended by chapter 285 of the laws
4 of 1985, is amended to read as follows:

5 § 7. Functions of the board. 1. In carrying out the purposes of this
6 act, the board shall perform the following functions:

7 a. In accordance with the provisions of section eight of this act, the
8 board shall (i) consult with the city and the covered organizations and
9 to the extent it deems it necessary or appropriate to accomplish the
10 purposes of this act, the city of Staten Island, in the preparation of
11 the financial plan, and certify to the city the revenue estimates
12 approved therein, (ii) prescribe the form of the financial plan and the
13 supporting information required in connection therewith, and (iii) exer-
14 cise the rights of approval, disapproval and modification with respect
15 to the financial plan, including but not limited to the revenue esti-
16 mates contained therein.

17 b. The board, to the extent it deems it necessary or appropriate in
18 order to accomplish the purposes of this act, shall establish and adopt
19 procedures with respect to the (i) proper maintenance of the board fund,
20 (ii) the deposit and investment of revenues in such fund and (iii)
21 disbursement of monies from such fund.

22 c. The board shall, from time to time and to the extent it deems
23 necessary or appropriate in order to accomplish the purposes of this
24 act, (i) review the operations, management, efficiency and productivity
25 of such city operations and of such covered organizations or of the city
26 of Staten Island or portions thereof as the board may determine, and
27 make reports thereon; (ii) audit compliance with the financial plan in
28 such areas as the board may determine; (iii) recommend to the city, the
29 city of Staten Island and the covered organizations such measures relat-
30 ing to their operations, management, efficiency and productivity as it
31 deems appropriate to reduce costs and improve services so as to advance
32 the purposes of this act; and (iv) obtain information of the financial
33 condition and needs of the city, the city of Staten Island and the
34 covered organizations. Nothing herein shall diminish the powers of the
35 comptroller otherwise provided by law and the board may request the
36 assistance of the comptroller in performing the above functions.

37 d. The board (i) shall receive from the city and review the reports to
38 be prepared by or on behalf of the city pursuant to section seven-a;
39 (ii) shall receive from the city, the city of Staten Island and the
40 covered organizations and from the deputy comptroller, and shall review
41 such financial statements and projections, budgetary data and informa-
42 tion, and management reports and materials as the board deems necessary
43 or desirable to accomplish the purposes of this act; and (iii) shall
44 inspect, copy and audit such books and records of the city, the city of
45 Staten Island and the covered organizations as the board deems necessary
46 or desirable to accomplish the purposes of this act.

47 e. All contracts entered into by the city or any covered organization
48 and, to the extent the board deems necessary or desirable to accomplish
49 the purposes of this act, by the city of Staten Island must be consist-
50 ent with the provisions of this act and must comply with the require-
51 ments of the financial plan as approved by the board. With respect to
52 all contracts or other obligations to be entered into by the city or any
53 covered organization after October fifteenth, nineteen hundred seventy-
54 five, requiring the payment of funds or the incurring of costs by the
55 city or any covered organization:

1 (i) Within twenty days from the effective date of this act the mayor
2 shall present to the board proposed regulations respecting the cate-
3 gories and types of contracts and other obligations required to be
4 reviewed by the board pursuant to this subdivision [e]. Within thirty
5 days from the effective date of this act, the board shall approve or
6 modify and approve such proposed regulations or promulgate its own in
7 the event that such proposed regulations are not submitted to it within
8 the twenty days as provided for herein. Such regulations may thereafter
9 be modified by the board from time to time on not less than thirty days
10 notice to the mayor and the mayor may from time to time propose modifi-
11 cations to the board. Unless expressly disapproved or modified by the
12 board within thirty days from the date of submission by the mayor, any
13 such proposed regulations or modifications shall be deemed approved by
14 the board;

15 (ii) Prior to entering into any contract or other obligations subject
16 to review of the board under its regulations, the city or any covered
17 organization and, to the extent the board deems necessary or desirable
18 to accomplish the purposes of this act, the city of Staten Island shall
19 submit a copy of such contract or other obligation to the board accompa-
20 nied by an analysis of the projected costs of such contract or other
21 obligation and a certification that performance thereof will be in
22 accordance with the financial plan, all in such form and with such addi-
23 tional information as the board may prescribe. The board shall promptly
24 review the terms of such contract or other obligation and the supporting
25 information in order to determine compliance with the financial plan;

26 (iii) During a control period the board shall, by order, disapprove
27 any contract or other obligation reviewed by it only upon a determi-
28 nation that, in its judgment, the performance of such contract or other
29 obligation would be inconsistent with the financial plan and the city,
30 the city of Staten Island or covered organization shall not enter into
31 such contract or other obligation;

32 (iv) During a control period if the board approves the terms of a
33 reviewed contract or other obligation, the city or covered organization
34 and, to the extent the board deems necessary or desirable to accomplish
35 the purposes of this act, the city of Staten Island may enter into such
36 contract or other obligation upon the terms submitted to the board.
37 Failure of the board to notify the city, the city of Staten Island or
38 covered organization within thirty days (or such additional time not
39 exceeding thirty days as the board shall have notified the city or
40 covered organization, that it requires to complete its review and analy-
41 sis) after submission to it of a contract or other obligation that such
42 contract or other obligation has been disapproved shall be deemed to
43 constitute board approval thereof.

44 f. Upon submission thereof by the city, the board shall review the
45 terms of each proposed long-term and short-term borrowing by the city
46 and any covered organization to be effected during a control period but
47 after October fifteenth, nineteen hundred seventy-five, and no such
48 borrowing shall be made unless approved by the board. To the extent the
49 board deems necessary or desirable to accomplish the purposes of this
50 act, during a control period, the city of Staten Island shall submit and
51 the board shall review the terms of each proposed long-term and short-
52 term borrowing by the city of Staten Island and no such borrowing shall
53 be made unless approved by the board. Each such proposed borrowing by a
54 covered organization shall be submitted to the city by the covered
55 organization before it may be considered by the board. Not more than
56 thirty days after any such submission by a covered organization the city

1 shall transmit any such proposed terms of borrowing to the board together with the certification of the city as to whether such proposed terms of borrowing are in accordance with the financial plan and are consistent with the objectives and purposes of this act. Any such submission to the city shall be accompanied by a certification of the covered organization that the terms thereof are in accordance with the financial plan and are consistent with the objectives or purposes of this act. The transmittal by the city to the board shall include a recommendation by the city for the approval or disapproval of such proposed terms of borrowing pursuant to the terms of this paragraph. In the event the city does not make such transmittal within such thirty day period, such covered organization may submit such proposed borrowing directly to the board. The board shall disapprove any borrowing if it determines that such borrowing is inconsistent with the financial plan or the objectives or purposes of this act. The board shall consult and coordinate with the municipal assistance corporation for the city of New York with respect to borrowings of the city and any covered organization and shall receive reports from the ~~municipal~~ municipal assistance corporation for the city of New York on its review of borrowings by the city. No covered organizations shall be prohibited from issuing bonds or notes to pay outstanding bonds or notes.

22 g. The board and the comptroller shall receive quarterly reports from the city comptroller setting forth the debt service requirements on all bonds and notes of the city and the covered organizations for the following quarter, which reports shall be in such form and contain such information as the board shall determine. Such reports shall be issued no later than sixty days prior to the start of the quarter to which they pertain and shall be updated immediately upon each issuance of bonds or notes after the date of such report to reflect any change in debt service requirements as a result of such issuance. The board also shall receive from the city monthly and quarterly financial reports, which reports shall be in such form and contain such information as the board shall determine and shall be made available by the city to the public. In order to avoid duplicative reports and reporting requirements, to the extent that the city is required to submit monthly or quarterly financial reports to the department of the treasury pursuant to any agreement or arrangement made in connection with federal guarantees of notes or boards issued by the city or a state financing agency, copies of such reports shall be submitted to the board in satisfaction of the monthly and quarterly reporting requirements set forth above, together with such additional information as the board may require. Each monthly and quarterly report herein required to be submitted to the board must indicate any variance between actual and budgeted revenues, expenses or cash for the period covered by such report. During a control period, to the extent the board deems necessary or desirable to accomplish the purposes of this act, the city of Staten Island shall be subject to the same reporting requirements as the city.

48 h. The board shall issue, to the appropriate officials of the city, the city of Staten Island and the covered organizations, such orders as it deems necessary to accomplish the purposes of this act, including but not limited to timely and satisfactory implementation of an approved financial plan. Any order so issued shall be binding upon the official to whom it was issued and failure to comply with such order shall subject the official to the penalties described in section eleven of this act.

1 i. The board shall coordinate with the municipal assistance corpo-
2 ration for the city of New York and the deputy comptroller with respect
3 to the performance of its review and monitoring of the revenues and
4 expenditures of the city and the covered organizations.

5 2. In the event of any default by the city on its outstanding bonds or
6 notes, and so long as such default has not been cured by the city, the
7 board may, any provisions of this act notwithstanding, take any action
8 that it is authorized to take pursuant to title six-A of article two of
9 the local finance law, and may direct the city to take any action that
10 the city is authorized to take under such law.

11 3. (a) Notwithstanding any provision of the New York City Collective
12 Bargaining Law, codified as chapter [~~fifty-four~~ three of title twelve
13 of the New York city administrative code, or any general or special law
14 to the contrary, any report or recommendation of an impasse panel
15 constituted pursuant to such chapter which provides for an increase in
16 wages or fringe benefits of any employee of the city or covered organ-
17 ization, in addition to considering any standard or factor required to
18 be considered by applicable law, including the standards enumerated in
19 section [~~1173-7.0~~ 12-311](c)(3)(b) of such chapter, shall also take into
20 consideration and accord substantial weight to the financial ability of
21 the city and or covered organization to pay the cost of such increase in
22 wages or fringe benefits.

23 (b) The board of collective bargaining constituted pursuant to such
24 chapter, when reviewing such report or recommendation before proceeding
25 to other issues, shall make a threshold determination as to whether such
26 report or recommendation for an increase in wages or fringe benefits is
27 within the city's and or covered organization's financial ability to
28 pay. If the threshold determination is in the negative, the matter shall
29 be remitted to the impasse panel for further consideration. If the
30 threshold determination is in the affirmative, the further review of the
31 report or recommendation with respect to other issues, if any, shall
32 proceed as provided by law. Unless the parties stipulate otherwise, the
33 threshold determination shall be made within thirty days after
34 submission of the report or recommendation to the board of collective
35 bargaining.

36 (c) Any determination pursuant to article eight of the labor law or
37 any agreement or stipulation entered into in lieu thereof which provides
38 for an increase in wages or fringe benefits of any employee of the city
39 or covered organization shall, in addition to considering any standard
40 or factor required to be considered by applicable law, also take into
41 consideration and accord substantial weight to the financial ability of
42 the city and or covered organization to pay the cost of such increase.

43 (d) Any report or recommendation of a fact finding or similar type
44 panel or any interest arbitration award which provides for an increase
45 in wages or fringe benefits of any employee of the city or covered
46 organization not subject to the provisions of the New York City Collec-
47 tive Bargaining Law, codified as chapter [~~fifty-four~~ three of title
48 twelve] of the New York city administrative code, shall, in addition to
49 considering any standard or factor required to be considered by applica-
50 ble law, also take into consideration and accord substantial weight to
51 the financial ability of the city and or covered organization to pay the
52 cost of such increase.

53 (e) Any party to a proceeding before the board of collective bargain-
54 ing as described in paragraph (b) or other body as described in para-
55 graphs (c) or (d) [~~hereof~~ of this subdivision] may commence a special
56 proceeding in the appellate division, first department, supreme court,

1 state of New York, to review the threshold determination as to the city
2 and/or covered organization's financial ability to pay. Such proceeding
3 shall be commenced not later than thirty days after the final determi-
4 nation has been made by the board of collective bargaining in the case
5 of paragraph (b) or other body in the case of paragraphs (c) or (d) of
6 this subdivision. Such proceeding shall have preference over all other
7 causes in such appellate division, other than causes relating to the
8 election law.

9 (f) The court shall make a de novo review of the record solely for the
10 purpose of determining whether an award of an increase in wages or
11 fringe benefits was within the city's and or covered organization's
12 financial ability to pay. The court's findings as to such issue shall be
13 based upon a preponderance of all the evidence set forth in the record.
14 Unless the parties stipulate otherwise, arguments or submission shall be
15 had within fifteen days after commencement of the special proceeding and
16 the court shall render its decision within fifteen days thereafter. All
17 questions, other than the question relating to the threshold determi-
18 nation, shall be reviewed by the appellate division in the same proceed-
19 ing in the manner provided by articles seventy-five or seventy-eight of
20 the civil practice law and rules as may be appropriate, notwithstanding
21 that the issue would otherwise have been cognizable in the first
22 instance before a special or trial term of the supreme court. If an
23 appeal shall otherwise lie from such determination of the appellate
24 division to the court of appeals, notice of such appeal shall be filed
25 within thirty days after the entry of the final order or judgment of the
26 appellate division if such appeal is of right or within ten days after
27 entry of an order granting leave to appeal and such appeal shall have
28 preference over all other appeals other than appeals relating to the
29 election law.

30 (g) At any stage of any proceeding under paragraphs (a), (b), (c), (d)
31 and (e) hereof or any appeal from an order or judgment therefrom, the
32 board may intervene as a party on the issue of the financial ability of
33 the city and or covered organization to pay the cost of an increase in
34 wages or fringe benefits.

35 (h) For the purposes of this subdivision, financial ability to pay
36 shall mean the financial ability of the city and or covered organization
37 to pay the cost of any increase in wages or fringe benefits without
38 requiring an increase in the level of city taxes existing at the time of
39 the commencement of a proceeding under paragraph (a), (c) or (d) hereof.

40 ~~[(i) The provisions of this subdivision shall terminate on June thir-~~
41 ~~tieth, nineteen hundred eighty six.]~~

42 4. During a control period, except upon approval by the board in
43 accordance with the provisions of paragraph e or f of subdivision one of
44 this section, as the board shall determine, neither the city nor a
45 covered organization nor, to the extent the board deems necessary or
46 desirable to accomplish the purposes of this act, the city of Staten
47 Island shall enter any agreement or other arrangement, whether or not it
48 creates a debt of the city, the city of Staten Island or a covered
49 organization, pursuant to which the revenues or credit of the city or
50 the city of Staten Island may be directly or indirectly pledged, encum-
51 bered, committed or promised, contingently or otherwise, for the payment
52 of obligations of a public benefit corporation. Nothing in this subdivi-
53 sion shall limit the right of the city to comply with the provisions of
54 any existing agreement or other arrangement in respect of the obli-
55 gations of a public benefit corporation.

1 5. The board may employ such consultants as it may deem necessary to
2 assist it in performing its functions required under this act.

3 6. The board shall have the authority to make and execute agreements
4 and all other instruments which the board deems necessary for the exer-
5 cise of its powers and functions including, in connection with any
6 agreement by the federal government or any agency or instrumentality
7 thereof to guarantee the payment of the principal of or interest on
8 bonds or notes issued by the city or by a state financing agency, to
9 enter into one or more agreements containing terms and conditions
10 required by the secretary of the treasury pursuant to the New York City
11 Loan Guarantee Act of 1978, Public Law 95-339 with the federal govern-
12 ment or any agency or instrumentality thereof with respect to such guar-
13 antee or any matters related thereto and to comply with such terms and
14 conditions.

15 7. The board may appoint qualified individuals to participate as
16 members of such audit, productivity or similar committees or councils as
17 the city may from time to time establish in consultation with the board.
18 Such individuals, however, shall not be deemed to be officers, employees
19 or agents of the board. The board shall review and report on, not less
20 than annually, the development and implementation of methods for enhanc-
21 ing the productivity of the city's labor force proposed by any such
22 committee or council.

23 § 12-017. Section 8 of section 2 of chapter 868 of the laws of 1975,
24 constituting the New York state financial emergency act for the city of
25 New York, subdivisions 1, 2, 4, 5 and 6 as amended by chapter 201 of the
26 laws of 1978, the opening paragraph and paragraph c of subdivision 1,
27 subdivisions 2-a and 3 as amended by chapter 777 of the laws of 1978,
28 paragraph a of subdivision 1 as amended by chapter 118 of the laws of
29 2020, is amended to read as follows:

30 § 8. Development of the financial plan. 1. Pursuant to the proce-
31 dures contained in subdivision three of this section, each year the
32 city and to the extent the board deems necessary or desirable to accom-
33 plish the purposes of this act, the city of Staten Island shall develop,
34 and may from time to time modify, with the approval of the board during
35 a control period, a four year financial plan covering the city and the
36 covered organizations or the city of Staten Island, as applicable.

37 Each such financial plan and financial plan modification shall comply
38 with the requirements of subdivision four of this section and shall,
39 except as otherwise provided pursuant to subdivision two-a of this
40 section, conform to the following standards:

41 a. For its fiscal years ending June thirtieth, nineteen hundred seven-
42 ty-nine through June thirtieth, nineteen hundred eighty-one, the city's
43 budget covering all expenditures other than capital items shall be
44 prepared and balanced so that the results thereof would not show a defi-
45 cit when reported in accordance with the accounting principles set forth
46 in the state comptroller's uniform system of accounts for municipi-
47 palities, as the same may be modified by the comptroller, in consulta-
48 tion with the city comptroller, for application to the city; subject to
49 the provision of subdivision four of section three thousand thirty-eight
50 of the public authorities law with respect to contributions by the city
51 or other public employer to any retirement system or pension fund and
52 subject to the provision of paragraph (c) of subdivision five of section
53 three thousand thirty-eight of the public authorities law with respect
54 to expense items included in the capital budget of the city. For the
55 fiscal year ending June thirtieth, nineteen hundred eighty-two, and for
56 each fiscal year thereafter, the city's budget covering all expenditures

1 other than capital items shall be prepared and balanced so that the
2 results thereof would not show a deficit when reported in accordance
3 with generally accepted accounting principles and would permit compar-
4 ison of the budget with the report of actual financial results prepared
5 in accordance with generally accepted accounting principles. With
6 respect to financial plans that include the fiscal years ending June
7 thirtieth, nineteen hundred seventy-nine through June thirtieth, nine-
8 teen hundred eighty-one, the city's budget covering all expenditures
9 other than capital items shall be prepared in accordance with generally
10 accepted accounting principles and there shall be substantial progress
11 in each such fiscal year towards achieving a city budget covering all
12 expenditures other than capital items the results of which would not
13 show a deficit when reported in accordance with generally accepted
14 accounting principles. The city shall eliminate expense items from its
15 capital budget not later than the commencement of the fiscal year ending
16 June thirtieth, nineteen hundred eighty-two. For the fiscal year ending
17 June thirtieth, nineteen hundred eighty-nine, and for each fiscal year
18 thereafter, the budgets covering all expenditures other than capital
19 items of each of the covered organizations shall be prepared and
20 balanced so that the results thereof would not show a deficit when
21 reported in accordance with generally accepted accounting principles;
22 and for each fiscal year prior thereto, there shall be substantial
23 progress towards such goal. Notwithstanding the foregoing and the
24 provisions of any general or special state law or local law to the
25 contrary, including but not limited to the New York city charter: (i)
26 all costs that would be capital costs in accordance with generally
27 accepted accounting principles, but for the application of governmental
28 accounting standards board statement number forty-nine, shall be deemed
29 to be capital costs for purposes of this act and any other provision of
30 state or local law, including but not limited to the New York city char-
31 ter, relevant to the treatment of such costs; and (ii) the determination
32 as to the existence of a deficit pursuant to this act and any other
33 provision of state or local law, including but not limited to the New
34 York city charter, shall be made without regard to changes in restricted
35 fund balances, as defined by the governmental accounting standards
36 board, where restrictions in relation to such fund balances are imposed
37 by state or federal law or regulation, or otherwise by private or
38 governmental parties other than the city of New York, and without regard
39 to funds held in the health stabilization fund, the school crossing
40 guards health insurance fund, any revenue stabilization fund established
41 pursuant to section fifteen hundred twenty-eight of the New York city
42 charter and the management benefits fund established by the city of New
43 York. Deposits into any such revenue stabilization fund shall be deemed
44 to be expenses of such city in the fiscal year in which such deposits
45 are made, and withdrawals from such fund shall be deemed to be revenues
46 of such city in the year in which such withdrawals are made; provided
47 however, that surpluses of such city, whether accumulated from fiscal
48 years ending prior to the effective date of the chapter of the laws of
49 two thousand twenty that amended this paragraph or existing at the close
50 of any fiscal year ending after such effective date, shall be deposited
51 into such revenue stabilization fund as soon as practicable, and such
52 deposits shall not be deemed expenses of the city in the fiscal year in
53 which such deposits are made.

54 b. The limitations on its outstanding short-term obligations required
55 by subdivision nine of section three thousand thirty-eight of the public

1 authorities law and by section nine-b of this act shall be observed at
2 all times, as each is amended from time to time.

3 c. Provision shall be made for the payment in full of the debt
4 service on all bonds and notes of the city and the covered organizations
5 (other than notes held by the municipal assistance corporation for the
6 city of New York to the extent that such corporation has evidenced its
7 intention not to present such notes for payment during the fiscal year
8 in which the determination is made provided that such notes were held by
9 such corporation on June thirtieth, nineteen hundred seventy-eight or
10 were issued in exchange for or in refunding or renewal of notes held by
11 such corporation on such date) and to the extent the board deems neces-
12 sary or desirable to accomplish the purposes of this act, the city of
13 Staten Island, for the adequate funding of programs of the city, the
14 city of Staten Island, if applicable and the covered organizations which
15 are mandated by state or federal law and for which obligations are going
16 to be incurred during the fiscal year and for payment of a guarantee fee
17 or any other amounts required by the United States of America or any
18 agency or instrumentality thereof in connection with the guarantee of
19 the payment of the principal of or interest on bonds or notes issued by
20 the city.

21 d. All projections of revenues and expenditures contained in a finan-
22 cial plan shall be based on reasonable and appropriate assumptions and
23 methods of estimation. All cash flow projections shall be based upon
24 reasonable and appropriate assumptions as to sources and uses of cash
25 (including but not limited to the timing thereof), and shall provide for
26 operations of the city, the city of Staten Island, if applicable and
27 covered organizations to be conducted within the cash resources so
28 projected.

29 e. The city shall provide a general reserve for each fiscal year to
30 cover potential reductions in its projected revenues or increases in its
31 projected expenditures during each such fiscal year. The amount
32 provided for such general reserve shall be estimated by the city in
33 accordance with paragraph d of this subdivision, but in no event shall
34 it be less than one hundred million dollars at the beginning of any
35 fiscal year.

36 f. For financial plans beginning with the fiscal year ending June
37 thirtieth, nineteen hundred eighty-three or any succeeding fiscal year,
38 the first fiscal year included in any financial plan shall make
39 provision for the repayment of any deficit incurred by the city during
40 the preceding fiscal year.

41 2. In developing the financial plan the city shall seek to achieve a
42 stabilized work force for the city and, to the extent a reduction in the
43 work force is required, primary recourse shall be had to the attrition
44 process to accomplish such reduction.

45 2-a. The city and the board shall confer concerning the projected
46 effect on the budgets of the city and the covered organizations of any
47 change in generally accepted accounting principles, or change in the
48 application of generally accepted accounting principles to the city and
49 the covered organizations, made after the effective date of this act.
50 If the board determines that immediate compliance with such change will
51 have a material effect on such budgets over a time period insufficient
52 to accommodate the effect without a substantial adverse impact on the
53 delivery of essential services, the board may authorize and approve a
54 method of phasing the requirements of such change into such budgets over
55 such reasonably expeditious time period as the board deems appropriate.

1 3. The financial plan shall be developed and, during a control peri-
2 od, shall be approved, and may from time to time be modified, in accord-
3 ance with the following procedures:

4 a. The city shall, by June first, nineteen hundred seventy-eight,
5 prepare and submit a financial plan to the board covering the four year
6 period which begins with the fiscal year ending June thirtieth, nineteen
7 hundred seventy-nine. Thereafter, at least fifty days prior to the
8 beginning of each fiscal year or on such other date as the board may
9 approve upon the request of the city or the city of Staten Island, if
10 applicable, the city, and, during a control period, to the extent the
11 board deems necessary or desirable to accomplish the purposes of this
12 act, the city of Staten Island shall prepare and submit a financial plan
13 to the board covering the four year period beginning with such fiscal
14 year. On such dates the mayor shall also submit to the board the city's
15 executive expense, revenue and capital budgets for the ensuing fiscal
16 year and a certificate of the mayor stating that such budgets are
17 consistent with the financial plan submitted therewith, that projections
18 contained in the budgets and financial plan are based upon reasonable
19 and appropriate assumptions and methods of estimation, and that opera-
20 tion within the budgets is feasible.

21 b. (i) During a control period the board shall promptly review each
22 financial plan and financial plan modification submitted by the city or,
23 the city of Staten Island, if applicable. Not more than forty-five days
24 after submission of a financial plan or more than thirty days after
25 submission of a financial plan modification the board shall determine
26 whether the financial plan or financial plan modification is complete
27 and complies with the standards set forth in subdivision one of this
28 section and shall approve or disapprove the financial plan or financial
29 plan modification in accordance with the provisions of this section. If
30 the board determines that the financial plan or financial plan modifica-
31 tion is complete and complies with the standards set forth in subdivi-
32 sion one of this section, the board shall approve the financial plan or
33 financial plan modification. Upon making such determination the board
34 shall make a certification to the city or, the city of Staten Island, if
35 applicable, setting forth revenue estimates approved by the board in
36 accordance with such determination.

37 (ii) At all times other than during a control period the board shall
38 promptly review each financial plan and financial plan modification
39 submitted by the city. If the board determines after such review that
40 the financial plan or financial plan modification submitted by the city
41 is not in accordance with the standards set forth in subdivision one of
42 this section, the board shall promptly so notify the city and may take
43 such other action under this act as it deems appropriate.

44 c. The board shall disapprove a financial plan or financial plan
45 modification if during a control period it determines that the financial
46 plan or financial plan modification is incomplete or fails to comply
47 with the provisions of subdivision one of this section. In disapproving
48 a financial plan or a financial plan modification the board may order
49 that one or more of the following actions be taken:

50 (i) expenditures or reserves to assure availability of amounts
51 required for debt service requirements on all bonds and notes of the
52 city, the city of Staten Island, if applicable and the covered organiza-
53 tions or expenditures required for adequate funding of programs of the
54 city, the city of Staten Island, if applicable and the covered organiza-
55 tions mandated by state or federal law and for which obligations are

1 going to be incurred during the fiscal year, be increased to the levels
2 required to provide for their payment in full;

3 (ii) the revenue projections (or any item thereof) during any period
4 be adjusted to comply with the standards set forth in subdivision one of
5 this section; and

6 (iii) the aggregate expenditures projected for any period be reduced
7 to conform to revenue estimates certified by the board in order to
8 comply with the standards set forth in subdivision one of this section.

9 d. During a control period in the event that the city or the city of
10 Staten Island, if applicable shall, for any reason, fail to submit a
11 financial plan prior to the beginning of a fiscal year, as required by
12 paragraph a of this subdivision, or in the event that the board has not,
13 for any reason permitted under this act, approved a financial plan
14 submitted by the city or the city of Staten Island, if applicable prior
15 to the beginning of a fiscal year, the board shall formulate and adopt a
16 financial plan to be effective until the board approves a financial plan
17 submitted by the city or the city of Staten Island, if applicable. Any
18 financial plan so formulated by the board shall comply with the stand-
19 ards set forth in subdivision one of this section. The budgets and
20 operations of the city or the city of Staten Island, if applicable and
21 the covered organizations at all times shall be in conformance and
22 compliance with the respective financial plan then in effect.

23 e. After the initial adoption by the city, or the approval by the
24 board during a control period, or, during a control period, to the
25 extent the board deems necessary or desirable to accomplish the purposes
26 of this act, the initial adoption by the city of Staten Island, of a
27 financial plan, projections of revenues and expenditures and other esti-
28 mates contained in the financial plan shall be reexamined by the board
29 at least quarterly in consultation with the city and the covered organ-
30 izations, and during a control period the city or the city of Staten
31 Island, as applicable shall prepare and submit to the board financial
32 plan modifications at such times, in such detail and within such time
33 periods as the board may require in order to modify the respective
34 financial plan to conform to the standards set forth in subdivision one
35 of this section. During a control period in the event the board deter-
36 mines that (i) revenue estimates (or any item thereof) must be adjusted
37 to ensure compliance with the standards set forth in subdivision one of
38 this section, or (ii) that the city or a covered organization or the
39 city of Staten Island, as applicable is expending funds at a rate that
40 would cause expenditures to exceed the aggregate expenditure limitation
41 for the city or covered organization or the city of Staten Island, as
42 applicable provided for in the financial plan then in effect, prior to
43 the expiration of the fiscal year, the city or the city of Staten
44 Island, as applicable shall submit a financial plan modification to
45 effect such adjustments in revenue estimates and reductions in total
46 expenditures as may be necessary to conform to such standards or aggre-
47 gate expenditure limitations. If during a control period the city fails
48 to submit such modification after such determination as to adjustments
49 in revenue estimates or such determination as to rates of expenditures,
50 or to submit a financial plan modification in the detail or within the
51 time period specified by the board, or if such modification is disap-
52 proved by the board as not conforming to the standards set forth in
53 subdivision one of this section, the board may formulate and adopt such
54 financial plan modification as it deems appropriate to ensure that the
55 financial plan with respect to such entity continues to meet such stand-
56 ards. Such modification shall become effective on its adoption.

1 Notwithstanding the provisions of this section, in the event the city or
2 the city of Staten Island, as applicable shall determine that, due to
3 unforeseen events during a fiscal year, compliance with the standards
4 set forth in paragraph a of subdivision one of this section would result
5 in a material adverse impact upon the delivery of essential services,
6 the city or the city of Staten Island, as applicable shall notify the
7 board of such determination, together with such information, projections
8 or analyses relating thereto as the board may require, and shall submit
9 a modification to the financial plan reflecting such determination.
10 During a control period the board shall disapprove any such modification
11 unless it finds that (i) [~~the city's~~] such determination is supported by
12 information, projections and analyses which the board deems substantial-
13 ly accurate in all material respects and (ii) such events, in its judg-
14 ment, warrant such modification to the financial plan to avoid such
15 adverse impact on the delivery of essential services.

16 f. The city or the city of Staten Island may, from time to time,
17 submit financial plan modifications to each plan for review by the
18 board. During a control period the board shall approve such modifica-
19 tions unless it determines that such modifications would constitute
20 grounds for disapproval of the financial plan pursuant to paragraph c of
21 this subdivision, or if applicable, pursuant to paragraph e of this
22 subdivision.

23 g. Anything contained in this act to the contrary notwithstanding,
24 during a control period the board may at any time disapprove or after
25 consultation with the city or the city of Staten Island, as appropriate,
26 revise the revenue estimates (or any item thereof) prepared by the city
27 or the city of Staten Island in connection with the preparation of a
28 financial plan or any modification thereto and determined by the board
29 not to be based on assumptions and methods of estimation which are
30 reasonable and appropriate under the circumstances and in view of the
31 objectives and purposes of the act. The board may after consultation
32 with the city or the city of Staten Island, as appropriate, determine
33 the estimated revenues of the city or the city of Staten Island, as
34 appropriate, and the covered organizations provided, however, that any
35 revenues estimated by the board shall be based on reasonable and appro-
36 priate assumptions and methods of estimation.

37 4. Each financial plan shall be in such form and shall contain such
38 information for each year during which the financial plan is in effect
39 as the board may specify, and shall, in such detail as the board may
40 from time to time prescribe, include projections of all revenues,
41 expenditures and cash flows (including but not limited to projected
42 capital expenditures and debt issuances) and a schedule of projected
43 capital commitments of the city or the city of Staten Island, as appro-
44 priate, and except in such instances as the board may deem appropriate
45 each of the covered organizations. In addition, each financial plan and
46 financial plan modification shall include a statement of the significant
47 assumptions and methods of estimation used in arriving at the projec-
48 tions contained therein, set forth in such form and in such detail as
49 the board may from time to time prescribe.

50 5. The city and the covered organizations and during a control period
51 to the extent the board deems necessary or desirable to accomplish the
52 purposes of this act, the city of Staten Island shall promptly furnish
53 the board with any information which the board may request to satisfy
54 itself that (i) projected employment levels, collective bargaining
55 agreements and other action relating to employee costs, capital
56 construction and such other matters as the board may specify, are

1 consistent with the provisions made for such costs in the financial
2 plan, (ii) the city and the covered organizations or the city of Staten
3 Island, as appropriate are taking whatever action is necessary with
4 respect to programs mandated by state and federal law to ensure that
5 expenditures for such programs are limited to and covered by the expend-
6 itures stated in the financial plan, and (iii) adequate reserves are
7 provided to maintain programs mandated by state and federal law and for
8 which obligations are going to be incurred in the fiscal year and other
9 essential programs in the event revenues have been overestimated or
10 expenditures underestimated for any period.

11 6. For each financial plan and financial plan modification to be
12 prepared and submitted by the city to the board pursuant to the
13 provisions of this section, the covered organizations shall submit to
14 the city such information with respect to their projected expenditures,
15 revenues, cash flows and a schedule of projected capital commitments
16 for each year covered by such financial plan or modification as the city
17 shall determine. Notwithstanding any other provision of law limiting
18 the authority of the city with respect to any covered organization, the
19 city, in the preparation and submission of the financial plan and
20 modifications thereof, shall (except for debt service or for other
21 expenditures to the extent that such expenditures are required by law)
22 have the power to determine the aggregate expenditures to be allocated
23 to any covered organization in the financial plan and any modifications
24 thereto.

25 § 12-018. Section 9 of section 2 of chapter 868 of the laws of 1975,
26 constituting the New York state financial emergency act for the city of
27 New York, as amended by chapter 201 of the laws of 1978 and the section
28 heading and subdivisions 1 and 4 as amended by chapter 777 of the laws
29 of 1978, is amended to read as follows:

30 § 9. Establishment and application of the board fund. 1. There is
31 hereby established a fund designated the board fund. Commencing on
32 October twentieth, nineteen hundred seventy-five, and for the duration
33 of a control period, all revenues received or to be received by the city
34 or any covered organization and to the extent the board deems necessary
35 or desirable to accomplish the purposes of this act, the city of Staten
36 Island shall, unless exempted by order of the board, be revenues of the
37 board fund and shall be for the account of the city, the city of Staten
38 Island or the appropriate covered organizations, except (i) to the
39 extent expressly prohibited by federal law, (ii) where revenues of the
40 city are deposited in the general debt service fund, the TAN debt
41 service account or the RAN debt service account, or (iii) where such
42 revenues are pledged to the payment of any outstanding bonds, notes or
43 other obligations of covered organizations or state public authorities
44 as defined in section two hundred one of the civil service law.
45 Disbursement from the board fund shall be made by the board in accord-
46 ance with the approved financial plan except as provided in subdivision
47 five of this section nine. Commencing on October twentieth, nineteen
48 hundred seventy-five, and for the duration of a control period, all
49 funds and accounts established or thereafter established by the city,
50 the city of Staten Island or the covered organizations shall, unless
51 exempted by order of the board, thereafter be funds and accounts of the
52 board fund except to the extent expressly prohibited by federal law or
53 to the extent pledged by covenants or agreements relating to any
54 outstanding bonds, notes or other obligations of covered organizations
55 or public authorities as defined in section two hundred one of the civil
56 service law; and no monies or funds held in the general debt service

1 fund, the TAN debt service account or the RAN debt service account shall
2 be part of the board fund. All such accounts of the board shall have
3 such captions and entries as the board shall determine to be necessary
4 to credit the foregoing revenues and receipts to the board fund. The
5 monies of the fund shall not be deemed to be money of the state or money
6 under its control.

7 2. The deposit of revenues into the board fund and the investment or
8 deposit of monies therein shall be made in accordance with and pursuant
9 to procedures established by the board.

10 3. In order to assure compliance with the financial plan, the board
11 shall from time to time adopt procedures controlling the disbursement of
12 monies from the board fund. The board shall authorize the city or, if
13 applicable, the city of Staten Island to make all disbursements of
14 [~~city~~] such entity's revenues from the board fund, which disbursements
15 shall be made in accordance with the approved financial plan; provided,
16 that the board may withdraw such authorization if it determines that (a)
17 any disbursements made or to be made by the city or, if applicable, the
18 city of Staten Island have not been or are likely not to be in compli-
19 ance with the approved financial plan, (b) the city or, if applicable,
20 the city of Staten Island has violated any other provisions of this act,
21 or (c) the city has violated an agreement with any holder or guarantor
22 of bonds or notes issued by the city or a state financing agency.

23 4. Within the board fund there is hereby established a special
24 account designated the debt service repayment account. The board shall
25 from time to time direct, in accordance with procedures adopted by the
26 board, the deposit in the debt service repayment account of such amounts
27 as the board shall, in its discretion, determine to be sufficient to
28 meet the debt service requirements of the covered organizations on their
29 bonds and notes (other than bonds and notes of covered organizations
30 payable from revenues not included in the board fund) as they become
31 due. Amounts in the debt service repayment account shall be used to
32 meet such debt service requirements of the covered organizations.

33 5. If at any time the board determines that the amount then held in
34 the board fund or the amount estimated by the board to be held in the
35 board fund is or will be insufficient to meet the expenditures in the
36 amounts and at the times required by the financial plan, the board shall
37 require disbursements from the board fund to be made in the following
38 order or priority unless otherwise required by law of the United States
39 of America: (i) the payment of amounts from the appropriate account of
40 the board fund to the debt service repayment account, the general debt
41 service fund, the TAN debt service account and the RAN debt service
42 account, to maintain therein the amount required, to meet debt service
43 requirements of the city, the city of Staten Island, if appropriate and
44 the covered organizations on their bonds and notes as they may become
45 due, (ii) the payment of other liabilities having statutory or contrac-
46 tual priority over remaining liabilities of the city, the city of
47 Staten Island, if appropriate and the covered organizations whose monies
48 are included in the board fund, and (iii) the payment of other obli-
49 gations on an allocated basis as specified by the city or, the city of
50 Staten Island, if appropriate, for expenditures in accordance with the
51 financial plan provided that, in the event that the city or, the city of
52 Staten Island, if appropriate, fails to so specify, the board may with-
53 hold payment of any of such other obligations or may direct their
54 payment pro rata.

1 6. The board shall cause to be performed such pre-audit and post-au-
2 dit reviews of the board funds and disbursements therefrom as it may
3 determine.

4 § 12-019. Section 9-a of section 2 of chapter 868 of the laws of 1975,
5 constituting the New York state financial emergency act for the city of
6 New York, as added by chapter 201 of the laws of 1978, subdivisions 1,
7 2, 3, 4, 6, 7, 8, 9 and 11 as amended, subdivision 10 as renumbered and
8 amended and subdivision 12 as added by chapter 777 of the laws of 1978,
9 is amended to read as follows:

10 § 9-a. Establishment and application of a general debt service fund.

11 1. Commencing on the first day of the first full fiscal quarter subse-
12 quent to the first sale of a federally guaranteed city obligation, the
13 city shall establish a general debt service fund for the purpose of
14 paying debt service due or becoming due in the then current fiscal year
15 and in subsequent fiscal years until the later of (i) the termination
16 date of this act or (ii) the date when all general obligation bonds of
17 the city outstanding as of the establishment of the city of Staten
18 Island have been paid or payment therefor has been provided for in
19 accordance with their terms. All monies in the fund shall be held by
20 the comptroller, who shall administer and maintain the fund in accord-
21 ance with the provisions of this section.

22 2. All payments of or on account of real estate taxes or assessments
23 due to the city or the city of Staten Island, other than the proceeds of
24 tax anticipation notes, shall be immediately upon receipt deposited in
25 an account designated for the municipality to which payment was due
26 established in such fund. The comptroller shall retain, disburse and
27 apply monies in the fund during each month as follows:

28 a. During the first month of each fiscal quarter, there shall be
29 retained in the fund, subject to the provisions of subdivision three of
30 this section, all real estate tax payments deposited in the fund until
31 there shall have been retained from monies so deposited during such
32 month in the applicable account an amount equal to the total monthly
33 debt service, computed as of the date of any disbursement of money from
34 the fund, for the second and third months of such fiscal quarter;
35 provided that such amount shall be reduced by any amount already on
36 deposit in the fund which may be used to pay the monthly debt service
37 for such months.

38 Amounts to be on deposit in such accounts shall be determined as
39 follows: (i) with respect to the account of the city, debt service shall
40 include payments with respect to (a) all bonds and notes of the city
41 issued on or after the date of establishment of the city of Staten
42 Island and (b) all bonds or notes of the city prior thereto multiplied
43 by a fraction, the numerator of which is the total assessed valuation of
44 all taxable real property located in the city as of the date of such
45 establishment and the denominator of which is the total assessed valu-
46 ation of all taxable real property located in the city and the city of
47 Staten Island combined as of the date of such establishment and (ii)
48 with respect to the account of the city of Staten Island, debt service
49 shall include payments with respect to (a) all bonds or notes of the
50 city of Staten Island and (b) all bonds or notes of the city issued
51 prior to the establishment of the city of Staten Island multiplied by a
52 fraction, the numerator of which is the total assessed valuation of all
53 taxable real property located in the city of Staten Island as of the
54 date of such establishment and the denominator of which is the same as
55 in clause (b) of subparagraph (i) of this paragraph. To the extent
56 either account contains insufficient amounts to make payments on the

1 respective allocable portion of city bonds or notes issued prior to the
2 establishment of the city of Staten Island and such municipalities own
3 bonds or notes issued subsequent thereto, amounts on deposit in the
4 account of the other municipality in excess of the amounts required to
5 provide for payment of such latter municipality's own bonds or notes
6 issued subsequent to such establishment and allocable portion of city
7 bonds or notes issued prior thereto, shall be retained in such account
8 and applied to the payment of bonds or notes of the city issued prior to
9 such establishment to the extent of any insufficiency in such accounts.

10 For purposes of this section, fiscal quarter shall mean the three-
11 month period beginning July first, October first, January first or April
12 first, and monthly debt service shall mean, as of any date of computa-
13 tion, the amount of monies equal to the aggregate of (i) all interest
14 payable during such month on bonds and notes of the city or the city of
15 Staten Island, as applicable, plus (ii) the amount of principal (includ-
16 ing payments into sinking funds) maturing or otherwise coming due during
17 such month on all bonds of the city or the city of Staten Island, as
18 applicable, (excluding principal payments made from sinking funds
19 required by the terms of certain city or the city of Staten Island, as
20 applicable, bonds), plus (iii) the amount of principal to be paid on
21 notes of the city or the city of Staten Island, as applicable, during
22 such month from sources other than the proceeds of bonds or renewal
23 notes (exclusive of revenue anticipation notes and tax anticipation
24 notes or renewals thereof issued less than two years prior to the date
25 of computation).

26 b. During the second and third months of each fiscal quarter, there
27 shall be retained in the fund, subject to the provisions of subdivision
28 three of this section, all real estate tax payments deposited in the
29 fund until there shall have been retained from monies so deposited
30 during such month an amount equal to the total monthly debt service,
31 computed as of the date of any disbursement of monies from the fund, for
32 the first month of the next succeeding fiscal quarter; provided that
33 such amount shall be reduced by any amount already on deposit in the
34 fund which may be used to pay the monthly debt service for such month.

35 c. During any month of a fiscal quarter, after the retentions
36 required by paragraphs a and b of this subdivision have been made for
37 such month, the comptroller shall deposit any remaining balance of real
38 estate taxes received during such month, first into the TAN debt service
39 account to the extent required under subdivision six of this section,
40 and second into the board fund to be applied in accordance with proce-
41 dures of the board.

42 d. The city may at any time pay into the fund any monies required by
43 law to be used to pay monthly debt service and any other monies avail-
44 able for such purpose.

45 3. The board may approve, subject to agreements made with the holders
46 or guarantors of outstanding notes or bonds issued by or for the benefit
47 of the city after the effective date of this act, criteria for calculat-
48 ing a proportion of real estate tax receipts to be retained in the fund
49 in order to provide for the retention of amounts required by the
50 provisions of subdivision two of this section in lieu of the retention
51 of all initial receipts as required by such subdivision; provided, that
52 if the board at any time determines that retentions in the fund pursuant
53 to the provisions of such subdivision are or are likely to be insuffi-
54 cient to provide for the payment of monthly debt service when due, in
55 order to ensure that the amounts on deposit in the fund will be suffi-
56 cient to pay monthly debt service when due, the board shall require (i)

1 that real estate tax receipts be retained in the fund in greater amounts
2 or at earlier dates than the provisions of such subdivision require, or
3 (ii) that other revenues or cash resources of the city be paid into the
4 fund. The board shall consider the impact of earlier or larger
5 retention of real estate tax receipts on the city's seasonal borrowing
6 requirements when determining whether it shall require such additional
7 retention or that other revenues or cash resources of the city be paid
8 into the fund. Prior to the issuance by the city of any bonds or notes,
9 the board shall review any criteria then in effect which determine the
10 proportion of real estate tax receipts to be retained in the fund to
11 determine whether the proposed debt service schedule for such bonds or
12 notes is consistent with the monies which will be available therefor or
13 whether such criteria should be revised. The board shall from time to
14 time take such action as it determines is necessary, including disap-
15 proval of a proposed issue pursuant to paragraph f of subdivision one of
16 section seven, so that the monies in the fund shall be adequate to meet
17 debt service requirements.

18 4. Commencing on the first day of the second month of the first full
19 fiscal quarter subsequent to the first sale of a federally guaranteed
20 city obligation, the payment of monthly debt service shall be made,
21 first, from amounts retained in the fund. Amounts retained in the fund
22 shall be used only to pay debt service of the city.

23 5. Upon the issuance of any tax anticipation notes following the
24 effective date of this act, the comptroller shall establish and, so long
25 as any tax anticipation notes shall be outstanding, shall maintain a tax
26 anticipation note debt service account within the fund for the purpose
27 of paying the principal of tax anticipation notes.

28 6. The city shall determine the date on which the principal due or to
29 become due on an outstanding issue of tax anticipation notes shall equal
30 ninety percent of the available tax levy with respect to such issue, and
31 upon reasonable notice thereof the comptroller shall commence on such
32 date to pay into the TAN debt service account from collections of such
33 taxes and assessments, after retaining amounts required to be deposited
34 in the fund, amounts sufficient to pay when due, the principal of such
35 issue of tax anticipation notes. The payments of the principal of tax
36 anticipation notes shall be made, first, from amounts retained in the
37 TAN debt service account.

38 7. Upon the issuance of any revenue anticipation notes following the
39 effective date of this act, the comptroller shall establish and, so long
40 as any revenue anticipation notes shall be outstanding, shall maintain a
41 revenue anticipation note debt service account within the fund for the
42 purpose of paying the principal of revenue anticipation notes. Each
43 specific type of revenue in anticipation of which such notes are issued
44 and available for such purpose shall be deposited in such account imme-
45 diately upon receipt by the city. Where such revenue consists of state
46 aid or other revenue to be paid to the city by the comptroller, on the
47 date such revenue is payable to the city, the comptroller shall deposit
48 such revenue directly into such account in lieu of payment to the city.
49 All revenues deposited in the RAN debt service account shall be paid
50 immediately into the board fund except as otherwise provided in subdivi-
51 sion eight of this section.

52 8. The city shall determine the date on which the principal due or to
53 become due on an outstanding issue of revenue anticipation notes shall
54 equal ninety percent of the total amount of revenue against which such
55 notes were issued remaining to be paid to the city on or before the
56 fifth day prior to the maturity date of such notes and upon reasonable

1 notice thereof the comptroller shall commence on such date to retain in
2 the RAN debt service account from amounts deposited or to be deposited
3 therein of each specific type of revenue in anticipation of which revenue
4 such anticipation notes were issued, an amount sufficient to pay,
5 when due, the principal of such revenue anticipation notes. Monies
6 retained in such account shall vest immediately in the comptroller in
7 trust for the benefit of the holders of the revenue anticipation notes
8 in anticipation of which such notes were issued. No person having any
9 claim of any kind in tort, contract or otherwise against such city shall
10 have any right to or claim against any monies of the state appropriated
11 by the state and in anticipation of which such notes have been issued,
12 other than a claim for payment by the holders of such notes, and such
13 monies shall not be subject to any order, judgment, lien, execution,
14 attachment, setoff or counter-claim by any such person; provided, however,
15 that nothing contained in this paragraph shall be construed to
16 limit, impair, impede or otherwise adversely affect in any manner the
17 rights or remedies of the purchasers and holders and owners of any bonds
18 or notes of the state or any agency, instrumentality, public benefit
19 corporation or political subdivision thereof, including the city of New
20 York, under which such purchasers and holders and owners have any right
21 of payment of such bonds or notes by recourse to state aid or local
22 assistance monies held by the state or for the payment of which bonds or
23 notes state aid or local assistance monies are a designated source. The
24 payment of the principal of revenue anticipation notes shall be made
25 first from amounts retained in the RAN debt service account.

26 9. Whenever the amount contained in the TAN debt service account or
27 the RAN debt service account exceeds the amount required to be retained
28 in such account such excess monies, including earnings on investments of
29 monies in the fund, shall be withdrawn from such account and paid into
30 the board fund.

31 10. Subject to agreements made with holders or guarantors of
32 outstanding notes or bonds issued by or for the benefit of the city
33 after the effective date of this act, the comptroller shall invest the
34 monies retained in the fund in accordance with law.

35 11. The limitations imposed upon the city by this section shall be in
36 addition to any limitations imposed upon the city or the city of Staten
37 Island under the local finance law. In the event any provisions of the
38 local finance law shall be inconsistent with the provisions of this
39 section, the provisions of this section shall prevail. The requirements
40 of this section shall not apply to any note of the city held by the
41 municipal assistance corporation for the city of New York to the extent
42 that such corporation has evidenced its intention not to present such
43 notes for payment during the fiscal year in which the determination is
44 made provided that such notes were held by such corporation on June
45 thirtieth, nineteen hundred seventy-eight or were issued in exchange for
46 or in refunding or renewal of notes held by such corporation on such
47 date.

48 12. Notwithstanding any other provision of this section, the city and
49 the city of Staten Island, if applicable, may, at any time, subject to
50 approval by the comptroller, designate a trust company or bank having
51 its principal place of business in the state of New York and having the
52 powers of a trust company in the state of New York to hold all or any
53 part of the monies in the fund and to administer and maintain the monies
54 so held in accordance with the applicable provisions of this section and
55 any agreements made pursuant thereto.

1 § 12-020. Section 11 of section 2 of chapter 868 of the laws of 1975,
2 constituting the New York state financial emergency act for the city of
3 New York, subdivisions 1 and 3 as amended by chapter 777 of the laws of
4 1978, is amended to read as follows:

5 § 11. Prohibitions; penalties. 1. During a control period, (i) no
6 officer or employee of the city or of any of the covered organizations
7 or to the extent the board deems necessary or desirable to accomplish
8 the purposes of this act, the city of Staten Island shall make or
9 authorize an obligation or other liability in excess of the amount
10 available therefor under the financial plan as then in effect; (ii) no
11 officer or employee of the city or of any of the covered organizations
12 or the city of Staten Island shall involve the city, the city of Staten
13 Island, if applicable or any of the covered organizations in any
14 contract or other obligation or liability for the payment of money for
15 any purpose required to be approved by the board unless such contract,
16 obligation or liability has been so approved or deemed to be approved as
17 provided in paragraphs e and f of subdivision one of section seven and
18 unless such contract or obligation or liability is in compliance with
19 the financial plan as then in effect.

20 2. No officer or employee of the city or any of the covered organiza-
21 tions, or, the city of Staten Island, if applicable, shall take any
22 action in violation of any valid order of the board or shall fail or
23 refuse to take any action required by any such order or shall prepare,
24 present or certify any information (including any projections or esti-
25 mates) or report for the board or any of its agents that is false or
26 misleading, or, upon learning that any such information is false or
27 misleading, shall fail promptly to advise the board or its agents there-
28 of.

29 3. In addition to any penalty or liability under other law, any offi-
30 cer or employee of the city or any of the covered organizations, or, the
31 city of Staten Island, if applicable, who shall knowingly and willfully
32 violate subdivision one or two of this section shall be subject to
33 appropriate administrative discipline, including, when circumstances
34 warrant, suspension from duty without pay or removal from office by
35 order of either the governor or the mayor or the mayor of the city of
36 Staten Island, if applicable, and shall, upon conviction, be guilty of a
37 misdemeanor.

38 4. In the case of a violation of subdivision one or two of this
39 section by an officer or employee of the city, or, the city of Staten
40 Island, if applicable, or any of the covered organizations, the mayor or
41 the mayor of the city of Staten Island, if applicable, or the chief
42 executive officer of such covered organization shall immediately report
43 to the board all pertinent facts together with a statement of the action
44 taken thereon.

45 § 13-001. Section 25-a of the general city law is amended by adding a
46 new undesignated paragraph to read as follows:

47 For the purposes of this article, a city which is incorporated on or
48 after the first of January next succeeding the date on which this para-
49 graph shall have become a law and which is comprised of a geographical
50 area which on the date immediately prior to such incorporation had been
51 wholly contained within a city with a population of one million or more
52 shall continue to be treated as a city with a population of one million
53 or more.

54 § 13-002. Section 25-w of the general city law is amended by adding a
55 new subdivision (g) to read as follows:

1 (g) For the purposes of this article, a city which is incorporated on
2 or after the first of January next succeeding the date on which this
3 subdivision shall have become a law and which is comprised of a
4 geographical area which on the date immediately prior to such incorpo-
5 ration had been wholly contained within a city with a population of one
6 million or more shall continue to be treated as a city with a population
7 of one million or more.

8 § 13-003. Section 1 of chapter 772 of the laws of 1966 relating to
9 imposition of a city business tax is amended by adding a new undesig-
10 nated paragraph to read as follows:

11 For the purposes of this section, a city which is incorporated on or
12 after the first of January next succeeding the date on which this para-
13 graph shall have become a law and which is comprised of a geographical
14 area which on the date immediately prior to such incorporation had been
15 wholly contained within a city with a population of one million or more
16 shall continue to be treated as a city with a population of one million
17 or more.

18 § 13-004. Section 2 of chapter 772 of the laws of 1966 relating to
19 imposition of a city business tax is amended by adding a new undesig-
20 nated paragraph to read as follows:

21 For the purposes of this section, a city which is incorporated on or
22 after the first of January next succeeding the date on which this para-
23 graph shall have become a law and which is comprised of a geographical
24 area which on the date immediately prior to such incorporation had been
25 wholly contained within a city with a population of one million or more
26 shall continue to be treated as a city with a population of one million
27 or more.

28 § 13-005. Section 1301 of the tax law is amended by adding a new
29 subsection (f) to read as follows:

30 (f) For the purposes of this article, a city which is incorporated on
31 or after the first of January next succeeding the date on which this
32 subsection shall have become a law and which is comprised of a geograph-
33 ical area which on the date immediately prior to such incorporation had
34 been wholly contained within a city with a population of one million or
35 more shall continue to be treated as a city with a population of one
36 million or more.

37 § 14-001. The administrative code of the city of Staten Island is
38 enacted to read as follows:

39 Title 6 - General Services and Contracting

40 § 6-101 Definitions. As used in this title:

41 1. "Commissioner" shall mean the commissioner of the department of
42 general services and contracting.

43 2. "Department" shall mean the department of general services and
44 contracting.

45 § 6-102 Commissioner. The head of the department shall be the commis-
46 sioner.

47 § 6-103 Powers and duties. The commissioner shall have the power and
48 it shall be his or her duty to perform all the functions and operations
49 of the city of Staten Island relating to the construction, maintenance
50 and care of public buildings and facilities; the procurement of goods
51 and other personal property; the disposition of surplus property; the
52 providing to city agencies of services other than personal services; the
53 acquisition, disposition and management by the city of real property
54 other than housing; the providing of automotive, communication, energy
55 and data processing services including without limitation:

1 1. Procurement of goods, other personal property and services. With
2 respect to the procurement and disposal of goods and other personal
3 property and the procurement of services other than personal services,
4 the commissioner shall have the following power and duties:

5 (a) to purchase, inspect, store and distribute all goods, supplies,
6 materials, equipment and other personal property required by any city
7 agency, except as otherwise provided by law, or by any office of any
8 county wholly included in the city for which supplies, materials or
9 equipment are required, payment for which is made from the city treas-
10 ury;

11 (b) to establish and maintain one or more city storehouses, operating
12 therein a modern system of stores control to supply the estimated
13 current needs of the agencies for which the commissioner is authorized
14 to purchase. All purchases other than such purchases for stock for
15 estimated needs and all deliveries from such stock shall be upon justi-
16 fied requisitions. The commissioner shall also oversee the establish-
17 ment of efficient and economical systems of stores control in other city
18 agencies and review the operations of such storehouses to assure their
19 efficient and economical management;

20 (c) to receive all surplus and obsolete personal property not required
21 by any agency for which the commissioner has the power to make purchases
22 and all such agencies shall surrender such property to the commissioner
23 who shall dispose thereof pursuant to rules promulgated by him or her
24 governing its redistribution, exchange, transfer, sale or other disposi-
25 tion;

26 (d) to procure, supply and manage contractual services other than
27 personal or professional services for the use of city agencies;

28 (e) to promulgate rules governing the purchase, payment, storage, and
29 delivery of goods, supplies, materials and equipment by agencies of the
30 city and the disposal of surplus and obsolete materials, and to super-
31 vise their enforcement; and

32 (f) to classify all goods, supplies, materials and equipment.

33 2. Energy; gas and electricity. The commissioner shall have charge and
34 control of furnishing the city or any part thereof, by contract or
35 otherwise, with gas, electricity, steam, hot water or other energy
36 source, except such functions as are exercised by the public utility
37 service of the city.

38 3. Data processing services; information technology and telecommuni-
39 cations. (a) For purposes of this title "telecommunications" shall mean
40 transmission of writings, signals, pictures, numbers and sounds or
41 intelligence of all kinds by and of wire, cable, optical fiber, radio,
42 satellite, electromagnetic wave, microwave or other like connection
43 between points of origin and reception of such transmission, including
44 all instrumentalities, facilities, apparatus and services incidental to
45 such transmission.

46 (b) The commissioner shall provide data processing support, program-
47 ming, and computer systems analysis services for city agencies when
48 necessary or desirable, in accordance with executive orders promulgated
49 by the mayor.

50 (c) In addition, the commissioner shall have further powers and
51 duties:

52 (i) to plan, formulate, coordinate and advance information technology
53 and telecommunications policy for the city;

54 (ii) to develop, maintain and implement a long range telecommuni-
55 cations strategy;

1 (iii) to administer, subject to the approval of the council where
2 applicable, all franchises and revocable consents relating to telecommu-
3 nications including without limitation, proposing authorizing resol-
4 utions for telecommunications, franchises, developing and issuing
5 requests for proposals or other solicitations of proposals for telecom-
6 munications franchises, selecting telecommunications franchises, review-
7 ing and approving petitions for revocable consents relating to telecom-
8 munications, negotiating the terms of contracts or other agreements
9 relating to telecommunications franchises and revocable consents,
10 enforcing the terms and conditions of such agreements;

11 (iv) to develop municipal uses of cable television and coordinate
12 interagency uses of cable television and other telecommunications;

13 (v) to ensure that priority is given on at least one municipal channel
14 to the cable casting of the public proceedings of the council and its
15 committees, the city planning commission and other state and city agen-
16 cies;

17 (vi) to provide to city agencies such land-based and wireless voice,
18 data, video or other communication facilities, and technical assistance
19 or other assistance with respect to such facilities, as they may require
20 for the effective discharge of their responsibilities;

21 (vii) to participate in developing, maintaining and implementing a
22 long-range computer system and data communications strategy for the
23 city;

24 (viii) to assist in providing interagency coordination on matters
25 related to data communications activities and interfacing of computers;

26 (ix) to provide appropriate, reliable, cost-effective and responsive
27 computer and data communications services to agencies that require such
28 services by purchasing and maintaining hardware, software and such other
29 goods and services as may be necessary to effectively discharge the
30 powers and duties of the department;

31 (x) to provide assistance to agencies in meeting their data processing
32 and data communications objectives;

33 (xi) to provide agencies using or proposing to use the services of
34 this department with technical assistance in determining feasibility and
35 resource requirements;

36 (xii) to simplify access to shared information, reduce communication
37 costs and provide access to multiple computer systems by connecting
38 computers and terminals of various city agencies, and of other public
39 entities requesting such connection where such provision to such other
40 entities would in the judgment of the commissioner be in the city's
41 interests;

42 (xiii) to plan and provide telecommunications coordination in support
43 of disaster recovery;

44 (xiv) to ensure security for data and other information handled by
45 this department;

46 (xv) to institute procedures to assure restrictions of access to
47 information to the appropriate individuals, where such restrictions are
48 required by law; and

49 (xvi) to perform such other responsibilities with respect to informa-
50 tion technology and telecommunications matters, including responsibil-
51 ities delegated elsewhere by the code, as the mayor shall direct.

52 4. Automotive services. The commissioner shall acquire by purchase,
53 lease or otherwise, vehicles and other automotive equipment for the use
54 of city agencies; manage, maintain, store and operate a fleet of motor
55 vehicles; assign fleets to agencies in accordance with the direction of
56 the mayor and ensure the effective operation of all shops, yards,

1 garages, fuel depots and other facilities required for the maintenance
2 of fleets operated by agencies; and ensure the maintenance of records
3 for all city owned vehicles.

4 5. Right of entry. The commissioner, officers and employees of the
5 department may, in accordance with law, enter upon public or private
6 property for the purpose of making surveys, borings or other investi-
7 gations necessary for the exercise of powers or the performance of the
8 duties of the commissioner and the department. Refusal to permit such
9 entry shall be a misdemeanor punishable by not more than thirty days
10 imprisonment or by a fine of not more than \$50.00, or both.

11 § 6-104 Emergency communications systems of other agencies. With
12 respect to emergency communications systems and emergency communications
13 facilities administered by another agency or another municipality, the
14 department shall exercise its powers and duties only as the mayor shall
15 direct or at the request of such agency.

16 § 6-105 Records and information services. Within the department there
17 shall be a division of records and information services which shall
18 include, but not be limited to, municipal archives, a municipal refer-
19 ence and research center and a municipal records management division.

20 1. The division shall be responsible for the maintenance, access to
21 and preservation of records of the city. In addition, the division shall
22 develop and promulgate standards and procedures to effectively perform
23 those duties.

24 The division shall provide appropriate information and assistance to
25 the mayor and to members of the council. It shall also provide, within
26 reasonable limits, access to the public to records, books and documents
27 within its care and control.

28 2. The division is authorized to arrange for the exchange, sale,
29 purchase and loan of information materials from and with legislative
30 research services, libraries and institutions in other municipalities,
31 governmental bodies and public authorities.

32 3. The division shall:

33 (a) provide for the distribution of publications of the city, where
34 such authority is not vested in another city agency, and issue at regu-
35 lar intervals, no less than quarterly, a bulletin describing its facili-
36 ties and resources;

37 (b) institute actions in replevin to recover any historical and/or
38 other documents properly owned by, or originating from, the county of
39 Richmond prior to the creation of the preceding municipality;

40 (c) report annually by the thirtieth of September to the mayor, and
41 council on the powers and duties herein-mentioned including, but not
42 limited to, the cost of savings effectuated by the division during the
43 preceding fiscal year.

44 § 6-106 Departmental libraries. The commissioner shall analyze the
45 needs of each city agency, except the law department, with respect to
46 the establishment and maintenance of any library or research facility
47 therein, and make such recommendations as may be appropriate in the
48 circumstances. Any libraries or research facilities so established
49 shall, among any of its other duties, be responsible for the mainte-
50 nance, access to and preservation of records within its care and
51 control.

52 Title 7 - Legal Affairs

53 § 7-102 Department; corporation counsel. 1. There shall be a law
54 department the head of which shall be the corporation counsel.

55 2. The first assistant corporation counsel, appointed by the corpo-
56 ration counsel, during absence, disability or the vacancy of the office

1 of the corporation counsel, shall assume all powers and perform all
2 duties of the corporation counsel and shall act as corporation counsel
3 until a new appointment is made.

4 3. The corporation counsel may empower, by written authority filed
5 and remaining on record in the department, any of the assistants to
6 perform certain duties of the corporation counsel.

7 § 7-103 Powers and duties. The corporation counsel shall:

8 1. be attorney and counsel for the city and every agency thereof and
9 shall have charge of and conduct all the law business of the city and
10 its agencies;

11 2. have charge of and conduct the legal proceedings necessary in open-
12 ing, widening, altering and closing streets and in acquiring real estate
13 or in city condemnation proceedings;

14 3. have charge of and conduct the preparation of all leases, deeds,
15 contracts, bonds and all other legal papers for the city or connected
16 agency or officer thereof; and the corporation counsel shall approve the
17 form of all such deeds, bonds, contracts, leases and legal papers;

18 4. have the right to institute actions in law or equity to maintain,
19 defend and establish the rights, interests, revenues, property, privi-
20 leges, franchises or demands of the city or the people thereof, and to
21 collect any money, debts, fines or penalties or enforce the laws;

22 5. not be empowered to compromise, settle or adjust any rights,
23 claims, demands or causes of action in favor of or against the city, to
24 offer or confess judgment against the city or accept any offer of judg-
25 ment in favor of the city without the approval of the comptroller; and

26 6. have the authority to assign one or more assistants to any agency;
27 and the head of each agency may employ staff counsel to assist in legal
28 affairs of the agency.

29 § 7-104 Legal authority. 1. All actions and proceedings for the
30 recovery of penalties for the violation of any law shall be brought in
31 the name of the city and not in that of any agency.

32 2. The mayor may delegate to any agency, after consultation with the
33 corporation counsel and head of the agency, responsibility for the
34 conduct of routine legal affairs of the agency.

35 3. The mayor may assign or transfer attorneys from the law department
36 of the agency to assist in such delegated functions.

37 4. The corporation counsel shall monitor and evaluate on a regular
38 basis the exercise of authority delegated.

39 5. The mayor, upon recommendation of the corporation counsel, may
40 suspend or withdraw any delegated authority whenever in his or her judg-
41 ment the interests of the city justify such action.

42 § 7-105 City sheriff; powers and duties. 1. There shall be a city
43 sheriff who shall be appointed by the mayor.

44 2. Except as otherwise provided by law, the functions, powers and
45 duties formerly exercised by the sheriff of the preceding municipality
46 as of the date of establishment of the city of Staten Island shall
47 remain with the city sheriff.

48 § 7-106 City clerk; powers and duties. The city clerk shall:

49 1. be the chief archivist of the city and shall advise the mayor and
50 council on those matters concerning the preservation of the city's
51 historical documentation;

52 2. act as the chief reference and research librarian for the mayor and
53 council and shall ensure that all significant materials pertaining to
54 operations of the city be preserved and readily available for use;

55 3. act as the chief public records officer for the mayor and council
56 and shall, except as otherwise provided by law, establish standards for

1 the proper records management in any agency or government instrumentali-
2 ty funded in whole or in part from local tax levy monies; and
3 4. have the power formerly exercised or delegate any of the functions
4 and duties vested in such city clerk by law of the preceding municipi-
5 pality as it existed on the date of establishment.

6 Title 8 - Reserved

7 Title 9 - Criminal Justice

8 Chapter 1

9 Department of Corrections

10 § 9-101 Definitions. As used in this title:

11 1. "Commissioner" shall mean the commissioner of the department of
12 corrections.

13 2. "Department" shall mean the department of corrections.

14 3. "Division" shall mean the division of juvenile justice.

15 § 9-102 Commissioner. The head of the department shall be the commis-
16 sioner of corrections.

17 § 9-103 Powers and duties of commissioner. 1. The commissioner shall
18 have:

19 a. charge and management of all institutions of the city (including
20 all hospital wards) for the care and custody of felons; misdemeanants;
21 all prisoners under arrest and waiting arraignment (including those who
22 require hospital care and/or psychiatric observation or treatment);
23 violators of ordinances or local laws and for the detention of any
24 witnesses who are unable to furnish security for their appearance in
25 criminal proceedings;

26 b. sole power and authority concerning the care, custody and control
27 of all court pens for the detention of prisoners while in custody of the
28 state of New York within the city of Staten Island, the family court of
29 the state of New York, the supreme court in the county of Richmond and
30 of all vehicles employed in the transportation of prisoners who have
31 been sentenced, are awaiting trial or being held for other cause;

32 c. charge and management of persons or any other institution of the
33 city placed under his or her jurisdiction;

34 d. all authority concerning the care and custody of felons, misdemea-
35 ants or violators of local laws held in institutions under his or her
36 jurisdiction;

37 e. all authority in relation to the custody and transportation of
38 persons held for any criminal proceedings, all prisoners under arrest
39 and waiting arraignment (including those requiring hospital care and/or
40 psychiatric treatment) in the city; and

41 f. supervision and responsibility for the planning and implementation
42 of re-training, counseling, and rehabilitative programs for felons,
43 misdemeanants and violators of local laws who are held in institutions
44 under his or her charge.

45 2. The commissioner shall maintain and operate buildings and struc-
46 tures under his or her jurisdiction and may construct additions and make
47 repairs to such buildings by use of the labor of persons under his or
48 her care and custody.

49 § 9-104 Labor of prisoners. 1. Every inmate of an institution under
50 the authority of the commissioner shall be employed in some form of
51 industry, farming operations or other employment and any products there-

1 of shall be utilized in the institutions under the commissioner's juris-
 2 diction.
 3 2. Any persons held for trial may be employed in the same manner as
 4 sentenced prisoners; however, such sentenced prisoners must give their
 5 consent in writing.
 6 3. Inmates and/or prisoners held for trial may be detailed by the
 7 commissioner to perform work or service on the grounds, buildings, or on
 8 any public improvement under the charge of any other agency.

9 Chapter 2

10 Division of Juvenile Justice

11 § 9-201 The division of juvenile justice; director. 1. There shall be
 12 within the department of corrections a division of juvenile justice.
 13 2. The head of the division shall be the director of juvenile justice.
 14 § 9-202 Powers and duties of director. The director shall:
 15 1. establish, initiate, control, maintain and operate secure and non-
 16 secure facilities for the temporary care and maintenance of children
 17 alleged to be or adjudicated as juvenile delinquents.
 18 2. have the power to contract with other public and private agencies
 19 for services in order to ensure adequate, suitable and accessible accom-
 20 modations and that proper care will be available when required for
 21 detention.
 22 3. establish regulations for the operation of secure and non-secure
 23 detention facilities and shall provide or secure the availability of
 24 accessible and adequate non-secure detention facilities certified by
 25 the state division of youth.
 26 4. develop, implement and maintain systems to collect, store and
 27 disseminate information concerning juvenile delinquency, juvenile crime
 28 and the juvenile justice system.
 29 5. participate with other city agencies in development, implementation
 30 and maintenance of juvenile justice information.

31 Title 10 - Reserved

32 TITLE 11

33 TAXATION AND FINANCE

34 CHAPTER 1

35 DEPARTMENT OF FINANCE

36 § 11-001 Definitions and applicability. Any terms in this title refer-
 37 ring to a governmental entity of the preceding municipality shall be
 38 deemed to refer to such entity of the preceding municipality or its
 39 successor entity under the city of Staten Island. Any action taken in
 40 compliance with the provisions of this title prior to the incorporation
 41 of the city of Staten Island shall be deemed to comply with the require-
 42 ments of this title. For the purposes of this title, the term preceding
 43 municipality shall mean the city government for the geographical area of
 44 the city of Staten Island which existed immediately prior to the incor-
 45 poration of the city of Staten Island.

46 § 11-101 Power of department of finance to adopt a seal. The depart-
 47 ment of finance is authorized to adopt a seal.

48 § 11-102 Finance department; records; copies when in evidence. A
 49 copy of any paper, record, book, document or map, filed in the depart-
 50 ment of finance, or the minutes, records or proceedings, or any portion
 51 thereof, of any board or commission of which the commissioner of
 52 finance, is or may become a member, when certified by the commissioner
 53 of finance, or a deputy commissioner of finance, to be a correct copy of

1 the original, shall be admissible in evidence in any trial, investi-
2 gation, hearing or proceeding in any court, or before any commissioner,
3 board or tribunal, with the same force and effect as the original.
4 Whenever a subpoena is served upon the commissioner of finance, or any
5 member of a board or commission of which the commissioner of finance is
6 a member, or upon any officer or employee of the department of finance,
7 or upon any officer or employee of such boards or commissions, requiring
8 the production upon any trial or hearing of an original paper, document,
9 book, map, record, minutes or proceedings, the commissioner of finance,
10 in his or her discretion, may furnish a copy certified as herein
11 provided, unless the subpoena be accompanied by an order of the court or
12 other tribunal before which trial or hearing is had requiring the
13 production of such original.

14 § 11-102.1 Authorization to require identifying numbers. a. The
15 commissioner of finance in the proper discharge of his or her duties in
16 the administration and collection of taxes, assessments, arrears or
17 other charges payable to the city may require any person to furnish such
18 identifying number as the commissioner may prescribe for securing proper
19 identification of such person including, but not limited to, a social
20 security account number or federal employer identification number.

21 b. Any person who fails to supply such identifying number within thir-
22 ty days after written demand therefor shall be liable for a civil penal-
23 ty of not more than one thousand dollars. Upon application in writing
24 and for good cause shown, the commissioner of finance may extend the
25 time for compliance with such written demand.

26 c. The civil penalty prescribed by this section shall be recovered by
27 the corporation counsel in an action or proceeding in any court of
28 competent jurisdiction. In addition, the corporation counsel may insti-
29 tute any other action or proceeding in any court of competent jurisdic-
30 tion that may be appropriate or necessary for the enforcement of the
31 provisions of this section.

32 § 11-103 Bond of commissioner of finance. The commissioner of
33 finance, within ten days after receiving notice of his or her appoint-
34 ment and before such commissioner enters upon his or her office, shall
35 give a bond to the city and to the people of the state of New York in
36 the sum of three hundred thousand dollars, with not less than four
37 sufficient sureties to be approved by the comptroller, conditioned that
38 he or she will faithfully discharge the duties of the commissioner's
39 office and all trusts imposed on him or her by law in virtue of the
40 commissioner's office, including all duties in connection with the tax
41 on mortgages as prescribed by article eleven of the tax law. Such bond
42 shall be deemed to extend to the faithful execution of the duties of the
43 office until a new appointment shall be made and confirmed, and the
44 person so appointed enters upon the performance of the commissioner's
45 duties. In case of any official misconduct or default on the part of
46 such commissioner of finance, or his or her subordinates, an action upon
47 such bond may be begun and prosecuted to judgment by the city, which,
48 after first paying therefrom the expenses of the litigation, shall cause
49 the proceeds of such judgment to be distributed as shall be lawful and
50 equitable among the persons and objects injured or defrauded by such
51 official misconduct or default of the commissioner of finance or any of
52 his or her subordinates.

53 § 11-104 Commissioner of finance to keep accounts. a. The commission-
54 er of finance shall keep books showing the receipts of moneys from all
55 sources, and designating the sources of same, and also showing the

1 amounts paid from time to time on account of the several appropriations,
2 the forms of which shall be prescribed by the comptroller.

3 b. The city collector or the deputy collector in receiving moneys
4 payable to the city, from whatever source derived, shall not issue a
5 receipt to the payor for a payment made by personal, business or corpo-
6 rate check unless specifically requested.

7 § 11-105 Agreements with financing agencies or card issuers; payment
8 of fines, civil penalties, taxes, fees, rates, rent, charges or other
9 amounts by credit card. 1. As used in this section, the following terms
10 shall have the following meanings:

11 a. "Card issuer" shall mean an issuer of a credit card, charge card or
12 other value transfer device.

13 b. "Credit card" means any credit card, credit plate, charge card,
14 charge plate, courtesy card, debit card or other identification card or
15 device issued by a person to another person which may be used to obtain
16 a cash advance or a loan or credit, or to purchase or lease property or
17 services on the credit of the person issuing the credit card or a person
18 who has agreed with the issuer to pay obligations arising from the use
19 of a credit card issued another person.

20 c. "Financing agency" means a person engaged, in whole or in part, in
21 the business of purchasing retail installment contracts, obligations or
22 credit agreements or indebtedness of buyers under credit agreements from
23 one or more retail sellers or entering into credit agreements with
24 retail buyers but shall not include a retail seller. The term includes
25 but is not limited to a bank, trust company, private banker, industrial
26 bank or investment company, if so engaged, but shall not include a
27 retail seller.

28 d. "Person" means an individual, partnership, corporation or any other
29 legal or commercial entity.

30 2. The city may enter into agreements with one or more financing agen-
31 cies or card issuers to provide for the acceptance by the city of credit
32 cards as an alternate means of payment of fines, civil penalties, taxes,
33 fees, rent, rates, charges or other amounts owed by a person to the
34 city. Any such agreement shall govern the terms and conditions upon
35 which a credit card proffered as a means of payment of a fine, civil
36 penalty, tax, fee, rent, rate, charge or other amount shall be accepted
37 or declined and the manner in and conditions upon which the financing
38 agency or card issuer shall pay to the city the amount of fines, civil
39 penalties, taxes, fees, rent, rates, charges or other amounts paid by
40 means of credit cards pursuant to such agreement. Any such agreement may
41 provide for the payment by the city to such financing agency or card
42 issuer of fees for the services rendered by such financing agency or
43 card issuer pursuant to such agreement, which fees may consist of a
44 discount deducted from or payable in respect of the amount of each such
45 fine, civil penalty, tax, fee, rent, rate, charge or other amount or
46 otherwise as the agreement may provide.

47 3. Notwithstanding any other provision of law to the contrary, any
48 agency or department of the city which, pursuant to an agreement entered
49 into under this section, accepts credit cards as a means of payment of
50 fines, civil penalties, taxes, fees, rent, rates, charges or other
51 amounts owed by a person to the city shall be authorized to charge and
52 collect from any person offering a credit card as a means of payment of
53 a fine a reasonable and uniform fee as a condition of accepting such
54 credit card in payment of a fine, civil penalty, tax, fee, rent, rate,
55 charge or other amount. Such fee shall not exceed the cost incurred by
56 the agency or department in connection with such credit card trans-

1 action, which cost shall include any fee payable by the city to the
2 financing agency.

3 § 11-106 Weekly reports by commissioner of finance to mayor and comp-
4 troller. The commissioner of finance shall report weekly in writing to
5 the mayor and to the comptroller all moneys received by the commission-
6 er, the amount of all warrants paid by him or her since the commission-
7 er's last report, and the amount remaining to the credit of the city.

8 § 11-107 Report to comptroller. The commissioner of finance, when
9 required by the comptroller, shall furnish to him or her such informa-
10 tion as the comptroller may demand in relation to the finances of the
11 city, within such reasonable time as the commissioner may direct.

12 § 11-108 Rules in signing warrants. No warrant shall be signed by
13 the comptroller or countersigned by the commissioner of finance, except
14 upon vouchers for the expenditures of the amount named therein, duly
15 prepared and audited according to the methods prescribed by the comp-
16 troller, and filed with the comptroller, except in the case of judg-
17 ments, in which case a transcript thereof shall be filed.

18 § 11-109 Commissioner of finance to exhibit bank book. The commis-
19 sioner of finance shall exhibit his or her bank book to the comptroller
20 on the first Tuesday of every month and more often when required.

21 § 11-110 When commissioner of finance to close accounts. The accounts
22 of the commissioner of finance shall be annually closed on the last day
23 of June.

24 § 11-111 Withdrawal of moneys by heads of agencies. Notwithstanding
25 any provision of the charter, any city treasury or sinking fund moneys
26 which have been duly withdrawn from any bank or trust company upon prop-
27 er warrant and check to the order of the head or heads of any agency or
28 agencies may be redeposited by such head or heads of such agency or
29 agencies in a properly designated deposit bank and thereafter such rede-
30 posited moneys may be withdrawn upon check signed by him or her or them
31 without additional warrant.

32 § 11-112 Authorization of subordinates to sign checks and warrants.
33 Notwithstanding any provision of the charter, the comptroller or commis-
34 sioner of finance may designate and authorize any deputies, assistant
35 deputies, or employees to sign, each in his or her own name and in place
36 of and for the comptroller or commissioner of finance, respectively, any
37 or all checks or warrants, including those issued against sinking fund
38 and trust fund bank accounts. A warrant or check so signed shall be of
39 the same force and effect as if signed by the comptroller or commission-
40 er of finance, respectively. The designation or designations of depu-
41 ties shall be made in writing in the manner set forth in section nine-
42 ty-four of the charter of the preceding municipality as it existed
43 January first, nineteen hundred ninety-four. The designation or desig-
44 nations of assistant deputies or employees shall be in writing, signed
45 in duplicate by the comptroller or the commissioner of finance, respec-
46 tively, and shall be duly filed and remain of record in the office of
47 the comptroller and the department of finance. The period for which
48 each such designation of deputies, assistant deputies and employees
49 shall continue in force shall be specified therein and may be terminated
50 by the comptroller or commissioner of finance, respectively, at any time
51 by filing in the same office or offices in which the designation has
52 been filed a written notice of such termination signed by the comp-
53 troller or commissioner of finance, respectively.

54 § 11-113 Acceptance of facsimile signatures by banks or trust compa-
55 nies. Notwithstanding any provision of the charter, checks drawn upon
56 any bank or trust company for payment of payrolls or disbursements for

1 relief, required to be signed by the head of an agency or his or her
2 authorized designee, may be signed by the facsimile signature or signa-
3 tures of the person or persons authorized to sign such checks, if the
4 head of such agency so authorizes by an instrument in writing signed by
5 the head of such agency and filed with the comptroller; and, in such
6 event, any bank or trust company shall, acting in good faith and without
7 notice of any defect or invalidity, be authorized to pay and be
8 protected in paying any checks bearing or purporting to bear the facsim-
9 ile signature or signatures of the person or persons duly authorized to
10 sign such checks, regardless of the person by whom or the means by which
11 the actual or purported facsimile signature or signatures thereon may
12 have been affixed thereto, if such facsimile signature or signatures
13 closely resemble the facsimile specimens from time to time filed with
14 such banks or trust companies by the head of the agency in question;
15 provided, however, that nothing herein contained shall release such bank
16 or trust company from any liability arising from any cause or fact other
17 than the fact that such facsimile signature is not a genuine facsimile
18 signature affixed with appropriate authority.

19 § 11-115 City collector; appointment; bond. The mayor shall appoint
20 the city collector. The city collector, before entering upon the duties
21 of his or her office, shall enter into a bond to the city of Staten
22 Island to be approved by the commissioner of finance and comptroller in
23 the penal sum of twenty-five thousand dollars, which bond shall be
24 conditioned for the faithful performance of the duties of the office by
25 the officer giving such bond. Such bond shall be a lien on all the real
26 estate held by the collector executing the same, or any surety thereto,
27 in the city at the time of the filing thereof, unless there be named and
28 described in or on any such bond, real estate in such city equal in
29 value to the amount of such bond and owned by a surety, in which case
30 the bond shall be a lien on such real estate so described and upon all
31 the real estate of such city collector, and no other, and shall continue
32 to be such lien until the condition, together with all costs and charges
33 which may accrue by the prosecution thereof, shall be fully satisfied,
34 or until such lien be released, not to exceed, however, the period of
35 ten years after the time when the officer who has given such bond shall
36 have ceased to hold his or her office, unless an action thereon has been
37 commenced and shall then be pending.

38 § 11-116 Deputies to give bond; duties. The city collector shall
39 take from each deputy a bond, in such penal sum and with such sureties
40 as may be approved by the city collector and by the comptroller and
41 commissioner of finance, which bond shall run to the city collector, the
42 city and to whom it may concern, and shall be conditioned for the faith-
43 ful performance of the duties of such deputy. Each bond taken in
44 pursuance of the provisions of this section shall be filed with the
45 comptroller. Each deputy collector shall have all the powers and be
46 subject to all the duties of the city collector in respect to the
47 collection and receipt of taxes, assessments, water rents and arrears.

48 § 11-117 Renewal of bond. If at any time during the continuance in
49 office of the city collector or deputy collectors the comptroller or
50 commissioner of finance shall deem any surety of them to be insuffi-
51 cient, he or she may require the city collector or deputy collectors to
52 enter into a new bond to be approved in like manner as prescribed in
53 section 11-115 of this chapter, within such time as the comptroller may
54 direct, not being less than ten days after requiring such new bond to be
55 given. In case of the neglect or refusal of any such officer to furnish

1 such bond within the time so directed, the comptroller or commissioner
2 of finance may declare his or her office vacant.

3 § 11-118 Bureau of city collections; duties. The duties of the bureau
4 of city collections shall also include the collection of water rents,
5 charges, fines and penalties in connection with the water supply,
6 including arrears, sewer rents, sewer surcharges, charges, fines and
7 penalties in connection with the sewer system as defined in sections
8 24-514 and 24-523 of the code of the preceding municipality, including
9 arrears, interest on bonds and mortgages and revenue arising from the
10 sale of property belonging to or managed by the city.

11 § 11-119 City collector; absence; suspension of. a. In case of
12 inability of the city collector to perform the duties of his or her
13 office by reason of sickness or absence from the city, the mayor shall
14 designate some suitable person to perform the duties of the city collec-
15 tor's office during such inability or absence, and shall, if the comp-
16 troller so requires, take from such person a bond, with sufficient sure-
17 ties, in the manner hereinafter prescribed.

18 b. If the city collector or any deputy collector shall on any day omit
19 or neglect to furnish to the commissioner of finance or to the comp-
20 troller, respectively, the statements and vouchers required in section
21 11-121 of this chapter, or to make the prescribed daily payments, it
22 shall be the duty of the commissioner of finance forthwith to suspend
23 him or her from office. In case of such suspension, the commissioner of
24 finance shall appoint a suitable person to perform the duties of the
25 officer so suspended, who shall continue to act as such officer until
26 the person suspended shall be restored or another person shall have been
27 appointed. On making such temporary appointment, the commissioner of
28 finance shall be required to take from the person so appointed a bond,
29 with two sufficient sureties, to be approved by the comptroller and
30 filed with the comptroller, in such penal sum as the comptroller may
31 deem just, conditioned for the faithful performance of the duties of the
32 office during the continuance of the person appointed therein; and all
33 the provisions of law prescribing the duties of the city collector and
34 deputy collectors shall apply to the person or persons so appointed.

35 § 11-120 Bond of city collector to be filed. The bond given by the
36 city collector shall be filed and remain in the office of the comp-
37 troller, and true copies thereof, certified by the comptroller, shall be
38 filed in the office of the clerk, and shall be public records. In case
39 a certificate of the adjustment of the accounts of the city collector be
40 made, a true copy thereof, certified by the comptroller, shall be filed
41 in each of the offices in which a copy of the bond of the city collector
42 shall have been filed.

43 § 11-121 City collector; daily statements and accounts. a. The city
44 collector or the deputy collector shall enter upon accounts, to be main-
45 tained in each such office for each parcel of property, the payment of
46 taxes, assessments, sewer rents or water rents thereon, the amount
47 therefor, and the date when paid. The city collector shall daily enter
48 into suitable books to be kept for the purpose of such accounts, such
49 payments and the respective parcels on account of which the same were
50 paid.

51 b. At close of office hours each day, the city collector shall render
52 to the commissioner of finance a statement of the sums so received, and
53 at the same time pay over to such commissioner of finance, the amount
54 received on such day. The city collector shall thereupon receive from
55 such commissioner of finance a voucher for the payment of such sums

1 which he or she shall exhibit to the comptroller not later than the next
2 succeeding business day.

3 c. At the close of office hours each day, the city collector shall
4 also furnish a statement to the comptroller who shall file the same in
5 his or her office. Such statement shall indicate in detail such sums so
6 received and the respective parcels on account of which the same were
7 paid. The comptroller shall, on each day, immediately after receiving
8 such statement, compare it with a voucher furnished to him or her by the
9 commissioner of finance indicating the sums which have been paid on such
10 day to the commissioner of finance and if the aggregate amounts thereof
11 shall correspond, shall credit the city collector in his or her books
12 with such amount.

13 § 11-122 Exemption from taxes granted to REMICs. An entity that is
14 treated for federal income tax purposes as a real estate mortgage
15 investment conduit, hereinafter referred to as a REMIC, as such term is
16 defined in section 860D of the internal revenue code, shall be exempt
17 from all taxation under chapters five and six of this title. A REMIC
18 shall not be treated as a corporation, partnership or trust for purposes
19 of chapter six of this title. The assets of a REMIC shall not be
20 included in the calculation of any tax liability under chapter six. This
21 provision does not exempt the holders of regular or residual interests,
22 as defined in section 860G of the internal revenue code, in a REMIC from
23 tax on or measured by such regular or residual interests, or on income
24 from such interests.

25 § 11-123 Interest compounded daily.

26 In computing the amount of any interest required to be paid under
27 section 11-224 (except subdivision j thereof), 11-224.1, 11-264, 11-306,
28 11-307, 11-312, 11-313, 17-151, 19-152, 24-317, 24-512, 24-605, 26-128,
29 26-517.1, 27-2144 or 27-4029.1 of the code, such interest shall be
30 compounded daily.

31 § 11-124 Conciliation conferences. a. The commissioner of finance may
32 establish a procedure for providing conciliation conferences for
33 purposes of settling contested determinations of taxes or charges or
34 denials of refunds or credits with respect to taxes or charges imposed
35 under chapter five, six, seven, eight, nine, eleven, twelve, thirteen,
36 fourteen, fifteen, twenty-one, twenty-two, twenty-four, twenty-five or
37 twenty-seven of this title, or for the purpose of settling disputes
38 arising from the notification of the refusal to grant, the suspension or
39 the revocation of a license issued pursuant to chapter thirteen of this
40 title. If such a procedure is established, a conciliation conference
41 shall be provided at the option of any taxpayer or any other person
42 subject to the provisions of any of such chapters. For purposes of this
43 subdivision, if the commissioner of finance fails to act with respect to
44 a refund application before the expiration of the time period after
45 which the taxpayer may file a petition for refund with the tax appeals
46 tribunal established by section one hundred sixty-eight of the charter
47 of the preceding municipality as it existed January first, nineteen
48 hundred ninety-four pursuant to subdivision (c) of section 11-529 or
49 subdivision three of section 11-680 of the code, such failure shall be
50 deemed to be the denial of a refund.

51 b. A request for a conciliation conference shall be made in the manner
52 set forth in rules promulgated by the commissioner of finance and,
53 notwithstanding any provision of law to the contrary, shall suspend the
54 running of the period of limitations for the filing of a petition with
55 such tax appeals tribunal under chapter five, six, seven, eight, nine,
56 eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two,

1 twenty-four, twenty-five or twenty-seven of this title until such time
2 as a conciliation decision is rendered by the commissioner of finance,
3 or until the person who requested the conciliation conference makes a
4 written request to discontinue or withdraw from the conciliation
5 proceeding.

6 c. Nothing contained herein shall prevent any taxpayer or any other
7 person who has received a notice of determination, notice of deficiency
8 or notice of denial of a claim for refund from filing a petition with
9 such tax appeals tribunal if the time for filing such a petition has not
10 elapsed.

11 d. The commissioner of finance is authorized and empowered to make,
12 adopt and amend rules appropriate to the carrying out of this section
13 and the purposes thereof.

14 § 11-126 Definitions. When used in this title, the term "partnership"
15 shall mean an entity classified as a partnership for federal income tax
16 purposes, including a subchapter K limited liability company, and the
17 term "partner" or the term "member" when used in relation to a partner-
18 ship shall include a member of a subchapter K limited liability company,
19 unless the context requires otherwise. The term "subchapter K limited
20 liability company" shall mean a limited liability company classified as
21 a partnership for federal income tax purposes. The term "limited liabil-
22 ity company" means a domestic limited liability company or a foreign
23 limited liability company, as defined in section one hundred two of the
24 state limited liability company law, a limited liability investment
25 company formed pursuant to section five hundred seven of the banking
26 law, or a limited liability trust company formed pursuant to section one
27 hundred two-a of the banking law. Notwithstanding anything herein to
28 the contrary, this section shall not apply for purposes of chapter
29 seventeen or nineteen of this title.

30 § 11-128 Payment of real property taxes by electronic funds transfer.

31 a. Definition. "Electronic funds transfer" shall mean any transfer of
32 funds, other than a transaction originated by check, draft or similar
33 paper instrument, which is initiated through an electronic terminal,
34 telephonic instrument or computer or magnetic tape so as to order,
35 instruct or authorize a financial institution to debit or credit an
36 account.

37 b. Authority. Notwithstanding any provision of law to the contrary,
38 the department of finance may accept and, as authorized by this section,
39 require payment of real property taxes by electronic funds transfer, and
40 may authorize a designee to accept such payments. The department of
41 finance, or its designee, may take all actions necessary to complete and
42 administer such transactions, including but not limited to requesting
43 and collecting necessary information and the debiting of specified
44 accounts as provided for by this section.

45 c. Participation. Notwithstanding any provision of law to the contra-
46 ry, the commissioner may require the payment of real property taxes by
47 electronic funds transfer for properties with annual real property tax
48 liability equal to or greater than three hundred thousand dollars. The
49 owner of any such real property, or the person or entity authorized by
50 such owner to pay real property taxes on such real property, shall be
51 required to enroll in an electronic payment program to make such
52 payments, including any arrears in real property taxes on such real
53 property, by electronic funds transfer, either by payment initiated by
54 the taxpayer as described in paragraph one of subdivision d of this
55 section or by authorizing the department of finance to debit the rele-

1 vant account as described in paragraph two of subdivision d of this
2 section.

3 1. Notwithstanding any other provision of this section, where a
4 taxpayer pays real property taxes for more than one property by a single
5 payment, and the total annual real property tax liability for such prop-
6 erties is equal to or greater than three hundred thousand dollars, the
7 total annual real property tax liability for such properties shall be
8 used to determine whether the taxes for a property must be paid by elec-
9 tronic funds transfer.

10 2. (i) Where real property taxes are paid for more than one taxpayer
11 by a single bill or paid by a single entity, including but not limited
12 to a mortgage escrow agent as defined in subparagraph (ii) of this para-
13 graph, if the total amount paid is equal to or greater than three
14 hundred thousand dollars annually, such amount shall be used to deter-
15 mine whether the taxpayer or entity is required to participate in an
16 electronic funds transfer program.

17 (ii) For purposes of this paragraph, the term "mortgage escrow agent"
18 shall include every banking organization, federal savings bank, federal
19 savings and loan association, federal credit union, bank, trust company,
20 licensed mortgage banker, savings bank, savings and loan association,
21 credit union, insurance corporation organized under the laws of any
22 state other than New York, or any other person, entity or organization
23 which, in the regular course of its business, requires, maintains or
24 services escrow accounts in connection with mortgages on real property
25 located in the city.

26 d. Electronic payment program. The owner of real property, or other
27 person or entity authorized by such owner to pay real property taxes on
28 real property for which payment must be made by electronic funds trans-
29 fer under this section, may choose between participating in a taxpayer
30 initiated payment program or an automatic debit program, as set forth in
31 this subdivision and described in rules promulgated by the commissioner
32 of finance.

33 1. Taxpayer initiated program. In such a program, taxpayers initiate
34 payment by electric funds transfer, including payment by fedwire.

35 2. Automatic debit program. In such a program, taxpayers authorize the
36 department of finance, or the department's designee as determined by the
37 commissioner of finance, to debit the taxpayer's account for the amounts
38 due.

39 e. Notification of participation requirements. For taxpayers or enti-
40 ties subject to this section, the department of finance shall mail
41 notice of such requirement to the property owner or other party who has
42 been designated to receive real property tax bills on an owner's regis-
43 tration card filed by such owner. Such notice shall include the date by
44 which the owner or other party designated by such owner to pay real
45 property taxes on the property must enroll in the electronic payment
46 program.

47 f. Authorization. To administer the payment of real property taxes by
48 electronic funds transfer by automatic debit as described in paragraph
49 two of subdivision d of this section, the department of finance may
50 require that the party responsible for the payment of real property
51 taxes:

52 1. execute an electronic funds transfer agreement with the department
53 of finance or its designee, on a form approved by the department of
54 finance. Such form may be in a format designated by the commissioner,
55 including an electronic format. The agreement shall require that the
56 taxpayer authorize the department of finance or its designee to debit

1 such account on the last date by which the real property taxes may be
2 paid without the accrual of interest in accordance with applicable law;
3 and

4 2. furnish the department of finance or its designee with information
5 to enable the department of finance to complete the electronic funds
6 transfer transaction. Such information shall include, but not be limited
7 to, the name and address of the bank from which an electronic funds
8 transfer shall be authorized, the account number from which the payment
9 shall be authorized, the American Bankers Association (ABA) routing
10 number of the bank where the taxpayer maintains an account and the
11 borough, block and lot of the real property for which such payments are
12 authorized.

13 g. Timely payment. Notwithstanding any provision of law to the contra-
14 ry, where real property taxes are required to be made by electronic
15 funds transfer pursuant to subdivision c of this section, payment of
16 real property tax by electronic funds transfer shall be deemed timely
17 and not subject to interest charges if:

18 1. for taxpayers enrolled in a taxpayer initiated program pursuant to
19 paragraph one of subdivision d of this section, (i) the taxpayer proper-
20 ly initiates payment on the last date by which the real property taxes
21 may be paid without the accrual of interest in accordance with applica-
22 ble law; and (ii) on the last date by which the real property taxes may
23 be paid without the accrual of interest in accordance with applicable
24 law, such account contains sufficient funds to enable the successful
25 completion of the electronic funds transfer; or

26 2. for taxpayers enrolled in an automatic debit program pursuant to
27 paragraph two of subdivision d of this section, (i) the department of
28 finance or its designee has been authorized to debit the taxpayer's
29 account on the last date by which the real property taxes may be paid
30 without the accrual of interest in accordance with applicable law; (ii)
31 such account is properly identified; and (iii) on the date such payment
32 is due, such account contains sufficient funds to enable the successful
33 completion of the electronic funds transfer.

34 h. Charge on returned payments. Where the department of finance or its
35 designee attempts to debit a taxpayer's account pursuant to a valid
36 electronic funds transfer agreement and is unable to successfully
37 complete the electronic funds transfer due to insufficient funds or
38 other cause not attributable to the department of finance or its desig-
39 nee, in addition to any interest accruing from the late payment of taxes
40 in accordance with applicable law, the same fee that is imposed for a
41 dishonored check pursuant to section eighty-five of the general municip-
42 al law shall be imposed on the affected real property, and such fee may
43 be collected in the manner provided in such section.

44 i. Hardship. If a taxpayer is unable to enroll in the electronic
45 payment program required by subdivision c of this section or subsequent
46 to enrollment becomes unable to make payments by electronic funds trans-
47 fer as required by this section, the taxpayer may seek a waiver by writ-
48 ten application to the department of finance that sets forth the reason
49 for such inability. Such waiver may be granted in the discretion of the
50 commissioner of finance, who may consider such criteria as:

51 1. the hardship, whether financial or practical, created by partic-
52 ipation in the electronic funds transfer program for the taxpayer seek-
53 ing the waiver;

54 2. the length of time for which the waiver is requested; and

55 3. any other factors that the commissioner may deem relevant.

1 The commissioner shall issue a determination, in writing, within ten
2 days of the department of finance's receipt of a waiver request pursuant
3 to this subdivision, but no waiver shall be granted with respect to the
4 payment of any installment of real property taxes that is due within
5 thirty days of the date of the request for a waiver.

6 j. Confidentiality. The department of finance shall assure the confi-
7 dentiality of information supplied by taxpayers in effecting electronic
8 funds transfers in accordance with applicable provisions of law. The
9 provisions of article six of the public officers law shall not apply to
10 any such information furnished by taxpayers subject to the requirements
11 of this section.

12 k. Failure to pay by electronic funds transfer. 1. With respect to any
13 real property as to which real property taxes are required to be paid by
14 electronic funds transfer under this section, but for which an install-
15 ment of real property taxes is not paid by electronic funds transfer and
16 is paid instead by any other method, including payment by check, (i)
17 with respect to the first installment that is paid by any other method,
18 including payment by check, the department of finance shall mail a warn-
19 ing notice to the taxpayer setting forth the requirement to make payment
20 by electronic funds transfer and the penalties for failure to do so; and
21 (ii) with respect to each and every subsequent installment that is paid
22 by any other method, including payment by check, the department of
23 finance shall impose a penalty charge in the amount of one percent of
24 the amount of the tax installment that was required under this section
25 to be paid by electronic funds transfer.

26 2. Any penalty charge imposed under this subdivision shall be a lien
27 against the real property for which the taxpayer failed to make a
28 payment in the manner required by this section, and shall accrue inter-
29 est at the same rate as is imposed on a delinquent tax on real property,
30 to be calculated to the date of payment from the date of entry. Such
31 lien shall be a tax lien within the meaning of sections 11-319 and
32 11-401 and may be sold, enforced or foreclosed in the manner provided in
33 chapters three and four of this title.

34 l. Rules. The commissioner may promulgate rules necessary to implement
35 this section.

36 CHAPTER 2

37 REAL PROPERTY ASSESSMENT, TAXATION AND CHARGES

38 SUBCHAPTER 1

39 ASSESSMENT ON REAL PROPERTY

40 § 11-201 Assessments on real property; general powers of finance
41 department. The commissioner of finance shall be charged generally with
42 the duty and responsibility of assessing all real property subject to
43 taxation within the city.

44 § 11-202 Maps and records; surveyor. The commissioner of finance
45 shall appoint a surveyor who shall make the necessary surveys and
46 corrections of the block or ward maps, and also make all new tax maps
47 which may be required.

48 § 11-203 Maps and records; tax maps. a. As used in the charter of
49 the city of Staten Island and in this code, the term "tax maps" shall
50 mean and include the block map of taxes and assessments to the extent
51 that the territory within the city of Staten Island is or shall be
52 embraced in such map, such ward or land maps as embrace the remainder of
53 such city, and also such maps as may be prepared under and pursuant to
54 subdivision d of this section.

1 b. Each separately assessed parcel shall be indicated on the tax maps
2 by a parcel number or by an identification number. A separate identifi-
3 cation number shall be entered upon the tax maps in such manner as
4 clearly to indicate each separately assessed parcel of real property not
5 indicated by parcel numbering. Real property indicated by a single
6 identification number shall be deemed to be a separately assessed
7 parcel.

8 In the case of a newly created parcel with any building thereon, no
9 tax lot number or identification number shall be assigned to such parcel
10 unless the commissioner of the department of buildings has certified
11 that the newly created parcel complies with all applicable zoning laws.

12 c. Parcel numbers shall designate each parcel by the use of three or
13 more numbers, of which one shall be a section or ward number, another a
14 block, district or plat number, and another a lot number. The depart-
15 ment of finance may from time to time change the form of the section and
16 blocks, and also the numbers thereof, on the tax maps filed in its
17 office whenever such change of form has been caused pursuant to section
18 one hundred ninety-nine of the charter of the preceding municipality as
19 it existed on the first of January in the year next succeeding the
20 effective date of this section and there shall thereafter be delineated
21 and entered upon such maps such new additional sections and blocks and
22 their numbers as necessity may require. Such administration may from
23 time to time change the form of the lots or parcels comprised within any
24 block, and also the numbers thereof, and cause to be shown on such maps
25 the separate lots or parcels of land contained in any new block added
26 thereto and also the lot numbers thereof, according to the general plan
27 employed in the making of such maps.

28 d. Each separately assessed parcel indicated by an identification
29 number shall be shown by a description, or by inscription of such number
30 on the block map of taxes and assessments, or by other map and
31 description. Such numbers may be altered in the same manner as provided
32 in subdivision c of this section for the alteration of parcel numbers.

33 e. New tax maps shall be certified by the department of finance and
34 filed in its main office. All changes and alterations made in the tax
35 maps shall be transmitted within thirty days after such change or alter-
36 ation to such office.

37 § 11-204 Tax maps; block references; alterations and corrections. The
38 word "block", as used in this section designates a plot or parcel of
39 land such as is commonly so designated in the city, wholly embraced
40 within the continuous lines of streets, or streets and waterfront taken
41 together where water forms one of the boundaries of a block, and such
42 other parcels of land or land under water as may be indicated by the
43 department of finance upon such tax maps by block numbers as constitut-
44 ing blocks.

45 § 11-205 Maps and records; public inspection; evidential value. a. The
46 books, maps, assessment-rolls, files and records of the department of
47 finance shall be kept in such of the offices of the department of
48 finance as may be most convenient to the taxpayers of the city and suit-
49 able to the proper discharge of the business of the department of
50 finance. They shall be public records and shall at all reasonable times
51 be open to public inspection.

52 b. Copies of all such records and transcripts thereof, certified by
53 the commissioner of finance or an assessor or by an officer or employee
54 of the department of finance designated by the commissioner of finance,
55 and under the seal of the department of finance, shall be admissible in
56 evidence in all courts and places in the same manner and for the same

1 purposes as books, papers or documents similarly authenticated by the
2 clerk of a county.

3 § 11-206 Power of the commissioner of finance to correct errors. The
4 commissioner of finance may correct any assessment or tax which is erro-
5 neous due to a clerical error or to an error of description contained in
6 the several books of annual record of assessed valuations, or in the
7 assessments-rolls. If the taxes computed on such erroneous assessment
8 have been paid, the commissioner of finance is authorized to refund or
9 credit the difference between the taxes computed on the erroneous and
10 corrected assessments.

11 § 11-207 Duties of assessors in assessing property. a. In performing
12 their assessment duties, the assessors shall personally examine each
13 parcel of taxable real estate during at least every third assessment
14 cycle, and shall personally examine each parcel of real estate that is
15 not taxable during at least every fifth assessment cycle, as measured
16 from the last preceding assessment cycle during which such parcel was
17 personally examined, provided, however, the assessors shall revalue,
18 reassess or update the assessment of each parcel of taxable or nontaxa-
19 ble real estate during each assessment cycle, irrespective of whether
20 such parcel was personally examined during each assessment cycle.

21 b. The persons having charge of the assessment office shall furnish to
22 the commissioner of finance, under oath, a detailed statement of all
23 taxable real estate in the city. Such statement shall contain the
24 street, the section or ward, the block and lot and map or identification
25 numbers of such real estate embraced within such city; the sum for
26 which, in their judgment, each separately assessed parcel of real estate
27 would sell under ordinary circumstances if it were wholly unimproved
28 and, separately stated, the sum for which the same parcel would sell
29 under ordinary circumstances with the improvements, if any, thereon,
30 such sums to be determined with regard to the limitations contained in
31 the state real property tax law. Such statement shall include such
32 other information as the commissioner of finance may, from time to time,
33 require.

34 § 11-208 Special right of entry; certificate of the commissioner of
35 finance. A right of entry upon real property and into buildings and
36 structures at all reasonable times to ascertain the character of the
37 property shall not be allowed to any person acting in behalf of the
38 department of finance, other than the officials mentioned in sections
39 one hundred fifty-six and one thousand five hundred twenty-one of the
40 charter of the preceding municipality as it existed on the first of
41 January in the year next succeeding the effective date of this section,
42 unless a certificate therefor, executed in writing and signed by the
43 commissioner of finance, is presented by such person to the owner,
44 lessee, or occupant of the premises or his or her agent before entry
45 thereon is made.

46 § 11-208.1 Income and expense statements. a. Where real property is
47 income-producing property, the owner shall be required to submit annual-
48 ly to the department not later than the first of September a statement
49 of all income derived from and all expenses attributable to the opera-
50 tion of such property as follows:

51 (1) Where the owner's books and records reflecting the operation of
52 the property are maintained on a calendar year basis, the statement
53 shall be for the calendar year preceding the date the statement shall be
54 filed.

55 (2) Where the owner's books and records reflecting the operation of
56 the property are maintained on a fiscal year basis for federal income

1 tax purposes, the statement shall be for the last fiscal year concluded
2 as of the first of August preceding the date the statement shall be
3 filed.

4 (3) Notwithstanding the provisions of paragraphs one and two of this
5 subdivision, where the owner of the property has not operated the prop-
6 erty and is without knowledge of the income and expenses of the opera-
7 tion of the property for a consecutive twelve month period concluded as
8 of the first of August preceding the date of the statement shall be
9 filed, then the statement shall be for the period of ownership.

10 (4) The commissioner may for good cause shown extend the time for
11 filing an income and expense statement by a period not to exceed thirty
12 days.

13 b. Such statements shall contain the following declaration: "I certify
14 that all information contained in this statement is true and correct to
15 the best of my knowledge and belief. I understand that the willful
16 making of any false statement of material fact herein will subject me to
17 the provisions of law relevant to the making and filing of false instru-
18 ments and will render this statement null and void."

19 c. The form on which such statement shall be submitted shall be
20 prepared by the commissioner and copies of such form shall be made
21 available at the offices of the department in the county in which the
22 property is located. The commissioner may, by rule, require such state-
23 ment to be submitted electronically in such form and such manner as the
24 commissioner may determine. For good cause, the commissioner may waive
25 any rule requiring electronic filing and may permit a statement to be
26 filed in such other manner as the commissioner may designate.

27 d. (1) In the event that an owner of income-producing property fails
28 to file an income and expense statement within the time prescribed in
29 subdivision a of this section (determined with regard to any extension
30 of time for filing), such owner shall be subject to a penalty in an
31 amount not to exceed three percent of the assessed value of such
32 income-producing property determined for the current fiscal year in
33 accordance with section fifteen hundred six of the charter of the
34 preceding municipality as it existed on the first of January in the year
35 next succeeding the effective date of this section provided, however,
36 that if such statement is not filed by the thirty-first of December, the
37 penalty shall be in an amount not to exceed four percent of such
38 assessed value. If, in the year immediately following the year in which
39 an owner fails to file by the thirty-first of December, the owner again
40 fails to file an income and expense statement within the time prescribed
41 in subdivision a of this section (determined with regard to any exten-
42 sion of time for filing), such owner shall be subject to a penalty in an
43 amount not to exceed five percent of the assessed value of such property
44 determined for the current fiscal year. Such owner shall also be subject
45 to a penalty of up to five percent of such assessed value in any year
46 immediately succeeding a year in which a penalty of up to five percent
47 could have been imposed, if in such succeeding year the owner fails to
48 file an income and expense statement within the time prescribed in
49 subdivision a of this section (determined with regard to any extension
50 of time for filing). The penalties prescribed in this paragraph shall be
51 determined by the commissioner after notice and an opportunity to be
52 heard.

53 (2) The tax commission shall deny a hearing on any objection to the
54 assessment of property for which an income and expense statement is
55 required and has not been timely filed.

1 (3) Where an income and expense statement required under the
2 provisions of this section has not been timely filed, the commissioner
3 may compel by subpoena the production of the books and records of the
4 owner relevant to the income and expenses of the property, and may also
5 make application to any court of competent jurisdiction for an order
6 compelling the owner to furnish the required income and expense state-
7 ment.

8 e. As used in this section, the term "income-producing property" means
9 property owned for the purpose of securing an income from the property
10 itself, but shall not include property with an assessed value of forty
11 thousand dollars or less, or residential property containing ten or
12 fewer dwelling units or property classified in class one or two as
13 defined in article eighteen of the real property tax law containing six
14 or fewer dwelling units and one retail store.

15 f. Except in accordance with proper judicial order or as otherwise
16 provided by law, it shall be unlawful for the commissioner, any officer
17 or employee of the department, the president or a commissioner or
18 employee of the tax commission, any person engaged or retained by the
19 department or the tax commission on an independent contract basis, or
20 any person, who, pursuant to this section, is permitted to inspect any
21 income and expense statement or to whom a copy, an abstract or a portion
22 of any such statement is furnished, to divulge or make known in any
23 manner except as provided in this subdivision, the amount of income
24 and/or expense or any particulars set forth or disclosed in any such
25 statement required under this section. The commissioner, the president
26 of the tax commission, or any commissioner or officer or employee of the
27 department or the tax commission charged with the custody of such state-
28 ments shall not be required to produce any income and expense statement
29 or evidence of anything contained in them in any action or proceeding in
30 any court, except on behalf of the department or the tax commission.
31 Nothing herein shall be construed to prohibit the delivery to an owner
32 or his or her duly authorized representative of a certified copy of any
33 statement filed by such owner pursuant to this section or to prohibit
34 the publication of statistics so classified as to prevent the identifi-
35 cation of particular statements and the items thereof, or making known
36 aggregate income and expense information disclosed with respect to prop-
37 erty classified as class four as defined in article eighteen of the real
38 property tax law without identifying information about individual leas-
39 es, or making known a range as determined by the commissioner within
40 which the income and expenses of a property classified as class two
41 falls, or the inspection by the legal representatives of the department
42 or of the tax commission of the statement of any owner who shall bring
43 an action to correct the assessment. Any violation of the provisions of
44 this subdivision shall be punished by a fine not exceeding one thousand
45 dollars or by imprisonment not exceeding one year, or both, at the
46 discretion of the court, and if the offender be an officer or employee
47 of the department or the tax commission, the offender shall be dismissed
48 from office.

49 g. The commissioner shall be authorized to promulgate rules and regu-
50 lations necessary to effectuate the purposes of this section.

51 h. Subdivision f of this section shall be deemed a state statute for
52 purposes of paragraph (a) of subdivision two of section eighty-seven of
53 the public officers law.

54 § 11-209 Taxable status of building in course of construction. a. A
55 building in the course of construction, commenced since the preceding
56 fifth day of January and not ready for occupancy on the fifth day of

1 January following, shall not be assessed unless it shall be ready for
2 occupancy or a part thereof shall be occupied prior to the fifteenth of
3 April.

4 b. (1) A commercial building in the course of construction, commenced
5 since the fifth day of January one year preceding the taxable status
6 date and not ready for occupancy or partially occupied on the taxable
7 status date, shall not be assessed unless it shall be ready for occupan-
8 cy or a part thereof shall be occupied prior to the fifteenth day of
9 April following the taxable status date.

10 (2) A commercial building in the course of construction, commenced
11 since the fifth day of January two years preceding the taxable status
12 date and not ready for occupancy or partially occupied on the taxable
13 status date, shall not be assessed unless it shall be ready for occupan-
14 cy or a part thereof shall be occupied prior to the fifteenth day of
15 April following the taxable status date.

16 (3) A commercial building in the course of construction, commenced
17 since the fifth day of January three years preceding the taxable status
18 date and not ready for occupancy or partially occupied on the taxable
19 status date, shall not be assessed unless it shall be ready for occupan-
20 cy or a part thereof shall be occupied prior to the fifteenth day of
21 April following the taxable status date.

22 c. For purposes of this section, a "commercial building" shall mean a
23 building that is intended to be used, and upon completion is used,
24 exclusively for buying, selling or otherwise providing goods or
25 services, or for other lawful business, commercial or manufacturing
26 activities, excluding hotel services, except that a commercial building
27 may contain a residential component other than a hotel, provided (i)
28 that such residential component is receiving or has applied for and is
29 eligible to receive a partial exemption from real property taxes pursu-
30 ant to section four hundred twenty-one-a of the real property tax law,
31 or (ii) that such residential component in its entirety, both land and
32 building, is receiving or has applied for and is eligible to receive a
33 full exemption from real property taxes, provided, however, a "commer-
34 cial building" shall not include any building that is constructed on
35 block 1049, lot 29 as shown on the tax map of the city of New York for
36 the borough of Manhattan as such map was in effect for the assessment
37 roll published in calendar year two thousand.

38 d. Subdivision b of this section shall not apply to a tax lot that
39 constitutes a part of a building unless the building viewed as a whole
40 is a commercial building as defined in subdivision c of this section.

41 e. Any building that receives the benefit conferred pursuant to subdivi-
42 sion b of this section that is subsequently determined not to have
43 been a commercial building as defined in subdivision c of this section
44 for any year in which it received such benefit shall have its assessment
45 corrected for any such year. Taxes shall be imposed in the amount that
46 would have applied had the corrected taxable assessed value appeared on
47 the final assessment roll.

48 § 11-210 Books of annual record of assessed valuation of real estate
49 indicated by parcel numbers; form and contents. a. There shall be kept
50 in the office of the department of finance, books of the annual record
51 of the assessed valuation of real estate to be called "the annual record
52 of the assessed valuation of real estate indicated by parcel numbers in
53 the Staten Island", in which shall be entered in detail the assessed
54 valuation of each separately assessed parcel indicated by a parcel
55 number within the limits of Staten Island.

1 b. The assessed valuation of each such parcel shall be set down in
2 such books in two columns. In the first column shall be stated, oppo-
3 site each such parcel, the sum for which such parcel would sell under
4 ordinary circumstances if wholly unimproved; and in the second column,
5 the sum for which such parcel would sell under ordinary circumstances
6 with the improvements, if any thereon.

7 c. Such books shall be prepared in such manner that the assessed valu-
8 ations entered therein shall be under sections and block headings as may
9 be most convenient for use in connection with the tax maps described in
10 section 11-203 of this chapter.

11 § 11-211 Books of annual record of assessed valuation of real estate
12 indicated by identification numbers. a. The assessed valuation of all
13 taxable real property indicated by identification numbers shall be
14 entered in the office of the department of finance.

15 b. The assessors in the city shall furnish to the commissioner of
16 finance at the office of the department of finance, a detailed statement
17 under oath of the assessable real property indicated by an identifica-
18 tion number in such city.

19 c. There shall be kept in the office of the department of finance,
20 books of the annual record of the assessed valuation of real estate to
21 be known as "the annual record of the assessed valuation of real estate
22 indicated by identification numbers", in which shall be entered the
23 assessed valuations of the real property mentioned in this section.

24 § 11-212 Power of the commissioner of finance to equalize assessments
25 before opening books. a. Before opening the several books of annual
26 record of assessed valuation for public inspection, the commissioner of
27 finance shall fix the valuations of property for the purpose of taxation
28 throughout the city at such sums as will, in the commissioner's judg-
29 ment, establish a just and equal relation between the valuations of
30 property throughout the entire city.

31 b. To this end the assessors are required to transmit to the commis-
32 sioner of finance in each year a report of the assessed valuation of
33 real property at such time prior to the fifteenth of January as such
34 commissioner may prescribe.

35 § 11-213 Errors in annual records or assessment-rolls. The omission
36 from the several books of annual record of assessed valuations or from
37 the assessment-rolls in respect to the entry therein of the name of the
38 rightful owner or owners of real estate, whether individuals or corpo-
39 rations, shall not invalidate any tax or assessment. In such case,
40 however, no tax shall be collected except from the real estate so
41 assessed.

42 § 11-214 Procedure on apportionment of assessment. a. The commissioner
43 of finance may apportion any assessment in such manner as he or she
44 shall deem just and equitable, and forthwith cause such assessment to be
45 cancelled and new assessments, equal in the aggregate to the cancelled
46 assessment, to be made on the proper books and rolls. Within five days
47 thereafter the commissioner of finance shall cause written notice of the
48 new assessments to be mailed to the owners of record of the real estate
49 so assessed at their last known residence or business address, and an
50 affidavit of the mailing of such notice to be filed in the office of the
51 department of finance.

52 b. When such notice is mailed after the first of February such owners
53 may apply for correction of such assessments within twenty days after
54 the mailing of such notice with the same force and effect as if such
55 application were made on or before the first of March in such year.

1 § 11-215 Entry of corrections made by tax commission. Upon receiving
2 notice of a correction of an assessment made by the tax commission, the
3 commissioner of finance shall cause the amount of the assessment as
4 corrected to be entered upon the proper books of annual record and the
5 assessment-rolls for the year for which such correction is made.

6 § 11-216 Reduction in assessments; publication. a. There shall be
7 published annually in the City Record a list of all reductions in real
8 property assessments granted by the tax commission identifying the name
9 of the property owner, the address and the amount of reduction.

10 b. No reduction shall be granted for an income-producing property
11 unless there is submitted to the tax commission a statement of income
12 and expenses in the form prescribed by the tax commission and which
13 shall be, in the case of property valued at one million dollars or more
14 certified by a certified public accountant. The commissioner granting
15 such reduction in assessment shall state in a short memorandum the basis
16 upon which the reduction is granted.

17 c. In all cases where the reduction in assessment for the current year
18 is for fifty thousand dollars or more, the concurrence of the president
19 of the tax commission shall be required.

20 § 11-217 Assessment-rolls; form and contents. Assessment-rolls shall
21 be so arranged with respect to number of columns and shall contain such
22 entries as the commissioner of finance shall prescribe, sufficient to
23 identify the property assessed and to show its total assessed valuation.
24 Real estate shall be described therein by the numbers by which such
25 property is designated on the tax maps and in the several books of the
26 annual record of the assessed valuation of real estate, and such numbers
27 shall import into the assessment-rolls any necessary identifying
28 description shown by the tax maps.

29 § 11-218 Assessment-rolls; delivery to council or city clerk. a. The
30 council shall meet at noon, on the day of delivery of the rolls, other
31 than a Saturday, Sunday, or legal holiday, at the city hall or usual
32 place of meeting for the purpose of receiving the assessment-rolls and
33 performing such other duties in relation thereto as are prescribed by
34 law.

35 b. If the council fails to meet as herein prescribed, the rolls shall
36 be delivered to the city clerk with the same effect as if delivered to
37 the council.

38 § 11-219 Books of annual record; delivery for publication. Within two
39 weeks after the delivery of the assessment-rolls to the council, the
40 commissioner of finance shall furnish to the director of the City Record
41 a copy of the several books of the annual record of the assessed valu-
42 ation of real estate, omitting, however, the two columns headed respec-
43 tively "size of house" and "houses on lot."

44 § 11-220 Council; date of meeting to fix tax rate. The council shall
45 meet on a day other than a Saturday, Sunday or legal holiday, to fix the
46 annual tax rate.

47 § 11-221 Extension of tax on assessment-rolls or upon assessment-roll
48 cards. The respective sums to be paid as taxes on the valuation of real
49 property, may be set down in the assessment-rolls, or upon assessment-
50 roll cards.

51 § 11-222 Tax account of the commissioner of finance. Upon notification
52 from the public advocate of the amount of taxes mentioned in such
53 assessment-rolls and tax warrants, the comptroller shall cause the prop-
54 er sum to be charged to the commissioner of finance for collection.

55 § 11-223 Apportionment of taxes. a. If a sum of money in gross has
56 been or shall be taxed upon any lands or premises, any person or persons

1 claiming any dividend or undivided part thereof may pay such part of
2 such sum so taxed and of any interest and charges due or charged there-
3 on, as the commissioner of finance may deem to be just and equitable.

4 b. The commissioner of finance shall apportion the assessed valuation
5 of such lands or premises.

6 c. The remainder of the sum of money so taxed and the interest and
7 charges shall be a lien upon the residue of the land and premises only,
8 and the tax lien upon such residue may be sold to satisfy such tax,
9 interest or charges thereon, in the same manner as though the residue of
10 said tax had been imposed only upon such residue of such lands or prem-
11 ises.

12 § 11-224 Interest on unpaid taxes. a. If any tax on real estate which
13 shall have become due and payable prior to January first, nineteen
14 hundred thirty-four, is unpaid in whole or in part, the commissioner of
15 finance shall charge, receive and collect interest upon the amount of
16 such tax or such part thereof, to be calculated to the date of payment
17 at the rate of seven per centum per annum from the date when such tax or
18 such part thereof became due and payable to January first, nineteen
19 hundred thirty-four, at the rate of ten per centum per annum from Janu-
20 ary first, nineteen hundred thirty-four to May first, nineteen hundred
21 thirty-seven, or at the rate of seven per centum per annum for such
22 period if the comptroller and the commissioner of finance, in their
23 discretion, both determine that the payment of any tax arrears at such
24 reduced rate of interest may operate to save the property upon which
25 such taxes are in arrears from foreclosure or encourage its development
26 or is otherwise in the public interest, at the rate of seven per centum
27 per annum from May first, nineteen hundred thirty-seven to August first,
28 nineteen hundred sixty-nine, and from August first, nineteen hundred
29 sixty-nine to December thirty-first, nineteen hundred seventy-six, at
30 the rate of seven per centum per annum if the annual tax on a parcel is
31 two thousand dollars or less, and at the rate of one per centum per
32 month if the annual tax on a parcel is more than two thousand dollars
33 or, irrespective of the annual tax, if a parcel consists of vacant or
34 unimproved land, and from January first, nineteen hundred seventy-seven
35 at the rate of seven per centum per annum if the annual tax on a parcel
36 is two thousand dollars or less, and at the rate of fifteen per centum
37 per annum if the annual tax on a parcel is more than two thousand
38 dollars or, irrespective of the annual tax, if a parcel consists of
39 vacant or unimproved land.

40 b. If any tax on real estate which shall have become due and payable
41 after January first, nineteen hundred thirty-four and prior to April
42 first, nineteen hundred thirty-seven, is unpaid in whole or in part, the
43 commissioner of finance shall charge, receive and collect interest upon
44 the amount of such tax or such part thereof, to be calculated to the
45 date of payment at the rate of ten per centum per annum from the date on
46 which such tax or such part thereof became due and payable to May first,
47 nineteen hundred thirty-seven, or at the rate of seven per centum per
48 annum for such period if the comptroller and the commissioner of
49 finance, in their discretion, both determine that the payment of any tax
50 arrears at such reduced rate of interest may operate to save the proper-
51 ty upon which such taxes are in arrears from foreclosure or encourage
52 its development or is otherwise in the public interest, at the rate of
53 seven per centum per annum from May first, nineteen hundred thirty-seven
54 to August first, nineteen hundred sixty-nine, from August first, nine-
55 teen hundred sixty-nine to December thirty-first, nineteen hundred
56 seventy-six, at the rate of seven per centum per annum if the annual tax

1 on a parcel is two thousand dollars or less, and at the rate of one per
2 centum per month if the annual tax on a parcel is more than two thousand
3 dollars or, irrespective of the annual tax, if a parcel consists of
4 vacant or unimproved land, and from January first, nineteen hundred
5 seventy-seven, at the rate of seven per centum per annum if the annual
6 tax on a parcel is two thousand dollars or less, and at the rate of
7 fifteen per centum per annum if the annual tax on a parcel is more than
8 two thousand dollars or, irrespective of the annual tax, if a parcel
9 consists of vacant or unimproved land.

10 c. If any tax on real estate which shall have become due and payable
11 on or after April first, nineteen hundred thirty-seven and prior to
12 August first, nineteen hundred sixty-nine is unpaid in whole or in part,
13 the commissioner of finance shall charge, receive and collect interest
14 upon the amount of such tax or such part thereof, to be calculated to
15 the date of payment at the rate of seven per centum per annum from the
16 day on which such tax or such part thereof became due and payable to
17 August first, nineteen hundred sixty-nine, from August first, nineteen
18 hundred sixty-nine to December thirty-first, nineteen hundred seventy-
19 six, at the rate of seven per centum per annum if the annual tax on a
20 parcel is two thousand dollars or less, and at the rate of one per
21 centum per month if the annual tax on a parcel is more than two thousand
22 dollars or, irrespective of the annual tax, if a parcel consists of
23 vacant or unimproved land, and from January first, nineteen hundred
24 seventy-seven at the rate of seven per centum per annum if the annual
25 tax on a parcel is two thousand dollars or less, and at the rate of
26 fifteen per centum per annum if the annual tax on a parcel is more than
27 two thousand dollars or, irrespective of the annual tax, if a parcel
28 consists of vacant or unimproved land.

29 d. If any tax on real estate which shall have become due and payable
30 on or after August first, nineteen hundred sixty-nine and prior to
31 December thirty-first, nineteen hundred seventy-six, is unpaid in whole
32 or in part, the commissioner of finance shall charge, receive and
33 collect interest upon the amount of such tax or such part thereof, to be
34 calculated from the date on which such tax or such part thereof became
35 due and payable to December thirty-first, nineteen hundred seventy-six,
36 at the rate of seven per centum per annum if the annual tax on a parcel
37 is two thousand dollars or less, and at the rate of one per centum per
38 month if the annual tax on a parcel is more than two thousand dollars
39 or, irrespective of the annual tax, if a parcel consists of vacant or
40 unimproved land, and from January first, nineteen hundred seventy-seven
41 at the rate of seven per centum per annum if the annual tax on a parcel
42 is two thousand dollars or less, and at the rate of fifteen per centum
43 per annum if the annual tax on a parcel is more than two thousand
44 dollars or, irrespective of the annual tax, if a parcel consists of
45 vacant or unimproved land.

46 e. If any tax on real estate which shall become due and payable at any
47 time on or after January first, nineteen hundred seventy-seven, shall
48 remain unpaid in whole or in part on the fifteenth day following the
49 date on which the same shall become due and payable, the commissioner of
50 finance shall charge, receive and collect interest upon the amount of
51 such tax or such part thereof remaining unpaid on that date, to be
52 calculated from the day on which such tax or such part thereof became
53 due and payable to the date of payment at the rate of seven per centum
54 per annum if the annual tax on a parcel is two thousand dollars or less,
55 and at the rate of fifteen per centum per annum if the annual tax on a

1 parcel is more than two thousand dollars or, irrespective of the annual
2 tax, if a parcel consists of vacant or unimproved land.

3 f. If any tax on real estate which shall become due and payable at any
4 time on or after July first, nineteen hundred seventy-nine, shall remain
5 unpaid in whole or in part on the fifteenth day following the date on
6 which the same shall become due and payable, or if any tax on real
7 estate which became due and payable prior to July first, nineteen
8 hundred seventy-nine shall remain unpaid on that date, the commissioner
9 of finance shall charge, receive and collect interest upon the amount of
10 such tax or such part thereof remaining unpaid, to be calculated, in the
11 case of any tax which shall become due and payable on or after July
12 first, nineteen hundred seventy-nine, from the day on which such tax or
13 such part thereof became due and payable, and in the case of any tax
14 which became due and payable prior to July first, nineteen hundred
15 seventy-nine, from July first, nineteen hundred seventy-nine, to the
16 date of payment at the rate of seven per centum per annum if the annual
17 tax on a parcel is two thousand seven hundred fifty dollars or less, and
18 at the rate of fifteen per centum per annum if the annual tax on a
19 parcel is more than two thousand seven hundred fifty dollars or, irre-
20 spective of the annual tax, if a parcel consists of vacant or unimproved
21 land. Any interest accrued prior to July first, nineteen hundred seven-
22 ty-nine, pursuant to subdivisions a through e of this section shall be
23 unaffected by the provisions of this subdivision.

24 g. No later than the twenty-fifth day of May of each year, the banking
25 commission shall transmit a written recommendation to the council of a
26 proposed interest rate to be charged for nonpayment of taxes on real
27 estate in those cases where the annual tax on a parcel is more than two
28 thousand seven hundred fifty dollars or where, irrespective of the annu-
29 al tax, a parcel consists of vacant or unimproved land. In making such
30 recommendations the commission shall consider the prevailing interest
31 rates charged for commercial loans extended to prime borrowers by
32 commercial banks operating in the city and shall propose a rate of at
33 least six per centum per annum greater than such rates. The council may
34 by resolution adopt an interest rate to be applicable to the foremen-
35 tioned parcels and may specify in such resolution the date on which such
36 interest rate is to take effect.

37 h. Notwithstanding anything to the contrary contained in the recommen-
38 dation transmitted by the banking commission to the council relative to
39 the proposed rate of interest to be charged during the fiscal year of
40 the city commencing July first, nineteen hundred seventy-nine in the
41 case of nonpayment of real estate taxes, or contained in the resolution
42 adopted by the council in accordance with such recommendation, the coun-
43 cil hereby sets the interest rate to be charged during the fiscal year
44 of the city commencing July first, nineteen hundred seventy-nine for
45 nonpayment of real estate taxes at eighteen per centum per annum where
46 the annual tax on a parcel is more than two thousand seven hundred fifty
47 dollars or where the parcel consists of vacant or unimproved land.

48 i. The interest mentioned in subdivisions a through h of this section
49 shall be paid over and accounted for from time to time by such commis-
50 sioner of finance as a part of the tax collected by him or her.

51 j. When an installment agreement has been entered into pursuant to any
52 of the provisions of chapter four of this title, during the period
53 beginning on the date this subdivision takes effect and ending April
54 thirtieth, nineteen hundred eighty-two, the commissioner of finance
55 shall, notwithstanding any higher rate of interest prescribed pursuant
56 to applicable law, and unless a lower rate of interest is applicable to

1 a parcel covered by such an agreement, charge, collect and receive
2 interest on the arrears due and payable under such agreement, to be
3 calculated at the rate of ten percent per annum from May first, nineteen
4 hundred eighty-two to the date of payment of each installment. Any
5 interest accrued or accruing prior to May first, nineteen hundred eight-
6 y-two shall not be affected by the provisions of this subdivision but
7 shall be charged, collected and received in the manner and at the rates
8 prescribed pursuant to applicable law. Such ten percent rate of inter-
9 est shall be applicable only if, as of May first, nineteen hundred
10 eighty-two, (i) there has been no default in such agreement, and (ii)
11 all current taxes, assessments or other legal charges are paid as they
12 become due or within the period of grace provided by law. Where an
13 installment agreement has been entered into prior to May fifth, nineteen
14 hundred eighty-two pursuant to the provisions of either paragraph three
15 of subdivision a of section 11-413 of chapter four of this title prior
16 to March fourteenth, nineteen hundred seventy-nine or of subdivision a
17 of section 11-405 or subdivision h of section 11-409 of chapter four of
18 this title and said agreement is current as to both installment payments
19 and current taxes, assessments and other legal charges, the commissioner
20 of finance, on application of the party who entered into such agreement,
21 may cancel said agreement and enter into a new agreement containing the
22 terms provided on May fifth, nineteen hundred eighty-two. If any such
23 prior agreement is not cancelled as herein provided, any installments
24 due and payable under such agreement on or after May first, nineteen
25 hundred eighty-two shall be subject to interest at the rate and under
26 the conditions set forth above. In the event of any subsequent default
27 or failure to make timely payment of any installment payment or current
28 tax, assessment or other legal charge, the ten percent rate of interest
29 specified in this subdivision shall thereupon cease to be applicable and
30 the commissioner of finance shall thereafter charge, collect and receive
31 interest in the manner and at the rates prescribed pursuant to applica-
32 ble law.

33 k. 1. Notwithstanding any other provision of this section to the
34 contrary, but subject to the exception contained in paragraph two of
35 this subdivision, in the case of an installment of tax on real property
36 described in paragraph b of subdivision four of section fifteen hundred
37 nineteen of the city charter of the preceding municipality as it existed
38 on the first of January in the year next succeeding the effective date
39 of this section, interest shall be charged, received and collected at
40 the rate established pursuant to this section if such installment shall
41 remain unpaid in whole or in part on the date on which it shall become
42 due and payable.

43 2. If the tax rate for any fiscal year of the city has not been set by
44 the fifteenth of June preceding the start of such fiscal year, interest
45 shall not be charged, received and collected with respect to the first
46 installment of tax which is due and payable on the first of July in such
47 fiscal year if such installment is paid on or before the extended
48 payment date. For this purpose, the term "extended payment date" means
49 the date which falls the same number of days after the first of July in
50 such fiscal year as the number of days the date such tax rate is set
51 falls after such fifteenth of June.

52 1. No later than the fifth day following the effective date of this
53 subdivision and no later than May twenty-fifth of each succeeding year,
54 the banking commission shall transmit a written recommendation to the
55 council of proposed interest rates to be charged for nonpayment of taxes
56 on real property in those cases in which the annual tax on a parcel,

1 other than a parcel which consists of vacant or unimproved land, is not
2 more than two thousand seven hundred fifty dollars. In making such
3 recommendations, the banking commission shall consider the prevailing
4 interest rates charged for commercial loans extended to prime borrowers
5 by commercial banks operating in the city. In the case of any such
6 parcel with respect to which the real property taxes are held in escrow
7 and paid to the commissioner of finance by a "mortgage escrow agent," as
8 that term is defined in section fifteen hundred nineteen of the city
9 charter of the preceding municipality as it existed on the first of
10 January in the year next succeeding the effective date of this section,
11 the proposed rate shall be at least six percent per annum greater than
12 such prevailing prime rate, and in the case of all other such parcels,
13 the proposed rate shall be at least equal to such prevailing prime rate.
14 The council may by resolution adopt interest rates to be applicable to
15 the aforementioned parcels and may specify in such resolution the dates
16 on which such interest rates are to take effect. In the event the coun-
17 cil does not adopt interest rates as provided in this subdivision, the
18 interest rates otherwise specified in this section shall be applicable.

19 § 11-224.1 Interest on unpaid real property tax.

20 (a) For real property with an assessed value of eighty thousand
21 dollars or less, if an installment of tax due and payable is not paid by
22 July fifteenth, October fifteenth, January fifteenth or April fifteenth,
23 interest shall be imposed on such unpaid amounts.

24 (b) For real property with an assessed value of over eighty thousand
25 dollars, if an installment of tax due and payable is not paid by July
26 first or January first, interest shall be imposed on such unpaid
27 amounts.

28 (c) If the council does not adopt interest rates by July first, two
29 thousand twenty-five, the rates shall be (i) for real property with an
30 assessed value of eighty thousand dollars or less, seven percent per
31 annum; and (ii) for real property with an assessed value of over eighty
32 thousand dollars, fifteen percent per annum.

33 (d) (i) Any tax or part of a tax that became due before July first,
34 two thousand five and remains unpaid after June thirtieth, two thousand
35 twenty-five, shall continue to accrue interest until paid at the rate
36 applicable under this section.

37 (ii) This section shall not apply to interest accrued before July
38 first, two thousand twenty-five.

39 (e) By May twenty-fifth of each year, the banking commission shall
40 send a written recommendation to the council of a proposed interest rate
41 to be charged for nonpayment of taxes on real property. The commission
42 shall consider the prevailing interest rates charged for commercial
43 loans extended to prime borrowers by commercial banks operating in the
44 city and:

45 (i) for real property with an assessed value of eighty thousand
46 dollars or less, shall propose a rate at least equal to such prevailing
47 prime rate;

48 (ii) for real property with an assessed value of over eighty thousand
49 dollars, shall propose a rate of at least six percent per annum greater
50 than such prevailing prime rate.

51 The council may by resolution adopt interest rates to be applicable to
52 the aforementioned properties and may specify in such resolution the
53 date that such rates will take effect.

54 (f) If the tax rate for any fiscal year of the city is not set by the
55 fifteenth of June preceding the start of such fiscal year, interest
56 shall not be charged for the first installment of tax which is due on

1 the first day of July in such fiscal year if such installment is paid on
2 or before the extended payment date. For this purpose, the term
3 "extended payment date" means the date which falls the same number of
4 days after the first day of July in such fiscal year as the number of
5 days the date such tax rate is set falls after such fifteenth day of
6 June.

7 (g) For purposes of this section, property held in the cooperative
8 form of ownership shall not be deemed to have an assessed value of over
9 eighty thousand dollars if the property's assessed value divided by the
10 number of residential dwelling units is eighty thousand dollars or less
11 per unit.

12 § 11-225 Power of tax commission to remit or reduce taxes. The tax
13 commission shall have power to remit or reduce a tax imposed upon real
14 property where lawful cause therefor is shown or where such tax is found
15 to be excessive or otherwise erroneous, but such remission or reduction
16 shall be made only with respect to an assessment for which an applica-
17 tion for correction has been made pursuant to section one hundred
18 sixty-three of the charter, and no such remission or reduction shall be
19 made when a claim to correct the assessment or recover the tax would be
20 barred by passage of time or other adequate defense, or when, at the
21 time that the determination is rendered, applications for correction or
22 other proceedings are pending to review the assessment of such property
23 for more than one subsequent fiscal year, provided, however, the tax
24 commission shall have no power to remit or reduce a tax pursuant to this
25 section more than five years after the last day on which an application
26 for correction could have been filed to appeal the unlawful or erroneous
27 assessment upon which such tax was based. If such tax shall have been
28 paid the commissioner of finance is authorized to refund or credit the
29 amount of any such remission or reduction granted pursuant to this
30 section. When the correction results from an application for correction
31 made by the board of managers of a condominium, a refund may be paid to
32 the board of managers for distribution to the individual unit owners
33 with the consent of such board and on such conditions as the commission-
34 er deems appropriate.

35 § 11-226 Special right of entry; certificate of president. A right of
36 entry upon real property and into buildings and structures at all
37 reasonable times to ascertain the character of the property shall not be
38 allowed to any person acting in behalf of the tax commission, other than
39 the officials mentioned in sections one hundred fifty-six and fifteen
40 hundred twenty-one of the charter of the preceding municipality as it
41 existed on the first of January in the year next succeeding the effec-
42 tive date of this section, unless a certificate therefor, executed in
43 writing and signed by the president of the tax commission, is presented
44 by such person to the owner, lessee or occupant of the premises or his
45 agent before entry thereon is made.

46 § 11-227 Duties of authorized employees in examining applicants. a.
47 Employees of the tax commission, when authorized to take testimony on
48 application, shall reduce such testimony to writing.

49 b. Within ten days after the evidence on any application is taken,
50 they shall transmit the application and testimony so taken, with their
51 recommendation, to the tax commission at its main office or such other
52 office as the commission may prescribe.

53 § 11-228 Testimony taken on application to constitute part of record.
54 All written testimony taken by the tax commission, by a commissioner, or
55 by an employee of the commission authorized to take testimony on appli-

1 cations, shall constitute part of the record of the proceedings upon any
2 assessment.

3 § 11-229 Solicitation of retainers prohibited. It shall be unlawful
4 for any person or his or her or its agents or employee, or any person
5 acting on his or her or its behalf, to solicit, or procure through
6 solicitation, either directly or indirectly, any retainer or agreement:

7 (a) Authorizing such person, or his or her or its agent, employee or
8 any person acting on his or her or its behalf, to make application to
9 the commissioner of finance or tax commission for the correction of a
10 tentative or final assessed valuation of real property on behalf of an
11 owner of such property or other person claiming to be aggrieved, or

12 (b) Authorizing such person, or his or her or its agent, employee or
13 any person acting on his or her or its behalf, to appear for such
14 purpose or represent such owner or aggrieved person before such commis-
15 sion or a commissioner or any other officer or employee authorized by
16 law to act upon such application, examine applicants, take testimony,
17 make or recommend the making of a correction of any such assessed valu-
18 ation, or take any other official action in relation to any such
19 correction. Any violation of this section shall be a misdemeanor.

20 § 11-230 Issuance of final determination; limitation of time. Except
21 as otherwise provided in section one hundred sixty-five of the charter
22 of the preceding municipality as it existed on the first of January in
23 the year next succeeding the effective date of this section, the final
24 determination of the tax commission upon any application for the
25 correction of an assessment and upon the evidence taken thereunder
26 shall, where the evidence is taken by the commission or by a commis-
27 sioner, be rendered within thirty days after the hearing of such application
28 is closed. Where the evidence is taken by an employee of the tax commis-
29 sion authorized to take testimony on applications, the final determi-
30 nation shall be rendered within thirty days after the application and
31 the testimony hereon shall have been filed with the commission at its
32 main office.

33 Immediately upon making a correction of an assessment, the tax commis-
34 sion shall notify the commissioner of finance thereof.

35 § 11-231 Proceeding to review tax assessment; contents of petition. a.
36 Any person or corporation claiming to be aggrieved by the assessed valu-
37 ation of real property may commence a proceeding to review or correct on
38 the merits a final determination of the tax commission by serving on the
39 president of the tax commission, or his or her duly authorized agent, a
40 copy of a verified petition as prescribed by law. No such petition shall
41 be accepted unless, prior to the service thereof, an index number has
42 been obtained from the county clerk. Within ten days after a proceeding
43 has been commenced as hereinbefore provided, the original verified peti-
44 tion with proof of service shall be filed in the office of the clerk of
45 the court in which the proceeding is to be heard.

46 b. Such review shall be allowed only on one or more of the following
47 grounds, which must be specified in such petition:

48 1. That the assessment is illegal, and stating the particulars of the
49 alleged illegality, or

50 2. That the assessment is erroneous by reason of over-valuation, or

51 3. That the assessment is erroneous by reason of inequality, in that
52 it has been made at a higher proportionate valuation than the assessment
53 of other real property on the assessment rolls of the city for the same
54 year, and for assessments made after December thirty-first, nineteen
55 hundred eighty-one, other real property within the same class as defined
56 in section eighteen hundred two of the real property tax law, specifying

1 the instances in which such inequality exists and the extent thereof,
2 and stating that the petitioner is or will be injured thereby, or

3 4. That the real property is misclassified, and stating the class in
4 which it is claimed the property should be classified.

5 c. The proceeding shall be maintained against the tax commission
6 either by naming the president and the commissioners of the tax commis-
7 sion individually, or by naming the tax commission of the city of Staten
8 Island generally.

9 d. Such proceeding to review and all proceedings thereunder shall be
10 brought at a special term of the supreme court in the judicial district
11 where the real property so assessed is situated.

12 e. The justice or referee before whom such proceeding shall be heard
13 may inspect the real property which is the subject of the proceeding.

14 § 11-232 Comptroller; rates of interest on taxes and assessments. The
15 comptroller shall not reduce the rate of interest upon any taxes or
16 assessments below the amount fixed by law.

17 § 11-233 Cancellation of unpaid taxes. When it shall appear to the
18 comptroller that the unpaid taxes or assessments, or both, together with
19 the interest and penalties thereon which may have been levied upon a
20 parcel of real estate subject to easements which were in existence prior
21 to the levying of such taxes or assessments, equal or exceed the sum for
22 which, under ordinary circumstances, such parcel of real estate would
23 sell subject to such easements, the comptroller, with the written
24 approval of the corporation counsel, may settle and adjust such unpaid
25 taxes or assessments, or both, with the interest and penalties thereon,
26 and when it shall appear to the comptroller that such parcel of real
27 estate would sell under ordinary circumstances subject to such easements
28 for only a nominal sum, then the comptroller with the written approval
29 of the corporation counsel may cancel such unpaid taxes and assessments
30 together with the interest and penalties thereon.

31 § 11-235 Board of estimate; power to cancel taxes, assessments and
32 water rents. The board of estimate, upon the written certificate of the
33 comptroller approving the same, with whom application for relief under
34 this section shall be filed, in its discretion and upon such terms as it
35 may deem proper, by unanimous vote, may cancel and annul all taxes,
36 assessments and water rents and sales to the city of any or all of the
37 same which now are or may hereafter become a lien against any real
38 estate owned by any corporation, entitled to exemption of such real
39 estate owned by it from local taxation under the provisions of the real
40 property tax law formerly contained in subdivision six of section four
41 of the tax law, provided that all taxes and water rents from which
42 relief is asked be apportioned as of the date such corporation took
43 title to such real estate, and that such taxes and water rents so appor-
44 tioned to the period before such date, and all assessments which became
45 a lien before such date, be paid. The commissioner of finance shall mark
46 the city's books and rolls of taxes, assessments and water rents in
47 accordance with the determination of the board of estimate in every case
48 in which action shall be taken under the provisions of this section.

49 § 11-236 Powers of board of estimate to cancel taxes, water rents and
50 assessments. The council by local law may authorize the board of esti-
51 mate, by a unanimous vote, upon the written consent of the comptroller,
52 to cancel and annul any taxes, water rents and assessments constituting
53 a lien against any real property owned by a corporation whose property
54 is exempt from taxation under the provisions of the real property tax
55 law, notwithstanding that such taxes, water rents or assessments shall
56 have become a lien against such real property while owned by a person or

1 corporation not exempt under such section. The commissioner of finance
2 shall mark the city's books and rolls of taxes and assessments in
3 accordance with the determination of the board of estimate under such
4 local law.

5 § 11-237 Cancellation of assessments, water and sewer rents on real
6 property acquired by tax enforcement foreclosure proceedings. Upon the
7 cancellation of unpaid assessments, water and sewer rents by the city
8 collector pursuant to section 11-353 of this title, the comptroller
9 shall charge the unpaid amounts for assessments for local improvements,
10 so cancelled, to the surplus in the appropriate assessment fund; the
11 unpaid amounts for water charges, meter setting and repair, meter glass-
12 es and sewer rents, so cancelled, shall be deducted from the accounts
13 receivable of the appropriate fund.

14 § 11-238 Real property tax surcharge on absentee landlords. a. Impo-
15 sition of surcharge. A real property tax surcharge is hereby imposed on
16 class one property, as defined in section eighteen hundred two of the
17 real property tax law, excluding vacant land, that provides rental
18 income and is not the primary residence of the owner or owners of such
19 class one property, or the primary residence of the parent or child of
20 such owner or owners, in an amount equal to zero percent of the net real
21 property taxes for fiscal years beginning on or after the first of July
22 in the second year next succeeding the effective date of this section.
23 As used in this section, "net real property tax" means the real property
24 tax assessed on class one property after deduction for any exemption or
25 abatement received pursuant to the real property tax law or this title.

26 b. Rental income, primary residence and/or relationship to owner or
27 owners. The property shall be deemed to be the primary residence of the
28 owner or owners thereof, if such property would be eligible to receive
29 the real property tax exemption pursuant to section four hundred twen-
30 ty-five of the real property tax law, regardless of whether such owner
31 or owners has filed an application for, or the property is currently
32 receiving, such exemption. Proof of primary residence and the resident's
33 or residents' relationship to the owner or owners and the absence of
34 rental income shall be in the form of a certification as required by the
35 rules of the commissioner.

36 c. Rules. The department of finance shall have, in addition to any
37 other functions, powers and duties which have been or may be conferred
38 on it by law, the power to make and promulgate rules to carry out the
39 purposes of this section, including, but not limited to, rules related
40 to the timing, form and manner of any certification required to be
41 submitted under this section.

42 d. Penalties. 1. Notwithstanding any provision of any general, special
43 or local law to the contrary, an owner or owners shall be personally
44 liable for any taxes owed pursuant to this section whenever such owner
45 or owners fail to comply with this section or the rules promulgated
46 hereunder, or makes a false or misleading statement or omission and the
47 commissioner determines that such act was due to the owner or owners'
48 willful neglect, or that under such circumstances such act constituted a
49 fraud on the department. The remedy provided herein for an action in
50 person shall be in addition to any other remedy or procedure for the
51 enforcement of collection of delinquent taxes provided by general,
52 special or local law.

53 2. If the commissioner should determine, within three years from the
54 filing of an application or certification pursuant to this section, that
55 there was a material misstatement on such application or certification,

1 he or she shall impose a penalty tax against the property of five
2 hundred dollars, in accordance with the rules promulgated hereunder.

3 e. Cessation of use. In the event that a property granted an exemption
4 from taxation pursuant to this section ceases to be used as the primary
5 residence of such owner or owners or his, her or their parent or child,
6 or produces rental income, such owner or owners shall so notify the
7 commissioner.

8 SUBCHAPTER 2

9 EXEMPTIONS FROM REAL PROPERTY TAXATION

10 PART 1

11 EXEMPTIONS FOR CERTAIN RESIDENTIAL PROPERTY

12 § 11-241 Discrimination in tax exempt projects. No exemption from
13 taxation, for any project, other than a project hitherto agreed upon or
14 contracted for, shall be granted to a housing company, insurance compa-
15 ny, redevelopment company or redevelopment corporation, which shall
16 directly or indirectly, refuse, withhold from, or deny to any person any
17 of the dwelling or business accommodations in such project or property,
18 or the privileges and services incident to occupancy thereof, on account
19 of the race, color or creed of any such person.

20 Any exemption from taxation hereafter granted shall terminate sixty
21 days after a finding by the supreme court of the state of New York that
22 such discrimination is being or has been practiced in such project or
23 property; if within sixty days such discrimination shall have been
24 ended, then the exemption shall not terminate.

25 § 11-242 Exemption and tax abatement in regard to improvements of
26 substandard dwellings. a. As used in this section, the following terms
27 shall have the following meanings: 1. "Alteration" and "improvement": a
28 physical change in an existing dwelling other than painting, ordinary
29 repairs, normal replacements or maintenance items.

30 2. "Existing dwelling": a class A multiple dwelling in existence prior
31 to the commencement of alterations for which tax exemption and abatement
32 is claimed under the terms of this section and for which a valuation
33 appears on the annual record of assessed valuation of the city for the
34 fiscal year nineteen hundred fifty-five--nineteen hundred fifty-six.

35 3. "Start" on alteration or improvement: begin any physical operation
36 undertaken for the purpose of making alterations or improvements to an
37 existing dwelling.

38 4. "Complete" an alteration or improvement: conclude or terminate any
39 physical operation such as is referred to in subparagraph three of this
40 paragraph, to an extent or degree which renders such building capable of
41 use for the purpose for which the improvements or alterations were
42 intended.

43 5. "Multiple dwelling": multiple dwellings as that term is defined in
44 section four of the multiple dwelling law.

45 b. Any increase in assessed valuation resulting from alterations and
46 improvements to existing dwellings to eliminate presently existing
47 unhealthy or dangerous conditions in any existing dwelling or to replace
48 inadequate and obsolete sanitary facilities in any such dwelling, any of
49 which represent fire or health hazards, or to provide central or other
50 appropriate and approved heating, except insofar as the gross cubic
51 content of the building is increased thereby, shall be exempt from taxa-
52 tion for local purposes for a period of twelve years after the taxable
53 status date immediately following the completion of the alterations and
54 improvements, to the extent that such increase in assessed valuation
55 result from the reasonable cost of such alterations and improvements,
56 providing that construction is started after March first, nineteen

1 hundred fifty-five and completed before December thirty-first, nineteen
2 hundred fifty-nine. The assessed valuation allocated to such dwelling
3 after such alterations and improvements during such period of twelve
4 years, exclusive of the increase in valuation which is exempted, shall
5 not exceed the valuation of the previously existing dwelling appearing
6 on the assessment rolls after the taxable status date immediately
7 preceding the commencement of such alterations and improvements. The
8 assessed valuation of the land occupied by such dwelling and any
9 increase in valuation resulting from alterations and improvements other
10 than those made pursuant to this section, shall not be affected by the
11 provisions of this section.

12 c. The taxes upon any such property, including the land, shall be
13 abated and reduced by an amount equal to eight and one-third per centum
14 of the reasonable cost of such alterations and improvements each year
15 for a period of nine years commencing with the first tax bill for the
16 first tax year in which the exemption herein provided is effective, but
17 such abatement of taxes in any consecutive twelve-month period shall in
18 no event exceed the amount of taxes payable in such period.

19 d. The department of buildings shall determine and certify the reason-
20 able cost of any such alterations and improvements and for that purpose
21 may adopt rules and regulations, administer oaths to and take testimony
22 of any person, including but not limited to the owner of such property,
23 may issue subpoenas requiring the attendance of such persons and the
24 production of such books, papers or other documents as the department
25 shall deem necessary, may make preliminary estimates of the maximum
26 reasonable cost of such alterations and improvements, may establish
27 maximum allowable costs for specified units, fixtures or work in such
28 alterations or improvements, and may require the submission of plans and
29 specifications of such alteration and improvements before the start
30 thereof. Application forms for the benefits of this section shall be
31 filed with the tax commission between February first and March fifteenth
32 and the tax commission shall certify to the city collector the amount of
33 taxes to be abated and reduced, pursuant to the certification of the
34 commissioner of buildings as herein provided. No such application shall
35 be accepted unless accompanied by copies of certificates of the city
36 planning commission and the commissioner of buildings, as provided in
37 this subdivision and in subdivision e of this section.

38 e. To the end that alterations and improvements in such property shall
39 interfere as little as practicable with urgently needed public improve-
40 ments, and the clearance and rebuilding of substandard and insanitary
41 areas, and shall be confined to multiple dwellings which are struc-
42 turally sound, comply with applicable provisions of law, and are
43 provided with adequate central or other appropriate and approved heating
44 exemption or abatement from taxation hereunder shall be restricted to
45 dwellings which: (1) the city planning commission certify will not undu-
46 ly interfere with projected public improvements or the clearance and
47 rebuilding of substandard and insanitary areas which certification shall
48 be evidenced by a certificate describing the property involved and shall
49 be issued upon application to such city planning commission in such
50 manner and in such form as may be prescribed by such city planning
51 commission, and (2) which the department of buildings shall certify to
52 be structurally sound, comply with applicable provisions of law and
53 provide central or other appropriate and approved heating, which certif-
54 ication shall be evidenced by a certificate describing the property
55 involved and shall be issued upon application to the department of
56 buildings in such manner and in such form as may be prescribed by such

1 department. Where the improvements and alterations include or benefit
2 that part of a building which is occupied by stores or used for commer-
3 cial purposes, the cost shall be apportioned so that the benefits of
4 this section shall not be provided for the cost of the improvements or
5 alterations made for store or commercial purposes.

6 f. Notwithstanding the provisions of the multiple dwelling law, or any
7 local law, ordinance, provisions of this code, rule or regulation, any
8 dwelling to which alterations and improvements are made pursuant to this
9 section and which did not require a certificate of occupancy on April
10 second, nineteen hundred forty-five, may be occupied lawfully after such
11 date upon the completion of such alterations and improvements without
12 such a certificate being obtained, provided, however, that such alter-
13 ations and improvements shall have been made in conformity with law and
14 the applicable provisions for fire protection required by articles six
15 and seven of the multiple dwelling law.

16 g. No owner of a dwelling to which the benefits of this section shall
17 be applied nor any agent, employee, manager or officer of such owner
18 shall directly or indirectly deny to any person because of race, color,
19 creed, or religion any of the dwelling accommodations in such property
20 or any of the privileges or services incident to occupancy therein.

21 h. Each agency to which functions are assigned by this section may
22 adopt rules and regulations for the effectuation of the purposes of this
23 section, and a copy, for each member of the council, of such rules and
24 regulations shall be filed with the clerk of the council prior to
25 promulgation.

26 i. Any person who shall knowingly and wilfully make any false state-
27 ment as to any material matter in any application for the benefits of
28 this section shall be guilty of an offense punishable by a fine of not
29 more than five hundred dollars or imprisonment for not more than ninety
30 days, or both.

31 j. The benefits of this section shall not apply to any multiple dwell-
32 ing which is not subject to the provisions of the emergency housing rent
33 control law or its successor statute for the city of Staten Island,
34 provided that this subdivision shall not operate to rescind any benefits
35 granted by the tax commission under this section prior to July first,
36 nineteen hundred fifty-eight; and further provided that where the bene-
37 fits herein provided were or are granted by the tax commission on or
38 after July first, nineteen hundred fifty-eight to any multiple dwelling
39 which is decontrolled subsequent to the granting of such benefits, the
40 tax commission shall withdraw such benefits, effective upon the
41 commencement of the first tax year following the tax year in which such
42 multiple dwelling is decontrolled.

43 § 11-243 Reextension of exemption and tax abatement in regard to
44 improvements of substandard dwellings. a. As used in this section, the
45 following terms shall have the following meanings:

46 1. "Alteration" and "improvement": a physical change in an existing
47 dwelling other than painting, ordinary repairs, normal replacement of
48 maintenance items, provided, however, that ordinary repairs and normal
49 replacement of maintenance items, as defined by rules adopted by the
50 department of housing preservation and development pursuant to subdivi-
51 sion m of this section, shall be eligible for tax exemption and tax
52 abatement under this section provided that repairs and maintenance
53 items:

54 (1) were started and completed within a twelve-month period,

55 (2) were made to any common area of the dwelling premises concurrently
56 with a major capital improvement thereto, as defined by rules adopted by

1 the department of housing preservation and development pursuant to
2 subdivision m of this section,

3 (3) require the issuance of a permit for at least one item thereof by
4 any city agency, and

5 (4) the amount of money expended thereon shall not exceed two times
6 the amount expended on the major capital improvement performed concu-
7 rently therewith.

8 "Alteration" and "improvement" shall also mean "an abatement" of lead-
9 based paint hazards, as defined in part 745 of title forty of the code
10 of federal regulations or any successor regulations in any existing
11 dwelling including any common areas, and shall include an "inspection"
12 and "risk assessment" for lead-based paint hazards, as defined in such
13 part, in a dwelling unit whether such unit is vacant or occupied but
14 shall not include any work performed to comply with a notice of
15 violation issued for a violation of article fourteen of subchapter two
16 of chapter two of title 27 of the administrative code of the city of New
17 York. For purposes of this paragraph, the term, "targeted area" shall
18 mean the geographical area of New York city that is determined by the
19 department of health and mental hygiene to have high rates of children
20 with environmental intervention blood lead levels. The department of
21 housing preservation and development shall establish two schedules of
22 certified reasonable costs for items that are included in an abatement
23 of lead-based paint hazards, one covering such abatement that is
24 performed in an eligible dwelling unit or common area located in the
25 targeted area, and one covering such abatement that is performed in an
26 eligible dwelling unit or common area that is not located in the target-
27 ed area. The first such schedules shall be promulgated by the department
28 of housing preservation and development within 180 days of the effective
29 date of this section and shall be used for any such abatements that are
30 commenced on or after August 2, 2004. Such schedules shall be reviewed
31 by such department biennially following their effective dates and
32 amended as necessary. Notwithstanding any other provision of law or
33 rule, an owner who performs an abatement of lead-based paint hazards
34 pursuant to this paragraph shall not be required to comply with subdivi-
35 sion y of this section which provides for filing of a notice of intent
36 form prior to the commencement of work, and no additional fee or penalty
37 shall be due and owing the department at the time of issuance of a
38 certificate of eligibility and reasonable cost for failure to file such
39 notice of intent.

40 2. "Existing dwelling": except as hereinafter provided in subdivision
41 d of this section, a class A multiple dwelling or a building consisting
42 of one or two dwelling units over space used for commercial occupancy in
43 existence prior to the commencement of alterations for which tax
44 exemption and abatement is claimed under the terms of this section and
45 for which a valuation appears on the annual record of assessed valuation
46 of the city for the fiscal year immediately preceding the commencement
47 of such alterations and improvements.

48 3. "Start" an alteration or improvement: begin any physical operation
49 undertaken for the purpose of making alterations or improvements to an
50 existing dwelling.

51 4. "Complete" an alteration or improvement: conclude or terminate any
52 physical operation such as is referred to in paragraph three of this
53 subdivision, to an extent or degree which renders such building capable
54 of use for the purpose for which the improvements or alterations were
55 intended.

1 5. "Multiple dwelling": multiple dwellings as that term is defined in
2 section four of the multiple dwelling law.

3 6. "Moderate rehabilitation": shall mean a scope of work which

4 (a) includes a building-wide replacement of a major component of one
5 of the following systems:

6 (1) Elevator

7 (2) Heating

8 (3) Plumbing

9 (4) Wiring

10 (5) Window; and

11 (b) has a certified reasonable cost of not less than twenty-five
12 hundred dollars, exclusive of any certified reasonable cost for ordinary
13 repairs, for each dwelling unit in existence at the commencement of the
14 rehabilitation; except that the department of housing preservation and
15 development may establish a minimum certified reasonable cost to be
16 greater than twenty-five hundred dollars per dwelling unit pursuant to
17 subdivision m of this section.

18 7. "Substantially occupied": shall mean an occupancy of not less than
19 sixty percent of all dwelling units immediately prior and during reha-
20 bilitation, except that the department of housing preservation and
21 development may establish higher percentages of occupancy pursuant to
22 subdivision m of this section.

23 8. "Private dwelling" shall mean any building or structure designed
24 and occupied for residential purposes by not more than two families.
25 Private dwellings shall also be deemed to include a series of one-family
26 or two-family dwelling units each of which faces or is accessible to a
27 legal street or public thoroughfare, if each such dwelling unit is
28 equipped as a separate dwelling unit with all essential services, and if
29 each such unit is arranged so that it may be approved as a legal one-fa-
30 mily or two-family dwelling.

31 b. Subject to the limitations provided in subdivision d of this
32 section and the restrictions in this section on conversion of buildings
33 used in whole or in part for single room occupancy, any increase in the
34 assessed valuation of real property shall be exempt from taxation for
35 local purposes to the extent such increase results from the reasonable
36 cost of: (1) the conversion of a class B multiple dwelling to a class A
37 multiple dwelling except insofar as the gross cubic content of such
38 building is increased thereby; or (2) the conversion of any nonresiden-
39 tial building or structure situated in the county of Richmond to a class
40 A multiple dwelling except insofar as the gross cubic content of such
41 building or structure is increased thereby; or (3) alterations or
42 improvements to the exterior of an otherwise eligible building or struc-
43 ture visible from a public street pursuant to a permit issued by the
44 landmarks commission with respect to a designated historic or landmark
45 site or structure; or (4) alterations or improvements constituting a
46 moderate rehabilitation of a substantially occupied class A multiple
47 dwelling except insofar as the gross cubic content of such building or
48 structure is increased thereby; or (5) alterations or improvements to an
49 otherwise eligible building or structure commenced after January first,
50 nineteen hundred eighty designed to conserve the use of fuel, electric-
51 ity or other energy sources or to reduce demand for electricity, includ-
52 ing the installation of meters for purposes of measuring the amount of
53 electricity consumed for each dwelling unit, and conversions of direct
54 metering to a system that includes a master meter and submeters in any
55 cooperative, condominium, or housing development fund company organized
56 under article eleven of the private housing finance law; or (6) alter-

1 ations or improvements to existing dwellings to eliminate existing
2 unhealthy or dangerous conditions in any such existing dwelling or
3 replace inadequate and obsolete sanitary facilities in any such existing
4 dwelling, any of which represents fire or health hazards, including as
5 improvements asbestos abatement to the extent such asbestos abatement is
6 required by federal, state or local law, except insofar as the gross
7 cubic content of such existing dwelling is increased thereby; or (7)
8 conversion of residential units qualified for the protection of article
9 seven-C of the multiple dwelling law in buildings or portions thereof
10 registered with the New York city loft board as interim multiple dwell-
11 ings pursuant to such article to units which are in compliance with the
12 standards of safety and fire protection set forth in article seven-B of
13 the multiple dwelling law or to units which have a certificate of occu-
14 pancy as class A multiple dwellings; or (8) alterations or improvements
15 commenced on or after September first, nineteen hundred eighty-seven
16 constituting a substantial rehabilitation of a class A multiple dwell-
17 ing, or a conversion of a building or structure into a class A multiple
18 dwelling, as part of a program to provide housing for low and moderate
19 income households as defined by the department of housing preservation
20 and development pursuant to the rules and regulations promulgated pursu-
21 ant to subdivision m of this section, provided that such alterations or
22 improvements or conversions shall be aided by a grant, loan or subsidy
23 from any federal, state or local agency or instrumentality, including,
24 in the discretion of the department of housing preservation and develop-
25 ment, a subsidy in the form of a below market sale from the city of New
26 York; or (9) alterations or improvements to any private dwelling or
27 conversion of any private dwelling to a multiple dwelling or conversion
28 of any multiple dwelling to a private dwelling, provided that such
29 alterations, improvements or conversions are part of a project that has
30 applied for or is receiving benefits pursuant to this section and shall
31 be aided by a grant, loan or subsidy from any federal, state or local
32 agency or instrumentality. Such conversions, alterations or improvements
33 shall be completed within thirty-six months after the date on which same
34 shall be started except that such thirty-six month limitation shall not
35 apply to conversions of residential units which are registered with the
36 loft board in accordance with article seven-C of the multiple dwelling
37 law pursuant to paragraph eight of this subdivision. Provided, however,
38 a sixty-month period for completion shall be available for alterations
39 or improvements undertaken by a housing development fund company organ-
40 ized pursuant to article eleven of the private housing finance law,
41 which are carried out with the substantial assistance of grants, loans
42 or subsidies from any federal, state or local governmental agency or
43 instrumentality or which are carried out in a property transferred from
44 the city of New York or the city of Staten Island if alterations and
45 improvements are completed within seven years after the date of trans-
46 fer. In addition, the department of housing preservation and development
47 may grant an extension of the period of completion for any project
48 carried out with the substantial assistance of grants, loans or subsi-
49 dies from any federal, state or local governmental agency or instrumen-
50 tality, if such alterations, improvements or conversions are completed
51 within sixty months from commencement of construction. Provided,
52 further, that such conversions, alterations or improvements shall in any
53 event be completed prior to the thirty-first of December in the third
54 year next succeeding the effective date of this section. Exemption for
55 conversions, alterations or improvements pursuant to paragraph one, two,
56 three, four, six, seven, eight or ten of this subdivision shall continue

1 for a period not to exceed fourteen years and begin no sooner than the
2 first tax period immediately following the completion of such conver-
3 sions, alterations or improvements. Exemption for alterations or
4 improvements pursuant to paragraph five or nine of this subdivision
5 shall continue for a period not to exceed thirty-four years and shall
6 begin no sooner than the first tax period immediately following the
7 completion of such alterations or improvements. Such exemption shall be
8 equal to the increase in the valuation, which is subject to exemption in
9 full or proportionally under this subdivision for ten or thirty years,
10 whichever is applicable. After such period of time, the amount of such
11 exempted assessed valuation of such improvements shall be reduced by
12 twenty percent in each succeeding year until the assessed value of the
13 improvements is fully taxable. Provided, however, exemption for any
14 conversions, alterations or improvements, which are aided by a loan or
15 grant under article eight, eight-A, eleven, twelve, fifteen, or twenty-
16 two of the private housing finance law, section six hundred ninety-six-a
17 or section ninety-nine-h of the general municipal law, or section three
18 hundred twelve of the housing act of nineteen hundred sixty-four (42
19 U.S.C.A. 1452b), or the Cranston-Gonzalez national affordable housing
20 act, (42 U.S.C.A. 12701 et. seq.), or started after July first, nineteen
21 hundred eighty-three by a housing development fund company organized
22 pursuant to article eleven of the private housing finance law which are
23 carried out with the substantial assistance of grants, loans or subsi-
24 dies from any federal, state or local governmental agency or instrumen-
25 tality or which are carried out in a property transferred from the city
26 of New York and where alterations and improvements are completed within
27 seven years after the date of transfer may commence at the beginning of
28 any tax period subsequent to the start of such conversions, alterations
29 or improvements and prior to the completion of such conversions, alter-
30 ations or improvements. The assessed valuation of the land occupied by
31 such dwelling and any increase in assessed valuation resulting from
32 conversions, alterations, or improvements other than those made pursuant
33 to this section shall not be affected by the provisions of this section.

34 b-1. Notwithstanding the provisions of subdivision b of this section,
35 alterations, improvements or conversions of any building or structure
36 that are eligible for benefits pursuant to subdivision b of this section
37 except insofar as the gross cubic content of such building or structure
38 is increased thereby shall be eligible for such benefits insofar as the
39 gross cubic content of such building or structure is increased thereby
40 provided that:

41 (1) for all tax lots now existing or hereafter created, at least fifty
42 percent of the floor area of the completed building or structure
43 consists of the pre-existing building or structure that was converted,
44 altered or improved in accordance with subdivision b of this section,
45 and

46 (2) for tax lots now existing or hereafter created within the follow-
47 ing area in the borough of Manhattan, such conversions, alterations or
48 improvements are aided by a grant, loan or subsidy from any federal,
49 state or local agency or instrumentality: beginning at the intersection
50 of the United States pierhead line in the Hudson river and the center
51 line of Chambers street extended, thence easterly to the center line of
52 Chambers street and continuing along the center line of Chambers street
53 to the center line of Centre street, thence southerly along the center
54 line of Centre street to the center line of the Brooklyn Bridge to the
55 intersection of the Brooklyn Bridge and the United States pierhead line
56 in the East river, thence northerly along the United States pierhead

1 line in the East river to the intersection of the United States pierhead
2 line in the East river and the center line of one hundred tenth street
3 extended, thence westerly to the center line of one hundred tenth street
4 and continuing along the center line of one hundred tenth street to its
5 westerly terminus, thence westerly to the intersection of the center
6 line of one hundred tenth street extended and the United States pierhead
7 line in the Hudson river, thence southerly along the United States pier-
8 head line in the Hudson river to the point of beginning.

9 (3) For purposes of this subdivision, "floor area" shall mean the
10 horizontal areas of the several floors or any portion thereof of a
11 dwelling or dwellings and accessory structures on a lot measured from
12 the exterior faces of exterior walls or from the center line of party
13 walls.

14 (4) Nothing in this subdivision shall be construed to provide tax
15 abatement benefits pursuant to subdivision c of this section for the
16 costs attributable to the increased cubic content in any such building
17 or structure.

18 c. (1) Except as provided in paragraphs two, three and four of this
19 subdivision, the taxes upon any real property, including the land, may
20 be abated each year for a period of not more than twenty years by an
21 amount no greater than eight and one-third per centum of the reasonable
22 cost of eligible conversions, alterations or improvements provided in
23 paragraphs one through eight and paragraph ten of subdivision b of this
24 section provided that the abatement in taxes in any consecutive twelve-
25 month period shall in no event exceed the amount of taxes payable in
26 such twelve-month period; and provided further that alterations or
27 improvements pursuant to paragraph four of subdivision b of this section
28 shall only receive the benefits of this section if construction
29 commenced after January first, nineteen hundred seventy-eight and that
30 in no event shall the aggregate abatement exceed ninety per centum of
31 the reasonable cost of conversions, alterations or improvements provided
32 in paragraphs one, three, four, six, seven, and ten of subdivision b of
33 this section, or exceed fifty per centum of the reasonable cost of
34 conversions pursuant to paragraph one of subdivision b of this section
35 if construction commenced after January first, nineteen hundred eighty-
36 two or exceed fifty per centum of the reasonable cost of conversions
37 pursuant to paragraphs two and eight of subdivision b of this section,
38 or exceed one hundred per centum of the reasonable cost of alterations
39 or improvements pursuant to paragraph five of subdivision b of this
40 section provided that where alterations or improvements pursuant to
41 paragraphs four and six of subdivision b of this section are done in
42 conjunction with a conversion pursuant to paragraph two of subdivision b
43 of this section, the aggregate abatement shall not exceed fifty per
44 centum of the reasonable cost. Notwithstanding the foregoing, the taxes
45 upon real property, including the land may be abated for a period of not
46 more than twenty years at eight and one-third per centum of the reason-
47 able cost of conversions where construction actually commenced in good
48 faith prior to July first, nineteen hundred eighty pursuant to an alter-
49 ation permit issued by the department of buildings prior to July first,
50 nineteen hundred eighty provided that the aggregate abatement shall not
51 exceed ninety per centum of the reasonable cost thereof and provided
52 further that in no event shall the abatement in taxes in any twelve-
53 month period exceed the amount of taxes payable in such twelve-month
54 period. In no event, however, shall the aggregate abatement for conver-
55 sions, alterations or improvements pursuant to subdivision b of this
56 section exceed such dollar limit per existing class A dwelling unit or

1 additional unit created by conversion to a class A multiple dwelling as
2 may be established pursuant to rules and regulations promulgated by the
3 department of housing preservation and development pursuant to subdivi-
4 sion m of this section. Only those items of work set forth in the item-
5 ized cost breakdown schedule contained in rules and regulations promul-
6 gated by the department of housing preservation and development pursuant
7 to subdivision m of this section shall be eligible for tax abatement.
8 Such abatement shall commence on the later of July first, nineteen
9 hundred seventy-eight or the first day of the first tax quarter follow-
10 ing the completion of such construction and the filing for benefits as
11 provided in subdivision h of this section except that such period of
12 abatement may commence on the later of the first day of the first tax
13 quarter following commencement of any conversion, alteration or improve-
14 ment or (i) July first, nineteen hundred seventy-six, if aided by a loan
15 pursuant to article eight of the private housing finance law and
16 completed after December thirty-first, nineteen hundred seventy-five; or
17 (ii) July first, nineteen hundred seventy-seven, if aided by a loan
18 pursuant to article fifteen of the private housing finance law; or (iii)
19 July first, nineteen hundred eighty, if aided by a loan pursuant to
20 article eight-A of the private housing finance law; or (iv) July first,
21 nineteen hundred eighty, if aided by a loan pursuant to section three
22 hundred twelve of the housing act of nineteen hundred sixty-four (42
23 U.S.C.A. §1452b); or (v) July first, nineteen hundred ninety-two, if
24 started after such date and aided by a loan or grant under article elev-
25 en, twelve, or twenty-two of the private housing finance law, section
26 six hundred ninety-six-a or section ninety-nine-h of the general municip-
27 al law, or the Cranston-Gonzalez national affordable housing act (42
28 U.S.C.A. 12701 et seq.); or (vi) July first, nineteen hundred eighty-
29 eight, if started after such date by or on behalf of a company not qual-
30 ified under any of the above provisions, which is a not-for-profit
31 corporation qualified pursuant to section 501(c)(3) of the internal
32 revenue code and which has entered into a regulatory agreement with the
33 local housing agency requiring operation of the property as housing for
34 low and moderate income persons and families.

35 (2) In the case of alterations or improvements pursuant to paragraph
36 five of subdivision b of this section which are carried out with the
37 substantial assistance of grants, loans or subsidies from any federal,
38 state or local agency or instrumentality or any not-for-profit philan-
39 thropic organization one of whose primary purposes is providing low or
40 moderate income housing or financed with mortgage insurance by the New
41 York city residential mortgage insurance corporation or the state of New
42 York mortgage agency or pursuant to a program established by the federal
43 housing administration for rehabilitation of existing multiple dwellings
44 in a neighborhood strategy area as defined by the United States depart-
45 ment of housing and urban development, the abatement of taxes on such
46 property, including the land, shall not exceed the lesser of the actual
47 cost of the alterations or improvements or one hundred fifty per centum
48 of the certified reasonable cost of the alterations or improvements, as
49 determined under regulations of the department of housing preservation
50 and development, and the annual abatement of taxes shall not exceed
51 twelve and one-half per centum of such certified reasonable cost,
52 provided that such abatement shall not be effective for more than twenty
53 years and the annual abatement of taxes in any consecutive twelve-month
54 period shall in no event exceed the amount of taxes payable in such
55 twelve-month period.

1 (3) In the case of alterations or improvements carried out with the
2 substantial assistance of grants, loans or subsidies from any federal,
3 state or local agency or instrumentality or any not-for-profit philan-
4 thropic organization one of whose primary purposes is providing low or
5 moderate income housing, or financed with mortgage insurance by the New
6 York city residential mortgage insurance corporation or the state of New
7 York mortgage agency or pursuant to a program established by the federal
8 housing administration for rehabilitation of existing multiple dwellings
9 in a neighborhood strategy area as defined by the United States depart-
10 ment of housing and urban development where such alterations or improve-
11 ments are done on property located in census tracts in which seventy-
12 five percent or more of the population live in households which earn
13 fifty percent or less of the median household income of the city, the
14 abatement of taxes on such property, including the land, shall not
15 exceed the lesser of the actual cost of the alterations or improvements
16 or one hundred fifty per centum of the certified reasonable cost of the
17 alterations or improvements, as determined under regulations of the
18 department of housing preservation and development, and the annual
19 abatement of taxes shall not exceed twelve and one-half per centum of
20 such certified reasonable cost, provided that such abatement shall not
21 be effective for more than twenty years and the annual abatement of
22 taxes in any consecutive twelve-month period shall in no event exceed
23 the amount of taxes payable in such twelve-month period.

24 (4) In the case of alterations, improvements or conversions pursuant
25 to paragraph eight of subdivision b of this section, the abatement of
26 taxes on such property, including the land, shall not exceed the lesser
27 of the actual cost of the alterations or improvements or one hundred
28 fifty per centum of the certified reasonable cost of the alterations or
29 improvements, as determined under regulations of the department of hous-
30 ing preservation and development, and the annual abatement of taxes
31 shall not exceed twelve and one-half per centum of such certified
32 reasonable cost, provided that such abatement shall not be effective for
33 more than twenty years and the annual abatement of taxes in any consec-
34 utive twelve-month period shall in no event exceed the amount of taxes
35 payable in such twelve-month period.

36 d. The benefits of this section shall apply:

37 (1) to any multiple dwelling which is altered, improved or increased
38 in valuation with aid of a loan provided by the city of New York or the
39 city of Staten Island, the New York city housing development corporation
40 or the United States department of housing and urban development for the
41 elimination of conditions dangerous to human life or detrimental to
42 health, including nuisances as defined in section three hundred nine of
43 the multiple dwelling law, or other rehabilitation or improvement wheth-
44 er or not all of the units thereof were in existence prior to rehabili-
45 tation pursuant to the provisions of: (i) article two, eight or eight-A
46 of the private housing finance law provided that such dwelling is made
47 available solely to persons or families of low income as defined in said
48 articles, (ii) article twelve of the private housing finance law, (iii)
49 article fifteen of the private housing finance law or (iv) any federal
50 law where the multiple dwelling is supervised or regulated by the United
51 States department of housing and urban development.

52 (2) except as hereinafter provided, to any building or structure which
53 is converted to a class A multiple dwelling or to any existing dwelling
54 which is substantially rehabilitated, and further provided that the
55 rents subsequent to conversion or substantial rehabilitation shall not
56 exceed such amount as may be fixed: (i) by the United States department

1 of housing and urban development, (ii) pursuant to the private housing
2 finance law of the state of New York, or (iii) pursuant to chapter three
3 or chapter four of title twenty-six of the code of the preceding munici-
4 pality, provided that the initial legal regulated rent for the dwelling
5 units shall be the rent charged and paid by the initial tenant and
6 registered with the New York state division of housing and community
7 renewal. Buildings or structures which are converted to class A multiple
8 dwellings and existing dwellings which are substantially rehabilitated
9 shall contain bedrooms in a number equal to at least fifty percent of
10 the apartments created where an alteration permit has been issued by the
11 department of buildings prior to April first, nineteen hundred eighty
12 and seventy-five percent of the apartments created where an alteration
13 permit has been issued by the department of buildings on or after April
14 first, nineteen hundred eighty provided, however, that if a building or
15 structure is converted from a non-residential use to a class A multiple
16 dwelling and the units therein contain an average floor area of one
17 thousand square feet, such requirement as to the number of bedrooms
18 shall not be applicable and if an existing dwelling is substantially
19 rehabilitated, the seventy-five percent bedroom requirement shall be
20 reduced to the extent its application would necessitate a reduction in
21 the number of units which are contained in the existing dwelling prior
22 to commencement of substantial rehabilitation.

23 (3) to any multiple dwelling, building or structure otherwise eligible
24 for any of the benefits of this section which:

25 (i) is operated exclusively for the benefit of persons or families who
26 are or will be entitled to occupancy by reason of ownership of stock or
27 membership in the corporate owner, or for the benefit of such persons or
28 families and other persons or families entitled to occupancy under
29 applicable provisions of law without ownership of stock or membership in
30 the corporate owner, or (ii) is owned as a condominium and is occupied
31 as the residence or home of three or more families living independently
32 of each other; provided, however, that, in addition to all other condi-
33 tions of eligibility for the benefits of this section, except for multi-
34 ple dwellings in which units have been newly created by substantial
35 rehabilitation of vacant buildings or conversions of non-residential
36 buildings, the availability of benefits under this section for such
37 multiple dwellings, buildings or structures shall be conditioned on the
38 following: (a) alterations or improvements to at least one building-wide
39 system are part of the application for benefits, and (b) (i) the
40 assessed valuation of such multiple dwelling, building, or structure,
41 including land, shall not exceed an average of thirty thousand dollars
42 per dwelling unit at the time of the commencement of the alterations or
43 improvements, and (ii) during the three years immediately preceding the
44 commencement of the alterations or improvements the average per room
45 sale price of the dwelling units or the stock allocated to such dwelling
46 units shall have been no greater than thirty-five percent of the maximum
47 mortgage amount for a single family home eligible for purchase by the
48 Federal National Mortgage Association; provided that if less than ten
49 percent of the dwelling units or an amount of stock less than the amount
50 allocable to ten percent of such dwelling units was not transferred
51 during such preceding three year period, eligibility for benefits shall
52 be conditioned upon the multiple dwelling, building, or structure having
53 an assessed valuation per dwelling unit of no more than twenty-five
54 thousand dollars at the time of the commencement of the alterations or
55 improvements. Provided, further, that such benefits shall be available

1 only for alterations or improvements commenced on or after June first,
2 nineteen hundred eighty-six.

3 Notwithstanding the foregoing, the benefits of this section shall be
4 available for any alterations or improvements commenced after August
5 seventh, two thousand eight for such multiple dwellings, buildings or
6 structures and shall be conditioned on the following: (1) the applica-
7 tion for benefits may include any item of work designated in the rules
8 adopted by the department of housing preservation and development as a
9 major capital improvement or asbestos abatement to the extent such
10 asbestos abatement is required by federal, state and local law; and (2)
11 (i) the assessed valuation of such multiple dwelling, building or struc-
12 ture, including land, shall not exceed an average of forty thousand
13 dollars per dwelling unit at the time of the commencement of the alter-
14 ations or improvements; and (ii) the average per room sale price of the
15 dwelling units or the stock allocated to such dwelling units shall have
16 been no greater than thirty-five percent of the maximum mortgage amount
17 for a single family home eligible for purchase by the Federal National
18 Mortgage Association during the three years immediately preceding the
19 commencement of the alterations or improvements; provided that if less
20 than ten percent of the dwelling units or an amount of stock less than
21 the amount allocable to ten percent of such dwelling units was not
22 transferred during such preceding three-year period, eligibility for
23 benefits shall be conditioned upon the multiple dwelling, building, or
24 structure having an assessed valuation per dwelling unit of no more than
25 forty thousand dollars at the time of the commencement of the alteration
26 or improvement. Provided, however, benefits shall also be available
27 under this section for work completed in any such multiple dwelling,
28 building or structure within the first three years of its conversion to
29 cooperative or condominium ownership, as evidenced by the date on which
30 the first closing in a condominium to a bona fide purchaser occurs or in
31 the case of a cooperative, the date on which the shares allocable to a
32 unit are conveyed to a bona fide purchaser, provided, however, that the
33 availability of such benefits for conversions, alterations or improve-
34 ments commenced prior to June first, nineteen hundred eighty-six, except
35 with respect to governmentally assisted projects as defined in regu-
36 lations issued by the department of housing preservation and develop-
37 ment, shall be conditioned upon the completion of such conversions,
38 alterations or improvements within three years after acceptance for
39 filing of the prospectus to establish such cooperative or condominium
40 entity by the attorney general of the state of New York. The maximum
41 amount of tax abatement which may be received in any tax period under
42 this section by any such multiple dwelling, building or structure for
43 any alterations and improvements commenced three or more years after its
44 initial conversion to cooperative or condominium ownership shall be
45 limited to an amount not in excess of two thousand five hundred dollars
46 per dwelling unit of the certified reasonable cost of the alterations or
47 improvements as determined under regulations of the department of hous-
48 ing preservation and development.

49 (3-a) Notwithstanding any contrary provision of paragraph three of
50 this subdivision, the availability of any benefits under this section to
51 any multiple dwelling, building or structure owned and operated by a
52 limited-profit housing company established pursuant to article two of
53 the private housing finance law shall not be conditioned upon the
54 assessed valuation of such multiple dwelling, building or structure,
55 including land, as calculated as an average dollar amount per dwelling
56 unit, at the time of the commencement of the alterations or improve-

1 ments; provided, however, that such limited-profit housing company (i)
2 is organized and operating as a mutual company, (ii) continues to be
3 organized and operating as a mutual company and to own and operate the
4 multiple dwelling, building or structure receiving such benefits, and
5 (iii) has entered into a binding and irrevocable agreement with the
6 commissioner of housing of the state of New York, the supervising agen-
7 cy, the New York city housing development corporation, or the New York
8 state housing finance agency prohibiting the dissolution or reconsti-
9 tution of such limited-profit housing company pursuant to section thir-
10 ty-five of the private housing finance law for not less than fifteen
11 years from the commencement of such benefits. For the purposes of this
12 paragraph, the terms "mutual company" and "supervising agency" shall
13 have the same meanings as set forth in section two of the private hous-
14 ing finance law.

15 (4) provided that, in the case of any building or structure: (i) in
16 which conversion, alteration or improvement commences on or after Janu-
17 ary first, nineteen hundred eighty-two, and (ii) which is located within
18 an area designated herein as a minimum tax zone, the benefits of this
19 section shall not be applied to abate or reduce the taxes upon the land
20 portion of such real property, which shall continue to be taxed based
21 upon the assessed valuation of the land and the applicable tax rate at
22 the time such taxes are levied; provided, however, that the foregoing
23 limitation with respect to abatement of taxes shall not apply:

24 (A) to any multiple dwelling which is eligible for benefits based upon
25 moderate rehabilitation pursuant to paragraph four of subdivision b of
26 this section, or (B) to any multiple dwelling which is governmentally
27 assisted as such term is defined in regulations to be promulgated by the
28 department of housing preservation and development pursuant to subdivi-
29 sion m of this section.

30 (5) provided that, in the case of any building or structure: (i) in
31 which conversion, alteration or improvement commences on or after Janu-
32 ary first, nineteen hundred eighty-two, and (ii) which is located within
33 an area designated herein as a tax abatement exclusion zone, the bene-
34 fits of this section shall not be applied to abate or reduce the taxes
35 upon such real property, which shall continue to be taxed based upon the
36 assessed valuation of the land and the improvements and the applicable
37 tax rate at the time such taxes are levied; provided, however, that the
38 foregoing limitation shall not deprive such real property of any bene-
39 fits of exemption from taxation of an increase in assessed valuation to
40 which it is entitled pursuant to this section; provided, however, that
41 the foregoing limitation with respect to abatement of taxes shall not
42 apply:

43 (A) to any alteration or improvement designated as a major capital
44 improvement, by the regulations promulgated by the department of housing
45 preservation and development pursuant to subdivision m of this section,
46 provided that the maximum amount of tax abatement which may be received
47 in any tax period under this section by any such multiple dwelling,
48 building or structure for any alterations and improvements shall be
49 limited to an amount not in excess of twenty-five hundred dollars per
50 dwelling unit of the certified reasonable cost of the alterations and
51 improvements as determined under regulations of the department of hous-
52 ing preservation and development, or (B) to any multiple dwelling which
53 is governmentally assisted as such term is defined by said regulations.

54 (8) Limitation on benefits. (a) The provisions of this paragraph shall
55 apply to all conversions, alterations and improvements except the
56 following:

1 (i) alterations or improvements under paragraphs three, five and six
2 of subdivision b of this section, where carried out:

3 (A) with the substantial assistance of grants, loans or subsidies from
4 any federal, state or local agency or instrumentality, or any not-for-
5 profit philanthropic organization one of whose primary purposes is
6 providing low or moderate incoming housing; or

7 (B) with mortgage insurance by the New York city residential mortgage
8 insurance corporation or the state of New York mortgage agency; or

9 (C) in the areas bounded and described as follows:

10 AREAS IN THE COUNTY OF RICHMOND:

11 PORT RICHMOND--The area bounded by the Kill Van Kull; Jewett Avenue
12 and its prolongation; Forest Avenue; and, the Willow Brook Expressway.

13 NEW BRIGHTON--The area bounded by the Kill Van Kull; Westervelt
14 Avenue; Brook Street; Castleton Avenue; and, North Randall Avenue and
15 its prolongation.

16 STAPLETON--The area bounded by Victory Boulevard; the Upper New York
17 Bay; Vanderbilt Avenue; Van Duzer Street; Cebra Avenue; and, St. Pauls
18 Avenue.

19 FOX HILLS--The area bounded by Vanderbilt Avenue; the Upper New York
20 Bay; the Staten Island Rapid Transit Railway right of way; and, the
21 Staten Island Expressway.

22 (D) pursuant to a program established by the federal housing adminis-
23 tration, federal national mortgage association, federal home loan mort-
24 gage corporation or government national mortgage association for the
25 rehabilitation of existing multiple dwellings for persons of low or
26 moderate income, or a program of mortgage insurance for the rehabili-
27 tation of existing multiple dwellings pursuant to section two hundred
28 twenty-three-f of the national housing act, as amended, or a program of
29 mortgage insurance established by the federal housing administration for
30 the rehabilitation of existing multiple dwellings for persons of low or
31 moderate income; provided that properties receiving benefits under such
32 programs are located in a neighborhood strategy area, as defined, by the
33 United States department of housing and urban development, or in one of
34 the areas listed in subparagraph (C) of this paragraph.

35 (ii) alterations or improvements under paragraph four of subdivision b
36 of this section; and

37 (iii) conversion of residential units qualified for the protection of
38 article seven-C of the multiple dwelling law under paragraph seven of
39 subdivision b of this section.

40 (b) Abatement limitations. (i) The amount of abatement under subdivi-
41 sion c of this section shall not exceed the certified reasonable cost of
42 the conversion, alteration or improvement, as determined under regu-
43 lations of the department of housing preservation and development,
44 provided that the amount of certified reasonable cost eligible for
45 abatement under this section shall not exceed fifteen thousand dollars
46 for a dwelling unit of three and one-half rooms, as determined under the
47 applicable zoning resolution, and a comparable amount for dwelling units
48 of other sizes, determined under regulations of the department of hous-
49 ing preservation and development, and further provided that the amount
50 of certified reasonable cost eligible for abatement under this section
51 may exceed fifteen thousand dollars or such comparable amount per dwell-
52 ing unit, but not more than twenty-five percent above such amount, upon
53 application of the property owner and a determination by the department
54 of housing preservation and development that:

1 (A) in the case of a conversion under paragraph one or two of subdivi-
2 sion b of this section, the increased cost is necessary to comply with
3 applicable law;

4 (B) in the case of an alteration or improvement under paragraph six of
5 subdivision b of this section, the increased cost is necessary to elimi-
6 nate the unhealthy or dangerous conditions or replace the inadequate and
7 obsolete facilities in a satisfactory manner;

8 (C) in the case of an alteration or improvement under paragraph five
9 of subdivision b of this section, the increased cost is necessary to
10 conserve energy in a satisfactory manner; or

11 (D) in the case of an alteration or improvement under paragraph three
12 of subdivision b of this section, the increased cost, to the extent such
13 cost is not offset by any and all tax credits received as a result of
14 the alteration or improvement, is necessary to comply with any provision
15 of law regulating historic or landmark buildings or structures.

16 (ii) Notwithstanding any other provisions of this subparagraph, and in
17 addition to all other conditions of eligibility for the benefits of this
18 section, the availability of abatements pursuant to subdivision c of
19 this section for any multiple dwellings, buildings or structures not
20 owned as a condominium or cooperative, except for multiple dwellings in
21 which units have been newly created by substantial rehabilitation of
22 vacant buildings or conversions of non-residential buildings, shall be
23 conditioned on the assessed valuation of such multiple dwelling, build-
24 ing or structure, including land, not exceeding an average of thirty
25 thousand dollars per dwelling unit at the time of commencement of the
26 alterations or improvements, provided, however, that such average shall
27 not exceed forty thousand dollars per dwelling unit at the time of
28 commencement of the alteration or improvement for alterations or
29 improvements commenced after the effective date of this paragraph.

30 (c) Exemption limitations. (i) The increase in assessed valuation of
31 the real property resulting from the conversion, alteration or improve-
32 ment under subdivision b of this section, shall be exempt from taxation
33 as provided in this section, only to the extent provided in this subpar-
34 agraph, provided that this subparagraph shall not apply to any conver-
35 sions, alterations or improvements commenced on or after June first,
36 nineteen hundred eighty-six. The amount of the increased assessed valu-
37 ation that is exempt from taxation shall depend on the amount of the
38 total assessed value per dwelling unit calculated by dividing the amount
39 of the total assessed valuation of the property, as determined under the
40 real property tax law, by the number of dwelling units in the building
41 after completion of the conversion, alteration or improvement. The
42 amount of increased assessed valuation that will be exempt from taxation
43 for buildings with total assessed valuation per dwelling unit of less
44 than thirty-eight thousand dollars shall be calculated pursuant to the
45 following formula: (A) any portion of total assessed valuation of the
46 property attributable to the first eighteen thousand dollars of total
47 assessed valuation per dwelling unit, to the extent it represents
48 increased assessed valuation, shall be one hundred percent exempt; (B)
49 any portion of total assessed valuation attributable to the next four
50 thousand dollars of total assessed valuation per dwelling unit, to the
51 extent it represents increased assessed valuation, shall be seventy-five
52 percent exempt; (C) any portion of total assessed valuation attributable
53 to the next four thousand dollars of total assessed valuation per dwell-
54 ing unit, to the extent it represents increased assessed valuation,
55 shall be fifty percent exempt; (D) any portion of total assessed valu-
56 ation attributable to the next four thousand dollars of total assessed

1 valuation per dwelling unit, to the extent it represents increased
2 assessed valuation, shall be twenty-five percent exempt; and (E) any
3 portion of total assessed valuation attributable to the next eight thou-
4 sand dollars of total assessed valuation per dwelling unit, to the
5 extent it represents increased assessed valuation per dwelling unit,
6 shall be fully taxable. Property with a total assessed valuation per
7 dwelling unit of thirty-eight thousand dollars or more shall not be
8 eligible for a tax exemption under this section.

9 (ii) In calculating the amount of increased assessed valuation that
10 will be exempt from taxation pursuant to the formula in clause (i) of
11 this subparagraph, the full amount of total assessed valuation that does
12 not represent increased assessed valuation shall be applied in such
13 formula prior to the inclusion of any amount of increased assessed valu-
14 ation.

15 (iii) Where the real property is occupied in part for residential
16 purposes and in part for non-residential purposes, the assessed valu-
17 ation of the property shall be appropriately allocated between the resi-
18 dential and non-residential portions. In computing the total assessed
19 valuation per dwelling unit under this subparagraph, only the amount of
20 valuation so allocated to the residential portion shall be considered.

21 (iv) Commencing with the assessment roll for the year nineteen hundred
22 eighty-four, where there has been a change in the level of assessment
23 from the assessment roll of the prior year of properties receiving
24 exemptions under this section, the department of finance may petition
25 the state board to certify the percentage of such change for the
26 purposes of this section. In such petition, the department of finance
27 shall submit such information as the state board shall require in order
28 to certify the percentage of such change. The state board may also make
29 such a certification on its own motion. Upon receipt of such certif-
30 ication from the state board, the department of housing preservation and
31 development may modify the dollar values of total assessed valuation per
32 dwelling unit in clause (i) of this subparagraph to reflect the percent-
33 age change in the level of assessment as shown in such certification. As
34 used in this subparagraph, the term "change in the level of assessment"
35 means the net increase or decrease in the assessed valuation of proper-
36 ties in the assessing unit that received exemptions under this section
37 in the current year as compared to those that received exemptions under
38 this section in the prior year as a result of assessing such properties
39 at a higher or lower ratio of full value.

40 (v) (A) Notwithstanding the provisions of clause (i) of this subpara-
41 graph, the department of housing preservation and development may reduce
42 or remove the limitations on the exemption from taxation provided in
43 such clause with respect to a particular property undergoing alteration
44 or improvement, upon application of the property owner and a determi-
45 nation by such department that the increased benefit will increase the
46 number of dwelling units that will be affordable to persons of low and
47 moderate income, and the increased benefit is necessary to make econom-
48 ically viable units or improvement in the quality of dwelling units that
49 will be affordable to persons of low or moderate income.

50 (B) As used in this subparagraph, the term "persons of low or moderate
51 income" shall mean persons who would qualify for housing subsidies
52 pursuant to section two hundred thirty-five of the national housing act,
53 as amended, at one hundred thirty-five percent of the income limitations
54 provided therein.

55 (C) Upon receiving an application under this subparagraph in proper
56 form, the department of housing preservation and development shall imme-

1 diately submit it to the community board for the area in which the
2 project is located, which may, within forty-five days of receiving it
3 and after a public hearing, make recommendations to the department as to
4 the application. The department shall act on the application within
5 sixty days of receiving it from the property owner in proper form, but
6 not before expiration of the time for the community board to make its
7 recommendations, unless the board has acted sooner.

8 (d) The department of housing preservation and development may set
9 forth preliminarily the terms of a determination under subparagraph (b)
10 or (c) of this paragraph prior to the commencement of the conversion,
11 alteration or improvement. Any such determination shall take effect
12 after completion of the work in accordance with the terms of the appli-
13 cation made by the property owner.

14 (e) Any determination of the department of housing preservation and
15 development to increase an abatement under subparagraph (b) of this
16 paragraph, or to reduce or remove the exemption limitations under
17 subparagraph (c) of this paragraph shall state the basis for the deter-
18 mination and the data on which the determination was based. Such deter-
19 mination shall be published in the City Record for five consecutive days
20 after the determination is rendered.

21 e. Notwithstanding any provision of this section or any other section
22 of the code to the contrary, where such dwelling is in an area where a
23 plan of redevelopment, program of neighborhood improvement, housing
24 maintenance, demonstration rehabilitation or concentrated code enforce-
25 ment is being carried out, the rents subsequent to conversion, alter-
26 ation or improvement may exceed the maximum amount allowable pursuant to
27 chapter four of title twenty-six of the code of the preceding munici-
28 pality where necessity for the adjustment of such rents is certified by
29 the department of housing preservation and development.

30 f. Subject to the provisions of subdivision d of this section, the
31 department of housing preservation and development shall determine and
32 certify the reasonable cost of any such conversions, alterations or
33 improvements and eligibility for the benefits of this section and for
34 that purpose may adopt rules and regulations, administer oaths to and
35 take the testimony of any person, including but not limited to the owner
36 of such property, may issue subpoenas requiring the attendance of such
37 persons and the production of such bills, books, papers or other docu-
38 ments as it shall deem necessary, may make preliminary estimates of the
39 maximum reasonable cost of such conversions, alterations or improve-
40 ments, may establish maximum allowable costs of specified units,
41 fixtures or work in such conversions, alterations or improvements, and
42 may require the submission of plans and specifications of such conver-
43 sions, alterations or improvements, and may require the submission of
44 plans and specifications of such conversions, alterations or improve-
45 ments before the start thereof. Applications for certification shall
46 include all bills and other documents showing the cost of construction
47 or such other evidence of such cost as shall be satisfactory to the
48 department of housing preservation and development, including, without
49 limitation, certification of cost by a certified public accountant in
50 accordance with generally accepted accounting principles. Applications
51 for certification for a building eligible for benefits pursuant to para-
52 graph three of subdivision d of this section, for alterations or
53 improvements completed more than three years after its conversion to
54 cooperative or condominium ownership, shall include such documentation
55 of the sale price of dwelling units or stock allocated to such dwelling
56 units as may be required by the department of housing preservation and

1 development, including but not limited to certification of sales price
2 by a certified public accountant. In addition, such applications shall
3 contain the consent of the applicant to allow the department of housing
4 preservation and development access to records, including but not limit-
5 ed to other tax records, as the department may deem appropriate to
6 enforce such conditions of eligibility. Applications for certification
7 filed on or after January first, nineteen hundred seventy-nine pursuant
8 to paragraphs one through six and paragraph eight of subdivision b of
9 this section shall be made after completion and within forty-eight
10 months following the start of construction of the conversion, alteration
11 or improvement, except that applications for certification for alter-
12 ations or improvements undertaken by a housing development fund company
13 organized pursuant to article eleven of the private housing finance law,
14 which are carried out with the substantial assistance of grants, loans
15 or subsidies from any federal, state or local governmental agency or
16 instrumentality or which are carried out in a property transferred from
17 the city of New York or city of Staten Island shall be made after
18 completion and within seventy-two months following the start of the
19 construction of the alteration or improvement. Provided, however, the
20 department of housing preservation and development is empowered to grant
21 an extension of the period for application for any project carried out
22 with the substantial assistance of loans, grants or subsidies from any
23 federal, state or local governmental agency or instrumentality, if such
24 application is made within seventy-two months from commencement of
25 construction. Applications for certification pursuant to paragraph seven
26 of subdivision b of this section shall be filed within twelve months of
27 the date of completion as provided by such subdivision.

28 g. To the end that conversions, alterations or improvements in such
29 property shall interfere as little as practicable with the clearance,
30 rehabilitation or rebuilding of sub-standard and insanitary areas and
31 shall be confined to buildings and structures which are structurally
32 sound and comply with applicable provisions of law, eligibility for the
33 benefits of this section shall be restricted to such buildings and
34 structures which the department of housing preservation and development
35 shall certify:

36 (1) to be structurally sound and to comply with applicable provisions
37 of law, as determined by the department of buildings, which certif-
38 ication shall be evidenced by a certificate describing the property
39 involved;

40 (2) if in an area for which a final plan of clearance, replanning,
41 reconstruction, rehabilitation, or redevelopment has been approved
42 pursuant to article fifteen of the general municipal law, or if in an
43 area for which an urban renewal plan or tests, studies or demonstrations
44 have been approved pursuant to article fifteen of the general municipal
45 law, to be improved in conformity with such replanning, reconstruction,
46 rehabilitation, redevelopment, tests, studies, demonstrations or plan;
47 and

48 (3) if in an area where a program of local neighborhood improvement or
49 housing maintenance is being carried out, to be in conformity with such
50 program.

51 h. Application forms for the benefits of this section shall be filed
52 with the department of finance within the time periods to be established
53 by rules and regulations promulgated by the department of housing pres-
54 ervation and development pursuant to subdivision m of this section. The
55 department of finance shall certify the amount of taxes to be abated,
56 pursuant to the certification of the department of housing preservation

1 and development as herein provided. No such application shall be
2 accepted unless accompanied by a copy of the certificate of the depart-
3 ment of housing preservation and development both as to reasonable cost
4 and as to eligibility as provided in subdivision f of this section.

5 i. The benefits of this section shall not apply:

6 (1) except as provided in subdivision d of this section, to any exist-
7 ing dwelling which is not subject to the provisions of the emergency
8 housing rent control law or to the city rent and rehabilitation law or
9 to the city rent stabilization law or to the private housing finance law
10 or to any federal law providing for supervision or regulation by the
11 United States department of housing and urban development;

12 (2) to any private dwelling, notwithstanding any other provision of
13 this section, unless it is in an area where a plan of redevelopment or
14 program of neighborhood improvement, housing maintenance, demonstration
15 rehabilitation or concentrated code enforcement is being carried out and
16 the department of housing preservation and development finds that the
17 conversion, alteration or improvement is in conformity with such plan of
18 redevelopment, or program of neighborhood improvement, housing mainte-
19 nance, demonstration rehabilitation or concentrated code enforcement;
20 provided that, however, for the purposes of this section, a class A
21 multiple dwelling may be deemed to include any garden-type maisonette
22 dwelling project consisting of a series of dwelling units which together
23 and in their aggregate were arranged or designed to provide three or
24 more apartments and are provided as a group collectively with all essen-
25 tial services such as, but not limited to, water supply, house sewers
26 and heat, and which are in existence and operated as a unit under single
27 ownership on the date upon which an application for the benefits of this
28 section is received by the department of housing preservation and devel-
29 opment, even though certificates of occupancy were issued for portions
30 thereof as private dwellings;

31 (3) to any property receiving tax exemption or abatement concurrently
32 for rehabilitation or new construction under any other provision of New
33 York state, city of New York or city of Staten Island law with the
34 exception of any alteration or improvement to property receiving such
35 tax exemption or abatement under the provisions of the private housing
36 finance law, provided, however, that the benefits of this section shall
37 not apply to any alterations or improvements done in connection with the
38 refinancing, pursuant to section 223f of the national housing act, as
39 amended, of a housing project organized pursuant to article two and
40 article four of the private housing finance law;

41 (4) to any multiple dwelling for ordinary repairs and normal replace-
42 ment of maintenance items, as provided in paragraph one of subdivision
43 a, hereof in the event that the dwelling thereof is receiving the bene-
44 fits of this section for other ordinary repairs and normal replacement
45 of maintenance items as of the December thirty-first preceding the date
46 of application;

47 (5) to the conversion of any building or structure, or portion there-
48 of:

49 (i) which is located in the city of Staten Island where residential
50 conversion as of right is not permitted by the zoning resolution;

51 (ii) where such benefits are eliminated by regulations to be promul-
52 gated by the department of housing preservation and development pursuant
53 to subdivision m of this section, unless, in the case of a building or
54 structure in Richmond county, construction actually commenced prior to
55 October first, nineteen hundred eighty-three, pursuant to an alteration
56 permit. A copy of any proposed regulation pursuant to this paragraph

1 shall be transmitted to the city council not less than sixty days prior
2 to its publication in the City Record, pursuant to section eleven
3 hundred five of the charter of the preceding municipality as it existed
4 on the first of January, in the year next succeeding the effective date
5 of this section; and

6 (iii) provided that the provisions of this paragraph shall not apply
7 to conversions pursuant to paragraph seven of subdivision b of this
8 section.

9 (6) to any conversion of or alteration or improvement, commenced on or
10 after July first, nineteen hundred eighty-two, to any class B multiple
11 dwelling or class A multiple dwelling used in whole or in part for
12 single room occupancy, regardless of the status or use of the building
13 after the conversion, alteration or improvement unless such conversion,
14 alteration or improvement is carried out with the substantial assistance
15 of grants, loans or subsidies from any federal, state or local agency or
16 instrumentality.

17 (7) to any conversion of or alteration or improvement, commenced on or
18 after the effective date of this paragraph, to any property classified
19 under the zoning resolution as a non-profit institution with sleeping
20 accommodations, regardless of the status or use of the building after
21 the conversion, alteration or improvement unless such conversion, alter-
22 ation or improvement is carried out with the substantial assistance of
23 grants, loans or subsidies from any federal, state or local agency or
24 instrumentality.

25 j. Notwithstanding the provisions of the multiple dwelling law, or any
26 local law, ordinance, provisions of this code, rule or regulation, any
27 dwelling to which alterations and improvements are made pursuant to this
28 section and which did not require a certificate of occupancy on April
29 second, nineteen hundred forty-five, may be occupied lawfully after such
30 date upon the completion of such alterations and improvements without
31 such a certificate being obtained, provided, however, that such alter-
32 ations and improvements shall have been made in conformity with law and
33 the applicable provisions for fire protection required by articles six
34 and seven of the multiple dwelling law.

35 k. No owner of a dwelling to which the benefits of this section shall
36 be applied, nor any agent, employee, manager or officer of such owner
37 shall directly or indirectly deny to any person because of race, color,
38 creed, national origin, gender, sexual orientation, disability, marital
39 status, age, religion, alienage or citizenship status, or the use of,
40 participation in, or being eligible for a governmentally funded housing
41 assistance program, including, but not limited to, the section 8 housing
42 voucher program and the section 8 housing certificate program, 42 U.S.C.
43 1437 et seq., or the senior citizen rent increase exemption program,
44 pursuant to either chapter seven of title twenty-six of the code of the
45 preceding municipality or section 26-509 of such code, any of the dwell-
46 ing accommodations in such property or any of the privileges or services
47 incident to occupancy therein. The term "disability" as used in this
48 subdivision shall have the meaning set forth in section 8-102 of the
49 code of the preceding municipality. Nothing in this subdivision shall
50 restrict such consideration in the development of housing accommodations
51 for the purpose of providing for the special needs of a particular
52 group.

53 l. Any person who shall knowingly and willfully make any false state-
54 ment as to any material matter in any application for the benefits of
55 this section shall be guilty of an offense punishable by a fine of not
56 more than five hundred dollars or imprisonment for not more than ninety

1 days, or both. The commissioner of the department of housing preserva-
2 tion and development may reduce or revoke past and future exemption or
3 tax abatement authorized pursuant to this section if the application for
4 tax exemption or tax abatement contains a false statement or false
5 information as to a material matter or omits a material matter.

6 m. Each agency or department to which functions are assigned by this
7 section may adopt and promulgate rules and regulations for the effectua-
8 tion of the purpose of this section.

9 n. The department of housing preservation and development may require
10 a filing fee in an amount as provided by the rules and regulations
11 promulgated by the department of housing preservation and development
12 pursuant to subdivision m of this section.

13 o. Any tax abatement granted for a period of nine years to a multiple
14 dwelling aided by a loan provided by the city of New York prior to Janu-
15 ary first, nineteen hundred seventy-one, shall upon application therefor
16 be adjusted to extend for a period of up to twenty years, provided that
17 the total abatement before and after such adjustment shall not exceed
18 the total abatement to which such property was initially entitled under
19 this section.

20 p. This section is enacted pursuant to the provisions of section four
21 hundred eighty-nine of the real property tax law and subdivision two of
22 section four hundred five of the private housing finance law.

23 q. No application for the benefits of this section shall be accepted
24 by the department of finance if there are outstanding real estate taxes
25 or water and sewer charges or payments in lieu of taxes which were due
26 and owing as of the last day of the tax period preceding the date of
27 such filing with the department of finance, provided that an applicant
28 aided by article eight or article fifteen of the private housing finance
29 law shall have such application accepted by the department of finance if
30 there are no outstanding real estate taxes or water and sewer charges
31 due and owing as of the last day of the tax period preceding commence-
32 ment of construction.

33 r. In the event that any building or structure receiving the benefits
34 of this section shall become operated exclusively for commercial, hotel
35 or transient hotel use, the tax commission shall withdraw benefits
36 granted herein prospectively.

37 s. The benefits of this section shall not apply to alterations or
38 improvements to existing dwellings in existence on December thirty-
39 first, nineteen hundred seventy-five where (i) such alterations or
40 improvements were completed on or before December thirty-first, nineteen
41 hundred seventy-five, and (ii) no dwelling units thereof on December
42 thirty-first, nineteen hundred seventy-five had rentals which were
43 subject to control by the city rent agency pursuant to chapter four of
44 title twenty-six of the code of the preceding municipality. This subdi-
45 vision shall not apply to alterations or improvements to any building or
46 structure which is benefitted by mortgage insurance pursuant to section
47 two hundred thirteen of the national housing act for applications filed
48 prior to January first, nineteen hundred seventy-nine.

49 t. Notwithstanding any law to the contrary, the owner of any building
50 or structure eligible for any of the benefits of this section which is
51 converted to a class A multiple dwelling, completed, or substantially
52 rehabilitated on or after January one, nineteen hundred seventy-four,
53 shall register the initial rent for each dwelling unit in such building
54 or structure with the New York state division of housing and community
55 renewal. After such registration, the rents of such dwelling units shall
56 be fully subject to regulations under chapter four of title twenty-six

1 of the code of the preceding municipality so long as the benefits of
2 this section are in effect or for such longer period as may be provided
3 by law.

4 u. Any tax exemption or tax abatement authorized pursuant to this
5 section may be revoked retroactively by the commissioner of department
6 of housing preservation and development or the department of finance at
7 any time during the authorized term of such tax exemption or tax abate-
8 ment if real estate taxes or water and sewer charges due to the city of
9 New York or city of Staten Island remain unpaid for one year after the
10 same are due and payable. In no event shall revocation be effective
11 prior to the date such taxes or charges were first due and payable.

12 v. Where alterations, improvements, or conversions include or benefit
13 that part of a building which is not occupied for dwelling purposes but
14 is occupied by stores or otherwise used for commercial purposes or
15 community facilities, the increase in assessed valuation and the cost of
16 the alteration shall be apportioned so that the benefits of this title
17 shall not be provided for alterations, improvements or conversions made
18 for other than dwelling purposes.

19 w. If any provision of this section or its application to any person
20 shall be held invalid, the remainder of this section and the applicabil-
21 ity of its provisions to other persons or circumstances shall not be
22 affected thereby.

23 x. Notwithstanding any provision of this section, no benefit pursuant
24 to paragraph four of subdivision b of this section shall be granted for
25 work commenced after January first, nineteen hundred eighty, unless the
26 applicant establishes that the department of housing preservation and
27 development and tenants of such class A multiple dwelling were given
28 notice of (i) the proposed work prior to commencement of such work, (ii)
29 the identity of the owner's representative, and (iii) the tenants'
30 rights under applicable law with respect to such work, provided that, in
31 the case of a loan program supervised by such department, notice to the
32 department shall be unnecessary, and further provided that the depart-
33 ment may itself provide the required notice to the tenants.

34 y. Applicants for benefits under the provisions of this section shall
35 file with the department of finance a form supplied by said department
36 which (i) states an intention to file for benefits under the provisions
37 of this section, (ii) describes the work for which tax benefits will be
38 claimed and (iii) estimates the cost of such work which will be eligible
39 for benefits. Such form shall be filed prior to the commencement of such
40 work. If the scope of such work or the estimated cost thereof changes
41 materially, applicant shall file a revised statement. Applicants who
42 fail to comply with the requirements of this subdivision shall be
43 subject to a penalty not to exceed one hundred percent of the filing fee
44 otherwise payable pursuant to subdivision n of this section.

45 z. A former tenant or former subtenant of premises in a non-residen-
46 tial building which is the subject of an application for an alteration
47 permit for conversion to a class A multiple dwelling, prior to the
48 application for any tax exemption or abatement benefits for such build-
49 ing pursuant to this section, and as a condition to the grant thereof,
50 shall be entitled to a relocation award under the terms and conditions
51 set forth below:

52 (1) As used in this subdivision, the term "eligible tenant" shall mean
53 any former tenant or former subtenant who:

54 (i) leased and used the vacated premises to conduct a manufacturing,
55 warehousing, or wholesaling business for not less than two consecutive
56 years immediately prior to vacating;

1 (ii) vacated such premises on or after April first, nineteen hundred
2 eighty-one for any reason other than eviction for non-payment of rent;

3 (iii) vacated such premises (a) no earlier than twenty-four months
4 prior to the filing date of an application for such alteration permit
5 and (b) no later than the completion of the conversion as evidenced by
6 the issuance of a permanent certificate of occupancy for a class A
7 multiple dwelling;

8 (iv) either purchased or leased for a term of not less than eighteen
9 months other premises within the city of Staten Island with a floor area
10 not less than one-third of the floor area of the vacated premises;

11 (v) relocated their business to such other premises within one year of
12 vacating the vacated premises; and

13 (vi) paid all commercial rent or occupancy tax for the vacated prem-
14 ises. A subtenant shall be eligible to receive a relocation award
15 notwithstanding any lack of eligibility of its prime tenant;

16 (2) the relocation award shall not exceed the greater of (i) the
17 aggregate base rent which accrued and was paid by the eligible tenant
18 during the final twenty-four months of its occupancy of the vacated
19 premises or (ii) four dollars for each square foot that the eligible
20 tenant occupied in the vacated premises during the final twenty-four
21 months of its occupancy of the vacated premises. As used in this subdivi-
22 sion, base rent shall be calculated in the same manner as base rent is
23 calculated for purposes of commercial rent or occupancy tax in the city
24 of Staten Island. However, the aggregate award payable to a prime tenant
25 and/or any subtenants of such prime tenant shall not exceed the amount
26 which would have been payable to the prime tenant had the prime tenant
27 been eligible for an award based on the entire floor area it leased from
28 the owner; and if such limitation applies, the awards shall be prorated
29 based upon the total floor area used and occupied by each eligible
30 tenant;

31 (3) the relocation award shall become due and payable to an eligible
32 tenant at the time the eligible tenant (i) either purchases or leases
33 other premises in accordance with paragraph one of this subdivision, and
34 (ii) certifies eligibility to, and demands payment of, the award from
35 the owner of the vacated building. If the relocation award is not paid
36 within thirty days of such certification and demand, interest shall
37 accrue on the relocation award from the date of the certification and
38 demand at the rate of twenty-four percent per annum;

39 (4) at any time after such certification and demand and prior to the
40 date of the filing of an application for tax exemption or abatement for
41 the vacated building pursuant to this section, an eligible tenant who
42 has not received a relocation award shall have a right to file a notice
43 of claim. Such notice of claim shall be filed with the county clerk of
44 the county and shall verify the claimant's name, its compliance with
45 eligibility requirements, the address of the vacated premises, the floor
46 area it occupied, the name of the prime tenant if the claimant is a
47 subtenant, and all the base rent that accrued and was paid by the claim-
48 ant during the final twenty-four months of its occupancy;

49 (5) a notice of claim, filed in accordance with paragraph four of this
50 subdivision, may be discharged by the filing of an undertaking with the
51 county clerk in an amount equal to the amount claimed and in accordance
52 with the procedures set forth in subdivision four of section nineteen of
53 the lien law, or by the payment into court of such amount in accordance
54 with the procedures set forth in section fifty-five of such law;

55 (6) no tax exemption or abatement shall be granted pursuant to this
56 section unless the department of housing preservation and development

1 receives an affidavit from the applicant for benefits of this section
2 which verifies that:

3 (i) the applicant has caused to be published a notice in a newspaper
4 of general circulation within the city of Staten Island, no later than
5 sixty days prior to filing of an application for tax exemption or abate-
6 ment pursuant to this section, which advises former tenants and subten-
7 ants of their rights pursuant to this subdivision; and

8 (ii) no notice of claim has been filed or all claims have been
9 released by the claimants, or secured in accordance with the provisions
10 of paragraph five of this subdivision, or discharged as an improper
11 claim by court order;

12 (7) the affidavit required pursuant to the provisions of paragraph six
13 of this subdivision shall be considered part of the application for
14 benefits pursuant to this section;

15 (8) if an eligible tenant has duly filed a notice of claim pursuant to
16 paragraph four of this subdivision and did not receive a relocation
17 award as provided herein, it may commence an action against any appli-
18 cant who filed a false affidavit pursuant to paragraph six of this
19 subdivision or any security posted by such applicant pursuant to para-
20 graph five of this subdivision, within three years of such filing. In
21 any action to enforce a claim pursuant to this subdivision, if the court
22 finds that the claimant has wilfully exaggerated the amount of the
23 claim, the claimant may be held liable in damages for an amount not to
24 exceed the proper relocation award. An eligible tenant in whose favor a
25 judgment is entered shall be entitled to costs and reasonable legal fees
26 and disbursements provided that such judgment is in excess of the amount
27 which the applicant or owner offered to pay the eligible tenant; and

28 (9) any lease or other rental agreement provision exempting, waiving,
29 releasing or discharging the obligation to pay a relocation award pursu-
30 ant to this subdivision shall be void as against public policy and whol-
31 ly unenforceable.

32 aa. Harassment. (1) The provisions of this subdivision apply to and
33 are additional requirements for claiming or receiving:

34 (a) any tax exemption under this section; or

35 (b) any tax abatement under this section where the certified reason-
36 able cost per dwelling unit of the conversion, alteration or improvement
37 (including the cost of any conversion, alteration or improvement for
38 which an abatement was approved within four years prior to commencement
39 of the conversion, alteration or improvement) exceeds seven thousand
40 five hundred dollars.

41 (2) The owner of the property shall file with the department of hous-
42 ing preservation and development, not less than thirty days before the
43 commencement of the conversion, alteration or improvement (hereinafter
44 referred to as the "cut-off date"), an affidavit, or, where any informa-
45 tion referred to in paragraph one of this subdivision changes prior to
46 applying for or claiming any benefit under this section, an amending
47 affidavit, setting forth the following information:

48 (a) every owner of record and owner of a substantial interest in the
49 property or entity owning the property or sponsoring the conversion,
50 alteration or improvement;

51 (b) a statement that none of such persons had, within the five years
52 prior to the cut-off date, been found to have harassed or unlawfully
53 evicted tenants by judgment or determination of a court or agency
54 (including a non-governmental agency having appropriate legal jurisdic-
55 tion) under the penal law, any state or local law regulating rents or

1 any state or local law relating to harassment of tenants or unlawful
2 eviction; and

3 (c) any change in the information required to be set forth.

4 (3) No conversion, alteration or improvement subject to this subdivi-
5 sion shall be eligible for tax exemption or tax abatement under this
6 section where:

7 (a) any affidavit required under this subdivision has not been filed;

8 (b) any such affidavit contains a willful misrepresentation or omis-
9 sion of any material fact; or

10 (c) any person referred to in subparagraph (a) of paragraph two of
11 this subdivision has been found to have harassed or unlawfully evicted
12 tenants as described in that paragraph, until and unless the finding is
13 reversed on appeal, provided that any such finding after the cut-off
14 date shall not apply to or affect any tax abatement or exemption for the
15 conversion, alteration or improvement covered by the affidavit.

16 (4) The department of housing preservation and development and the
17 department of finance shall maintain a list of affidavits as described
18 in paragraph two of this subdivision. Each agency shall review that list
19 with respect to each application or claim for benefits subject to this
20 subdivision.

21 (5) "Substantial interest" as used in subparagraph (a) of paragraph
22 two of this subdivision shall mean ownership of an interest of ten per
23 centum or more in the property or entity owning the property or sponsor-
24 ing the conversion, alteration or improvement.

25 (6) Where the conversion, alteration or improvement is commenced
26 before August first, nineteen hundred eighty-three, the cut-off date
27 shall be as set forth in this subdivision, but no affidavit shall be
28 required to be filed until thirty days after the effective date of this
29 subdivision.

30 bb. Notwithstanding any contrary provision of the private housing
31 finance law, the benefits of this section shall apply to any limited
32 profit housing company as provided in this section. Such multiple dwell-
33 ing, building or structure shall be eligible for benefits where at least
34 one building-wide improvement or alteration is part of the application
35 for benefits. Furthermore, to the extent that such alterations or
36 improvements are financed with grants, loans or subsidies from any
37 federal, state, or local agency or instrumentality, such multiple dwell-
38 ing, building or structure shall be eligible for benefits only if the
39 limited profit housing company has entered into a binding and irrev-
40 ocable agreement with the commissioner of housing of the state of New
41 York, the supervising agency, as such term is defined in section two of
42 the private housing finance law, the New York city housing development
43 corporation, or the New York state housing finance agency prohibiting
44 the dissolution or reconstitution of such limited profit housing company
45 pursuant to section thirty-five of the private housing finance law for
46 not less than fifteen years from the commencement of benefits. The
47 abatement of taxes on such property, including the land, shall not be an
48 amount greater than ninety per centum of the certified reasonable cost
49 of such alterations or improvements, as determined under regulations of
50 the department of housing preservation and development, nor greater than
51 eight and one-third percent of such certified reasonable cost in any
52 twelve-month period, nor be effective for more than twenty years. The
53 annual abatement of taxes in any twelve-month period shall in no event
54 exceed fifty percent of the amount of taxes payable in such twelve-month
55 period pursuant to the applicable exemption granted pursuant to article
56 two of the private housing finance law or other applicable laws or fifty

1 percent of payments required to be made in lieu of taxes in such twelve-
2 month period. Provided, however, the annual abatement of taxes for
3 alterations or improvements commenced prior to June first, nineteen
4 hundred eighty-six may not be applied to reduce the amount of taxes
5 payable or the amount of payments required to be made in lieu of taxes
6 in any twelve-month period to an amount less than the minimum amount of
7 taxes required to be paid pursuant to section thirty-three of the
8 private housing finance law.

9 cc. The commissioner of the department of housing preservation and
10 development and the commissioner of the department of finance shall
11 prepare an annual report which shall be submitted to the Mayor and the
12 council on or before the first of July next succeeding the year to which
13 the report pertains, regarding the exemptions and abatements granted
14 pursuant to this section and shall include, but not be limited to the
15 following information: (i) the amount of real property tax that would
16 have been paid in the aggregate by the owners of real property granted
17 an exemption or abatement if the property were fully taxable and the
18 amount of tax actually paid in the aggregate by such owners, (ii) the
19 geographic distribution of exemptions and abatements granted pursuant to
20 this section, and (iii) a distribution by type of eligible categories as
21 delineated in paragraphs one through nine of subdivision b of this
22 section.

23 dd. Partial waiver of rent adjustments attributable to major capital
24 improvements. (1) The provisions of this subdivision apply to and are
25 additional requirements for claiming or receiving any tax abatement
26 under this section, except as provided in paragraphs three and four of
27 this subdivision.

28 (2) The owner of the property shall file with the department of hous-
29 ing preservation and development, on the date any application for bene-
30 fits is made, a declaration stating that in consideration of any tax
31 abatement benefits which may be received pursuant to such application
32 for alterations or improvements constituting a major capital improve-
33 ment, such owner agrees to waive the collection of a portion of the
34 total annual amount of any rent adjustment attributable to such major
35 capital improvement which may be granted by the New York state division
36 of housing and community renewal pursuant to the rent stabilization code
37 or its successor statute for the city of Staten Island equal to one-half
38 of the total annual amount of the tax abatement benefits which the prop-
39 erty receives pursuant to such application with respect to such alter-
40 ations or improvements. Such waiver shall commence on the date of the
41 first collection of such rent adjustment, provided that, in the event
42 that such tax abatement benefits were received prior to such first
43 collection, the amount waived shall be increased to account for such tax
44 abatement benefits so received. Following the expiration of a tax abate-
45 ment for alterations or improvements constituting a major capital
46 improvement for which a rent adjustment has been granted by such divi-
47 sion, the owner may collect the full amount of annual rent permitted
48 pursuant to such rent adjustment. A copy of such declaration shall be
49 filed simultaneously with the New York state division of housing and
50 community renewal. Such declaration shall be binding upon such owner,
51 and his or her successors and assigns.

52 (3) The provisions of this subdivision shall not apply to substantial
53 rehabilitation of buildings vacant when alterations or improvements are
54 commenced or to buildings rehabilitated with the substantial assistance
55 of city, state or federal subsidies.

1 (4) The provisions of this subdivision shall apply only to alterations
2 and improvements commenced after the effective date of such subdivision.
3 § 11-244 Tax exemption and abatement for rehabilitated buildings. a.
4 As used in this section, the following terms shall have the following
5 meanings:

6 1. "Eligible real property" shall mean:

7 (i) any class B multiple dwelling;

8 (ii) any class A multiple dwelling used for single room occupancy
9 pursuant to section two hundred forty-eight of the multiple dwelling law
10 which contains no more than twenty-five percent class A dwelling units
11 which contain lawful sanitary and kitchen facilities within the dwelling
12 unit, provided that in the case of a multiple dwelling containing ten
13 dwelling units or less, up to forty percent of the dwelling units may be
14 class A units; and

15 (iii) not-for-profit institutions with sleeping accommodations.

16 Notwithstanding the foregoing, eligible real property shall not
17 include college and school dormitories, club houses, or residences whose
18 occupancy is restricted to an institutional use such as housing intended
19 for use primarily or exclusively by the employees of a single company or
20 institution. A building is an eligible real property only if it quali-
21 fies as such after completion of the eligible improvements, but need not
22 have been an eligible real property prior to the eligible improvements.

23 2. "Eligible improvements" shall be limited to the following catego-
24 ries of work, provided further that such work shall be in conformity
25 with all applicable laws:

26 (i) replacement of a boiler or burner or installation of an entire new
27 heating system;

28 (ii) replacement or upgrading of electrical system;

29 (iii) replacement or upgrading of elevators;

30 (iv) installation or replacement or upgrading of the plumbing system,
31 including water main and risers;

32 (v) replacement or installation of walls, ceilings, floors or trim
33 where necessary;

34 (vi) replacement or upgrading of doors, installation of security
35 devices and systems;

36 (vii) installation, replacement or upgrading of smoke detectors, fire
37 alarms, fire escapes or sprinkler systems;

38 (viii) replacement or repair of roof, leaders and gutters;

39 (ix) replacement or installation of bathroom facilities;

40 (x) installation of wall and pipe insulation;

41 (xi) replacement or upgrading of street connections for water or sewer
42 services;

43 (xii) replacement or installation of windows, or installation of
44 window gates or guards;

45 (xiii) installation or replacement of boiler smoke stack;

46 (xiv) pointing, waterproofing and cleaning of entire building exterior
47 surface;

48 (xv) improvements designed to conserve the use of fuel, electricity or
49 other energy sources;

50 (xvi) work necessary to effect compliance with all applicable laws
51 including, but not limited to the multiple dwelling law, the city hous-
52 ing maintenance code or its successor statute for the city of Staten
53 Island and the building code; and

54 (xvii) improvements unique to congregate living facilities, as defined
55 by rules and regulations promulgated by the department of housing pres-
56 ervation and development.

1 3. "Existing dwelling" shall mean any eligible real property in exist-
2 ence prior to the commencement of eligible improvements, for which tax
3 exemption and abatement is claimed under the terms of this section and
4 for which a valuation appears on the annual record of assessed valuation
5 of the city for the fiscal year immediately preceding the commencement
6 of construction of such eligible improvements.

7 4. "Commencement of eligible improvement" shall mean the beginning of
8 any physical operation undertaken for the purpose of making eligible
9 improvements to eligible real property.

10 5. "Completion of eligible improvement" shall mean the conclusion or
11 termination of any physical operation referred to in the preceding para-
12 graph, to an extent or degree which renders an eligible property capable
13 of use for the purpose for which the improvements were intended.

14 6. "Permanent resident" shall mean a person who has resided in eligi-
15 ble real property for six months or more; has a lease or other rental
16 agreement for a term of six or more months; or has requested a lease
17 pursuant to the provisions of the rent stabilization code or its succes-
18 sor statute for the city of Staten Island for housing accommodations
19 located in hotels.

20 b. Any increase in the assessed valuation of eligible real property
21 shall be exempt from taxation for local purposes for a period of thir-
22 ty-two years to the extent such increase results from eligible improve-
23 ments, provided that:

24 (i) the eligible improvements are commenced after July first, nineteen
25 hundred eighty, and prior to the thirty-first of December in the year
26 next succeeding the effective date of this section, and are completed
27 within thirty-six months from commencement;

28 (ii) the department of housing preservation and development determines
29 and certifies the cost, qualification and eligibility of any improvement
30 for benefits of this section;

31 (iii) the exemption may commence no sooner than the July first follow-
32 ing the filing with the department of finance of a certification of
33 eligibility issued by the department of housing preservation and devel-
34 opment for benefits of this section; provided, however, that if the
35 rehabilitation is carried out with substantial government assistance as
36 part of a program for affordable housing the exemption may commence no
37 sooner than the July first following the commencement of construction of
38 eligible improvements;

39 (iv) immediately prior to, and during, the construction of eligible
40 improvements, not less than fifty percent of the dwelling units in such
41 eligible real property are occupied by permanent residents; provided
42 that such occupancy requirement shall not apply to a vacant, govern-
43 mentally owned multiple dwelling which had been vacant for not less than
44 two years prior to the commencement of construction of eligible improve-
45 ments, nor to a vacant multiple dwelling where the eligible improvements
46 are carried out with the substantial assistance of grants, loans or
47 subsidies from any federal, state or local agency or instrumentality or
48 any not-for-profit philanthropic organization one of whose primary
49 purposes is providing low or moderate income housing;

50 (v) no outstanding real estate taxes, water and sewer charges,
51 payments in lieu of taxes or other municipal charges are due and owing
52 as of the tax quarter immediately preceding the commencement of tax
53 exemption pursuant to this section; provided that an applicant aided
54 pursuant to the provisions of the private housing finance law shall have
55 such application accepted by the tax commission if there are no
56 outstanding real estate, water and sewer taxes due and owing as of the

1 last day of the tax quarter preceding commencement of construction of
2 eligible improvements;

3 (vi) except in the case of eligible real property which is receiving
4 or has received assistance pursuant to a governmental rent subsidy
5 program or which is owned by a not-for-profit corporation or by a wholly
6 owned subsidiary of a not-for-profit corporation and which is receiving
7 or has received assistance pursuant to a governmental loan subsidy
8 program, as defined by the rules and regulations promulgated by the
9 department of housing preservation and development, for the construction
10 of eligible improvements, the initial rent after completion of eligible
11 improvements, for ninety percent of the total number of dwelling units
12 occupied by permanent residents in a class A or class B multiple dwell-
13 ing other than apartments shall not exceed the greater of either the
14 amount of any governmental rental assistance received by an occupant or
15 seventy-five percent of the rent which is permitted to be charged for
16 zero-bedroom units on the moderate rehabilitation fair market rent sche-
17 dule as determined by the United States department of housing and urban
18 development for the housing assistance payments program under section
19 eight of the national housing act;

20 (vii) no person residing in eligible real property prior to or during
21 the construction of eligible improvements shall be required by the owner
22 to vacate the eligible real property solely in order to perform the
23 eligible improvements or any related work.

24 c. Eligible real property which qualifies for exemption from taxation
25 for local purposes for eligible improvements shall also be eligible for
26 an annual abatement of real property taxes in an amount not to exceed
27 twelve and one-half percent of the reasonable cost of eligible improve-
28 ments certified by the department of housing preservation and develop-
29 ment, which abatement may commence on the first day of the first tax
30 quarter following the filing with the department of finance of a certifi-
31 cation of eligibility issued by the department of housing preservation
32 and development for benefits of this section; provided, however, that if
33 the rehabilitation is carried out with substantial government assistance
34 as part of a program for affordable housing the abatement may commence
35 no sooner than the first day of the first tax quarter following the
36 commencement of construction of eligible improvements, provided further
37 that:

38 (i) the annual abatement shall not exceed the amount of taxes other-
39 wise payable in the corresponding year;

40 (ii) the period during which such abatement is effective shall not
41 exceed twenty consecutive years from the date such abatement first
42 becomes effective; and

43 (iii) the total abatement shall not exceed the lesser of one hundred
44 fifty percent of the certified reasonable costs of eligible improvements
45 or the actual costs as determined by the department of housing preserva-
46 tion and development pursuant to its rules and regulations.

47 d. During the period of tax exemption or abatement pursuant to this
48 section, each of the following shall be a condition precedent to the
49 continuation of the exemption and/or abatement:

50 (i) compliance with all applicable provisions of law, including, but
51 not limited to the multiple dwelling law, the building code and the
52 housing maintenance code of the preceding municipality;

53 (ii) all dwelling units, except owner occupied units, shall be subject
54 to the emergency housing rent control law or the local housing rent
55 control act or the tenant protection act of nineteen hundred seventy-
56 four, or any local laws enacted pursuant thereto or the rent stabiliza-

1 tion law of nineteen hundred sixty-nine or their successor statutes for
2 the city of Staten Island; provided, however, that the department of
3 housing preservation and development may exempt from this requirement
4 dwelling units that are not occupied by permanent residents in those
5 buildings owned by a not-for-profit corporation and which are improved
6 with the aid of a rehabilitation loan from any government agency or
7 instrumentality or operated pursuant to a contract with a governmental
8 entity.

9 (iii) eligible real property receiving tax exemption or tax abatement
10 benefits under this section shall not receive tax exemption or tax
11 abatement for new construction or rehabilitation under any other
12 provision of law;

13 (iv) the eligible improvements shall not be used as the basis for any
14 application for rent increases and the owner shall file a statement to
15 such effect with the department of housing preservation and development
16 and with any appropriate rent regulatory agency, provided, however, that
17 rents of units improved with the aid of a rehabilitation loan from any
18 governmental agency or instrumentality may within the limitations estab-
19 lished by this section be increased pursuant to the rules and regu-
20 lations of the department of housing preservation and development; and

21 (v) a minimum of seventy-five percent of the dwelling units shall be
22 rental units occupied by permanent residents; provided, however that the
23 department of housing preservation and development may exempt from this
24 requirement those buildings improved with the aid of a rehabilitation
25 loan from any governmental agency or instrumentality or operated pursu-
26 ant to a contract with a governmental entity.

27 e. During the period of tax exemption or abatement pursuant to this
28 section, the owner shall submit an annual certification to the depart-
29 ment of housing preservation and development in the form prescribed by
30 such department. Failure to submit such certification in any given year
31 may result in the revocation of benefits. The certification shall
32 include the following:

33 (i) the total number of dwelling units within the eligible real prop-
34 erty and the total number of dwelling units occupied by permanent resi-
35 dents;

36 (ii) the number of dwelling units subject to the provisions of the
37 emergency housing rent control act, the emergency tenant protection act
38 of nineteen seventy-four or any local laws enacted pursuant thereto; the
39 emergency housing rent control law or the rent stabilization law of
40 nineteen hundred sixty-nine or their successor statutes applicable to
41 the city of Staten Island; and

42 (iii) all such other information required by the department of housing
43 preservation and development.

44 f. Any tax exemption or tax abatement authorized pursuant to this
45 section may be revoked or reduced by the department of housing preserva-
46 tion and development or by the department of finance at any time during
47 the authorized term of such tax exemption or tax abatement upon a find-
48 ing by either department that:

49 (i) the application for benefits pursuant to this section or the annu-
50 al certification required hereunder contains a false statement or false
51 information as to a material matter, or omits a material matter, in
52 which case the revocation or reduction may be retroactive to the
53 commencement of benefits pursuant to this section;

54 (ii) real estate taxes, water, sewer or other municipal charges, or
55 payments in lieu of said taxes or charges are, and have remained, due
56 and owing for more than one year, in which case the revocation or

1 reduction may be retroactive to the commencement of benefits pursuant to
2 this section, provided that in no event shall revocation be effective
3 prior to the date such taxes or charges were first due and payable; or

4 (iii) the eligible real property fails to comply with one or more of
5 the provisions or requirements of this section.

6 g. Application forms for the benefits of this section shall be filed
7 with the tax commission within the time periods to be established by
8 rules and regulations promulgated by the department of housing preserva-
9 tion and development, pursuant to subdivision i of this section. The tax
10 commission shall certify to the department of finance the amount of
11 taxes to be abated, pursuant to the certification of the department of
12 housing preservation and development as herein provided. No such appli-
13 cation shall be accepted unless accompanied by a copy of the certificate
14 of the department of housing preservation and development both as to
15 reasonable cost and as to eligibility as provided in subdivision b of
16 this section.

17 h. No owner of a dwelling to which the benefits of this section apply,
18 nor any agent, employee, manager or officer of such owner shall directly
19 or indirectly deny to any person because of race, color, creed, national
20 origin, sex, disability, marital status, age, religion, military status,
21 gender identity or expression or sexual orientation any of the dwelling
22 accommodations in such property or any of the privileges or services
23 incident to occupancy therein. The term "disability" as used in this
24 subdivision shall mean a physical, mental or medical impairment result-
25 ing from anatomical, physiological, or neurological conditions which
26 prevents the exercise of a normal bodily function or is demonstrable by
27 medically accepted clinical or laboratory diagnostic techniques. Nothing
28 in this subdivision shall restrict such consideration in the availabili-
29 ty of housing accommodations for the purpose of providing for the
30 special needs of a particular group.

31 i. The department of housing preservation and development shall deter-
32 mine and certify the reasonable cost of any such conversions, alter-
33 ations or improvements and eligibility for the benefits of this section
34 and for that purpose may adopt rules and regulations, administer oaths
35 to and take the testimony of any person, including, but not limited to
36 the owner of such property, may issue subpoenas requiring the attendance
37 of such persons and the production of such bills, books, papers or other
38 documents as it shall deem necessary, may make preliminary estimates of
39 the maximum reasonable cost of such conversions, alterations or improve-
40 ments, may establish maximum allowable costs of specified units,
41 fixtures or work in such conversions, alterations or improvements, and
42 may require the submission of plans and specifications of such conver-
43 sions, alterations or improvements before the start thereof. Applica-
44 tions for certification shall include all bills and other documents
45 showing the cost of construction or such other evidence of such cost as
46 shall be satisfactory to the department of housing preservation and
47 development, including, without limitation, certification of cost by a
48 certified public accountant in accordance with generally accepted
49 accounting principles. Each additional agency to which functions are
50 assigned by this section may adopt and promulgate rules and regulations
51 for the effectuation of the purposes of this section.

52 j. The department of housing preservation and development may require
53 a filing fee in an amount as provided by the rules and regulations
54 promulgated by the department of housing preservation and development
55 pursuant to subdivision i of this section.

1 k. Any person who shall knowingly and wilfully make any false state-
2 ments as to any material matter in any application for the benefits of
3 this section shall be guilty of an offense punishable by a fine of not
4 more than five hundred dollars or imprisonment for not more than ninety
5 days, or both.

6 l. If any provision of this section or its application to any person
7 shall be held invalid, the remainder of this section and the applicabil-
8 ity of its provisions to other persons or circumstances shall not be
9 affected thereby.

10 § 11-245.1 Site eligibility limitations on benefits pursuant to
11 section four hundred twenty-one-a of the real property tax law.

12 (a) Where eligibility for benefits under section four hundred twenty-
13 one-a of the real property tax law is sought for any construction
14 commenced on or after November twenty-ninth, nineteen hundred eighty-
15 five and before May twelfth, two thousand on the basis that such
16 construction shall take place on land which, on the date thirty-six
17 months prior to the commencement of such construction, was improved with
18 a nonresidential building or buildings and was under-utilized, the
19 under-utilization of the land must have been such that each building or
20 buildings:

21 (1) contained no more than the permissible floor area ratio for
22 nonresidential buildings in the zoning district in question and a
23 floor area ratio which was twenty percent or less of the maximum
24 floor area ratio for residential buildings,

25 (2) had an assessed valuation equal to or less than twenty percent
26 of the assessed valuation of the land on which the building or
27 buildings were situated, or

28 (3) by reason of the configuration of the building, or substantial
29 structural defects not brought about by deferred maintenance prac-
30 tices or intentional conduct, could no longer be functionally or
31 economically utilized in the capacity in which it was formerly
32 utilized.

33 For purposes of this subdivision and subdivisions (a-1) through (a-4)
34 of this section, construction shall be deemed to have commenced on the
35 date immediately following the issuance by the department of buildings
36 of a new building permit for an entire new building (based upon archi-
37 tectural, plumbing and structural plans approved by such department) on
38 which the excavation and the construction of initial footings and foun-
39 dations commences in good faith, on vacant land and for the entire
40 project site, as certified by an architect or professional engineer
41 licensed in the state, provided that installation of footings and foun-
42 dations is similarly certified by such architect or engineer to have
43 been completed without undue delay.

44 (a-1) Except as provided in subdivision (a-2) of this section, where
45 eligibility for benefits under section four hundred twenty-one-a of the
46 real property tax law is sought for any construction commenced on or
47 after May twelfth, two thousand and before the effective date of subdi-
48 visions (a-3) and (a-4) of this section on the basis that such
49 construction shall take place on land which, on the date thirty-six
50 months prior to the commencement of such construction, was improved with
51 a nonresidential building or buildings and was under-utilized, the
52 under-utilization of the land must have been such that each building or
53 buildings:

54 (1) contained no more than the permissible floor area ratio for
55 nonresidential buildings in the zoning district in question and a

1 floor area ratio which was seventy-five percent or less of the maxi-
2 mum floor area ratio for residential buildings,

3 (2) had an assessed valuation equal to or less than seventy-five
4 percent of the assessed valuation of the land on which the building
5 or buildings were situated, or

6 (3) by reason of the configuration of the building, or substantial
7 structural defects not brought about by deferred maintenance prac-
8 tices or intentional conduct, could no longer be functionally or
9 economically utilized in the capacity in which it was formerly
10 utilized.

11 For purposes of this subdivision, construction shall be deemed to have
12 commenced as provided in subdivision (a) of this section.

13 (a-2) Where eligibility for benefits under section four hundred twen-
14 ty-one-a of the real property tax law is sought for any construction on
15 any tax lot now existing or hereafter created which is located south of
16 or adjacent to either side of one hundred tenth street in the borough of
17 Manhattan which construction commenced on or after May twelfth, two
18 thousand and before the effective date of subdivisions (a-3) and (a-4)
19 of this section on the basis that such construction shall take place on
20 land which, on the date thirty-six months prior to the commencement of
21 such construction, was improved with a nonresidential building or build-
22 ings and was under-utilized, the under-utilization of the land must have
23 been such that each building or buildings:

24 (1) contained no more than the permissible floor area ratio for
25 nonresidential buildings in the zoning district in question and a
26 floor area ratio which was fifty percent or less of the maximum
27 floor area ratio for residential buildings,

28 (2) had an assessed valuation equal to or less than fifty percent of
29 the assessed valuation of the land on which the building or build-
30 ings were situated, or

31 (3) by reason of the configuration of the building, or substantial
32 structural defects not brought about by deferred maintenance prac-
33 tices or intentional conduct, could no longer be functionally or
34 economically utilized in the capacity in which it was formerly
35 utilized.

36 For purposes of this subdivision, construction shall be deemed to have
37 commenced as provided in subdivision (a) of this section.

38 (a-3) Except as provided in subdivision (a-4) of this section, where
39 eligibility for benefits under section four hundred twenty-one-a of the
40 real property tax law is sought for any construction commenced on or
41 after the effective date of this subdivision on the basis that such
42 construction shall take place on land which, on the date thirty-six
43 months prior to the commencement of such construction, was improved with
44 a nonresidential building or buildings and was under-utilized, the
45 under-utilization of the land must have been such that each building or
46 buildings:

47 (1) contained no more than the permissible floor area ratio for
48 nonresidential buildings in the zoning district in question and
49 either (i) had a floor area ratio which was seventy-five percent or
50 less of the maximum floor area ratio for residential buildings in
51 such zoning district, or (ii) if the land was not zoned to permit
52 residential use on the date thirty-six months prior to the commence-
53 ment of construction, had a floor area ratio which was seventy-five
54 percent or less of the floor area ratio of the residential building
55 which replaces such non-residential building,

1 (2) had an assessed valuation equal to or less than seventy-five
2 percent of the assessed valuation of the land on which the building
3 or buildings were situated, or

4 (3) by reason of the configuration of the building, or substantial
5 structural defects not brought about by deferred maintenance prac-
6 tices or intentional conduct, could no longer be functionally or
7 economically utilized in the capacity in which it was formerly
8 utilized.

9 For purposes of this subdivision, construction shall be deemed to have
10 commenced as provided in subdivision (a) of this section.

11 (a-4) Where eligibility for benefits under section four hundred twenty-
12 one-a of the real property tax law is sought for any construction on
13 any tax lot now existing or hereafter created which is located south of
14 or adjacent to either side of one hundred tenth street in the borough of
15 Manhattan which construction commenced on or after the effective date of
16 this subdivision on the basis that such construction shall take place on
17 land which, on the date thirty-six months prior to the commencement of
18 such construction, was improved with a nonresidential building or build-
19 ings and was under-utilized, the under-utilization of the land must have
20 been such that each building or buildings:

21 (1) contained no more than the permissible floor area ratio for
22 nonresidential buildings in the zoning district in question and
23 either (i) had a floor area ratio which was fifty percent or less of
24 the maximum floor area ratio for residential buildings in such
25 zoning district, or (ii) if the land was not zoned to permit resi-
26 dential use on the date thirty-six months prior to the commencement
27 of construction, had a floor area ratio which was fifty percent or
28 less of the floor area ratio of the residential building which
29 replaces such non-residential building,

30 (2) had an assessed valuation equal to or less than fifty percent of
31 the assessed valuation of the land on which the building or build-
32 ings were situated, or

33 (3) by reason of the configuration of the building, or substantial
34 structural defects not brought about by deferred maintenance prac-
35 tices or intentional conduct, could no longer be functionally or
36 economically utilized in the capacity in which it was formerly
37 utilized.

38 For purposes of this subdivision, construction shall be deemed to have
39 commenced as provided in subdivision (a) of this section.

40 (b) The department of housing preservation and development may promul-
41 gate rules and regulations for the effectuation of the purposes of this
42 section.

43 (c) The limitations on benefits contained in this section shall be in
44 addition to those contained in any other law or regulation.

45 § 11-245.1-a Boundary review commission. (a) There shall be estab-
46 lished a boundary review commission consisting of eleven members,
47 including the commissioner of finance, the commissioner of housing pres-
48 ervation and development, the commissioner of buildings, the chairperson
49 of the department of city planning, the director of the office of
50 management and budget, the executive director of the board of standards
51 and appeals and five members chosen by the speaker of the council. The
52 appointees of the speaker of the council shall serve at the pleasure of
53 the speaker. The commission shall elect a chairperson from among its
54 members.

55 (b) The boundary review commission shall undertake a biennial review
56 of the tax benefit program established pursuant to section four hundred

1 twenty-one-a of the real property tax law to determine whether the areas
2 for which the tax benefits are restricted pursuant to those provisions
3 of the administrative code which relate to such program should be
4 revised in any manner.

5 (c) In conducting a review to determine whether geographic exclusion
6 zones restricting benefits provided pursuant to section four hundred
7 twenty-one-a of the real property tax law should be revised, the commis-
8 sion shall review measurers of housing activity and housing market
9 conditions throughout the city including (i) the amount of new develop-
10 ment; (ii) values in land sales, residential sales prices and rents;
11 (iii) trends in land sales, residential sales prices and rents and other
12 development trend data including land use trends, lot consolidation and
13 board of standards and appeals actions; (iv) development potential; (v)
14 relationship between volume of potential development and existing hous-
15 ing; and (vi) financial feasibility of development with and without the
16 benefits provided pursuant to section four hundred twenty-one-a of the
17 real property tax law.

18 (d) On or before December first of each even numbered year following
19 the effective date of this section, such commission shall submit a
20 report to the speaker of the council and the mayor on its deliberations
21 and shall include recommendations for revisions to such boundaries that
22 it deems appropriate or why no revisions were recommended, including the
23 methodology by which it applied the criteria in subdivision (c) of this
24 section to arrive at its recommendations, and all data used to make such
25 recommendations. Any recommendations shall be consistent with the
26 provisions of section four hundred twenty-one-a of the real property tax
27 law.

28 § 11-245.1-b Limitations on benefits pursuant to section four hundred
29 twenty-one-a of the real property tax law. (a) As used in this section,
30 the following terms shall have the following meanings:

31 (1) "Residential tax lot" shall mean a tax lot that contains dwelling
32 units.

33 (2) "Non-residential tax lot" shall mean a tax lot that does not
34 contain any dwelling units.

35 (3) "Annual limit" shall mean sixty-five thousand dollars, which
36 amount shall be increased by three percent, compounded annually, on each
37 taxable status date following the first anniversary of the effective
38 date of the local law that added this section.

39 (4) "Certificate of occupancy" shall mean the first certificate of
40 occupancy covering all residential areas of the building on or contain-
41 ing a tax lot.

42 (5) "Unit count" shall mean (i) in the case of a residential tax lot
43 that does not contain any commercial, community facility or accessory
44 use space, the number of dwelling units in such tax lot, and (ii) in the
45 case of a residential tax lot that contains commercial, community facil-
46 ity or accessory use space, the number of dwelling units in such tax lot
47 plus one.

48 (6) "Exemption cap" shall mean the unit count multiplied by the annual
49 limit.

50 (b) The provisions of this section shall apply only to projects that
51 commence construction on or after the effective date of this section.

52 (c) No benefits under section four hundred twenty-one-a of the real
53 property tax law shall be conferred for any multiple dwelling containing
54 fewer than four dwelling units, as set forth in the certificate of occu-
55 pancy, unless the construction of such multiple dwelling is carried out
56 with substantial assistance of grants, loans or subsidies from any

1 federal, state or local agency or instrumentality where such assistance
2 is provided pursuant to a program for the development of affordable
3 housing.

4 (d) The portion of the assessed valuation of any residential tax lot
5 exempted from real property taxation in any year pursuant to section
6 four hundred twenty-one-a of the real property tax law shall not exceed
7 the exemption cap on or after the first taxable status date after the
8 building on or containing such tax lot receives its certificate of occu-
9 pancy unless, in accordance with a regulatory agreement with or approved
10 by the department of housing preservation and development that is appli-
11 cable to such tax lot, (1) the construction of such building is carried
12 out with substantial assistance of grants, loans or subsidies from any
13 federal, state or local agency or instrumentality and such assistance is
14 provided pursuant to a program for the development of affordable hous-
15 ing, or (2) the department of housing preservation and development has
16 imposed a requirement or has certified that twenty per cent of the units
17 be restricted income units. All such restricted income units must be
18 situated onsite. For the purposes of this section, "onsite" shall mean
19 that restricted income units shall be situated within the building or
20 buildings for which benefits pursuant to section four hundred twenty-
21 one-a of the real property tax law are being granted. A dwelling unit
22 that is located in two or more tax lots shall be ineligible to receive
23 any benefits under section four hundred twenty-one-a of the real proper-
24 ty tax law. The portion of the assessed valuation of all non-residential
25 tax lots in the building on or containing such non-residential tax lots
26 exempted from real property taxation in any year pursuant to section
27 four hundred twenty-one-a of the real property tax law shall not exceed
28 a cumulative total equal to the annual limit on or after the first taxa-
29 ble status date after the building on or containing such non-residential
30 tax lots receives its certificate of occupancy.

31 (e) A new multiple dwelling that is situated in (1) a neighborhood
32 preservation program area as determined by the department of housing
33 preservation and development as of June first, nineteen hundred eighty-
34 five, (2) a neighborhood preservation area as determined by the New York
35 city planning commission as of June first, nineteen hundred eighty-five,
36 (3) an area that was eligible for mortgage insurance provided by the
37 rehabilitation mortgage insurance corporation as of May first, nineteen
38 hundred ninety-two, or (4) an area receiving funding for a neighborhood
39 preservation project pursuant to the neighborhood reinvestment corpo-
40 ration act (42 U.S.C. §§ 8101 et seq.) as of June first, nineteen
41 hundred eighty-five, shall only be eligible for the benefits available
42 pursuant to subparagraph (iii) of paragraph (a) of subdivision two of
43 section four hundred twenty-one-a of the real property tax law if:

44 a. the construction is carried out with substantial assistance of
45 grants, loans or subsidies from any federal, state or local agency or
46 instrumentality and such assistance is provided pursuant to a program
47 for the development of affordable housing, or

48 b. the department of housing preservation and development has imposed
49 a requirement or has certified that twenty percent of the units be
50 restricted income units. All such restricted income units must be situ-
51 ated onsite.

52 (f) The department of housing preservation and development may promul-
53 gate rules and regulations to effectuate the purposes of this section.

54 (g) The limitations on eligibility for benefits contained in this
55 section shall be in addition to those contained in any other law, rule
56 or regulation.

1 (h) Notwithstanding anything to the contrary contained herein, the
2 limitations on eligibility for benefits contained in this section shall
3 not apply to a covered project as defined in subparagraph (i) of para-
4 graph a of subdivision six of section four hundred twenty-one-a of the
5 real property tax law.

6 § 11-245.2 Exemption for real property of certain water-works corpo-
7 rations. Real property owned by a water-works corporation subject to the
8 provisions of the public service law and used exclusively for the sale,
9 furnishing and distribution of water for domestic, commercial and public
10 purposes, shall not be taxable.

11 § 11-245.3 Exemption for persons sixty-five years of age or over. 1.
12 Real property owned by one or more persons, each of whom is sixty-five
13 years of age or over, or real property owned by husband and wife or by
14 siblings, one of whom is sixty-five years of age or over, or real prop-
15 erty owned by one or more persons, some of whom qualify under this
16 section and section 11-245.4 of this part shall be exempt from taxes on
17 real estate to the extent of fifty per centum of the assessed valuation
18 thereof. For the purposes of this section, siblings shall mean a brother
19 or a sister, whether related through halfblood, whole blood or adoption.

20 2. Exemption from taxation for school purposes shall not be granted in
21 the case of real property where a child resides if such child attends a
22 public school of elementary or secondary education.

23 3. No exemption shall be granted:

24 (a) if the income of the owner or the combined income of the owners of
25 the property exceeds the sum of twenty-six thousand dollars beginning
26 July first, two thousand six, twenty-seven thousand dollars beginning
27 July first, two thousand seven, twenty-eight thousand dollars beginning
28 July first, two thousand eight, twenty-nine thousand dollars beginning
29 July first, two thousand nine, and fifty thousand dollars beginning July
30 first, two thousand seventeen for the income tax year immediately
31 preceding the date of making application for exemption. Income tax year
32 shall mean the twelve-month period for which the owner or owners filed a
33 federal personal income tax return, or if no such return is filed, the
34 calendar year. Where title is vested in either the husband or the wife,
35 their combined income may not exceed such sum, except where the husband
36 or wife, or ex-husband or ex-wife is absent from the property as
37 provided in subparagraph (ii) of paragraph (d) of this subdivision, then
38 only the income of the spouse or ex-spouse residing on the property
39 shall be considered and may not exceed such sum. Such income shall
40 include social security and retirement benefits, interest, dividends,
41 total gain from the sale or exchange of a capital asset which may be
42 offset by a loss from the sale or exchange of a capital asset in the
43 same income tax year, net rental income, salary or earnings, and net
44 income from self-employment, but shall not include gifts, inheritances,
45 a return of capital, payments made to individuals because of their
46 status as victims of Nazi persecution as defined in P.L. 103-286, monies
47 earned through employment in the federal foster grandparent program, and
48 veterans disability compensation as defined in title 38 of the United
49 States Code, and any such income shall be offset by all medical and
50 prescription drug expenses actually paid which were not reimbursed or
51 paid for by insurance. In computing net rental income and net income
52 from self-employment no depreciation deduction shall be allowed for the
53 exhaustion, wear and tear of real or personal property held for the
54 production of income.

55 (b) unless the title of the property shall have been vested in the
56 owner or one of the owners of the property for at least twelve consec-

1 utive months prior to the date of making application for exemption,
2 provided, however, that in the event of the death of either husband or
3 wife in whose name title of the property shall have been vested at the
4 time of death and then becomes vested solely in the survivor by virtue
5 of devise by or descent from the deceased husband or wife, the time of
6 ownership of the property by the deceased husband or wife shall be
7 deemed also a time of ownership by the survivor and such ownership shall
8 be deemed continuous for the purposes of computing such period of twelve
9 consecutive months, and provided further, that in the event of a trans-
10 fer by either husband or wife to the other spouse of all or part of the
11 title to the property, the time of ownership of the property by the
12 transferer spouse shall be deemed also a time of ownership by the trans-
13 feree spouse and such ownership shall be deemed continuous for the
14 purposes of computing such period of twelve consecutive months, and
15 provided further, that where property of the owner or owners has been
16 acquired to replace property formerly owned by such owner or owners and
17 taken by eminent domain or other involuntary proceeding, except a tax
18 sale, and where a residence is sold and replaced with another within one
19 year and both are within the state, the period of ownership of the
20 former property shall be combined with the period of ownership of the
21 property for which application is made for exemption and such periods of
22 ownership shall be deemed to be consecutive for purposes of this
23 section. Where the owner or owners transfer title to property which as
24 of the date of transfer was exempt from taxation under the provisions of
25 this section, the reacquisition of title by such owner or owners within
26 nine months of the date of transfer shall be deemed to satisfy the
27 requirement of this paragraph that the title of the property shall have
28 been vested in the owner or one of the owners for such period of twelve
29 consecutive months. Where, upon or subsequent to the death of an owner
30 or owners, title to property which as of the date of such death was
31 exempt from taxation under such provisions, becomes vested, by virtue of
32 devise or descent from the deceased owner or owners, or by transfer by
33 any other means within nine months after such death, solely in a person
34 or persons who, at the time of such death, maintained such property as a
35 primary residence, the requirement of this paragraph that the title of
36 the property shall have been vested in the owner or one of the owners
37 for such period of twelve consecutive months shall be deemed satisfied;

38 (c) unless the property is used exclusively for residential purposes,
39 provided, however, that in the event any portion of such property is not
40 so used exclusively for residential purposes but is used for other
41 purposes, such portion shall be subject to taxation and the remaining
42 portion only shall be entitled to the exemption provided by this
43 section;

44 (d) unless the property is the legal residence of and is occupied in
45 whole or in part by the owner or by all of the owners of the property;
46 except where, (i) an owner is absent from the residence while receiving
47 health-related care as an inpatient of a residential health care facili-
48 ty, as defined in section twenty-eight hundred one of the public health
49 law, provided that any income accruing to that person shall be income
50 only to the extent that it exceeds the amount paid by such owner,
51 spouse, or co-owner for care in the facility, and provided further, that
52 during such confinement such property is not occupied by other than the
53 spouse or co-owner of such owner; or, (ii) the real property is owned by
54 a husband and/or wife, or an ex-husband and/or an ex-wife, and either is
55 absent from the residence due to divorce, legal separation or abandon-
56 ment and all other provisions of this section are met provided that

1 where an exemption was previously granted when both resided on the prop-
 2 erty, then the person remaining on the real property shall be sixty-two
 3 years of age or over.

4 4. Application for such exemption must be made by the owner, or all of
 5 the owners of the property, on forms prescribed by the state board to be
 6 furnished by the department of finance and shall furnish the information
 7 and must be executed in the manner required or prescribed in such form
 8 and shall be filed in the department of finance in the borough in which
 9 the real property is located between the fifteenth day of January and
 10 the fifteenth day of March. Notwithstanding any other provision of law,
 11 any person otherwise qualifying under this section shall not be denied
 12 the exemption under this section if he or she becomes sixty-five years
 13 of age after the taxable status date and on or before December thirty-
 14 first of the same year.

15 5. At least sixty days prior to the fifteenth day of January the
 16 department of finance shall mail to each person who was granted
 17 exemption pursuant to this section on the latest completed assessment
 18 roll an application form and a notice that such application must be
 19 filed between the fifteenth day of January and the fifteenth day of
 20 March every two years from the year in which such exemption was granted
 21 and be approved in order for the exemption to be granted. The department
 22 of finance shall, within three days of the completion and filing of the
 23 tentative assessment roll, notify by mail any applicant who has included
 24 with his application at least one self-addressed, prepaid envelope, of
 25 the approval or denial of the application; provided, however, where an
 26 applicant has included two such envelopes, the department of finance
 27 shall, upon the filing of the application, send by mail, notice of
 28 receipt of that application. Where an applicant is entitled to notice of
 29 denial provided herein, such notice shall state the reasons for such
 30 denial and shall further state that such determination is reviewable in
 31 a manner provided by law. Failure to mail any such application form or
 32 notices or the failure of such person to receive any or all of the same
 33 shall not prevent the levy, collection and enforcement of the payment of
 34 the taxes on property owned by such person.

35 6. Any conviction of having made any willful false statement in the
 36 application for such exemption shall be punishable by a fine of not more
 37 than one hundred dollars and shall disqualify the applicant or appli-
 38 cants from further exemption for a period of five years.

39 7. Notwithstanding the maximum income exemption eligibility level
 40 provided in subdivision three of this section, an exemption, subject to
 41 all other provisions of this section, shall be granted as indicated in
 42 the following schedule:

43	Annual Income	Percentage Assessed Valuation
44	as of July 1, 2006	Exempt From Taxation
45	More than \$26,000 but less than \$27,000	45 per centum
46	\$27,000 or more but less than \$28,000	40 per centum
47	\$28,000 or more but less than \$29,000	35 per centum
48	\$29,000 or more but less than \$29,900	30 per centum
49	\$29,900 or more but less than \$30,800	25 per centum
50	\$30,800 or more but less than \$31,700	20 per centum
51	\$31,700 or more but less than \$32,600	15 per centum
52	\$32,600 or more but less than \$33,500	10 per centum
53	\$33,500 or more but less than \$34,400	5 per centum

	Percentage Assessed Valuation Exempt From Taxation
1	
2	Annual Income as of July 1, 2007
3	More than \$27,000 but less than \$28,000 45 per centum
4	\$28,000 or more but less than \$29,000 40 per centum
5	\$29,000 or more but less than \$30,000 35 per centum
6	\$30,000 or more but less than \$30,900 30 per centum
7	\$30,900 or more but less than \$31,800 25 per centum
8	\$31,800 or more but less than \$32,700 20 per centum
9	\$32,700 or more but less than \$33,600 15 per centum
10	\$33,600 or more but less than \$34,500 10 per centum
11	\$34,500 or more but less than \$35,400 5 per centum

	Percentage Assessed Valuation Exempt From Taxation
12	
13	Annual Income as of July 1, 2008
14	More than \$28,000 but less than \$29,000 45 per centum
15	\$29,000 or more but less than \$30,000 40 per centum
16	\$30,000 or more but less than \$31,000 35 per centum
17	\$31,000 or more but less than \$31,900 30 per centum
18	\$31,900 or more but less than \$32,800 25 per centum
19	\$32,800 or more but less than \$33,700 20 per centum
20	\$33,700 or more but less than \$34,600 15 per centum
21	\$34,600 or more but less than \$35,500 10 per centum
22	\$35,500 or more but less than \$36,400 5 per centum

	Percentage Assessed Valuation Exempt From Taxation
23	
24	Annual Income as of July 1, 2009
25	More than \$29,000 but less than \$30,000 45 per centum
26	\$30,000 or more but less than \$31,000 40 per centum
27	\$31,000 or more but less than \$32,000 35 per centum
28	\$32,000 or more but less than \$32,900 30 per centum
29	\$32,900 or more but less than \$33,800 25 per centum
30	\$33,800 or more but less than \$34,700 20 per centum
31	\$34,700 or more but less than \$35,600 15 per centum
32	\$35,600 or more but less than \$36,500 10 per centum
33	\$36,500 or more but less than \$37,400 5 per centum

	Percentage Assessed Valuation Exempt From Taxation
34	Annual Income as of July 1, 2017
35	
36	More than \$50,000 but less than \$51,000 45 per centum
37	\$51,000 or more but less than \$52,000 40 per centum
38	\$52,000 or more but less than \$53,000 35 per centum
39	\$53,000 or more but less than \$53,900 30 per centum
40	\$53,900 or more but less than \$54,800 25 per centum
41	\$54,800 or more but less than \$55,700 20 per centum
42	\$55,700 or more but less than \$56,600 15 per centum
43	\$56,600 or more but less than \$57,500 10 per centum
44	\$57,500 or more but less than \$58,400 5 per centum

45 8. Any exemption provided by this section shall be computed after all
 46 partial exemptions allowed by law have been subtracted from the total
 47 amount assessed.

1 9. Exemption from taxation as provided in this section on real proper-
2 ty owned by husband and wife, one of whom is sixty-five years of age or
3 older, once granted, shall not be rescinded solely because of the death
4 of the older spouse so long as the surviving spouse is at least sixty-
5 two years of age.

6 10. a. For the purposes of this section, title to that portion of real
7 property owned by a cooperative apartment corporation in which a
8 tenant-stockholder of such corporation resides and which is represented
9 by his or her share or shares of stock in such corporation as determined
10 by its or their proportional relationship to the total outstanding stock
11 of the corporation, including that owned by the corporation, shall be
12 deemed to be vested in such tenant-stockholder. That proportion of the
13 assessment of real property owned by a cooperative apartment corpo-
14 ration, determined by the relationship of such real property vested in
15 such tenant-stockholder to such entire parcel and the buildings thereon
16 owned by such cooperative apartment corporation in which such tenant-
17 stockholder resides, shall be subject to exemption from taxation pursu-
18 ant to this section and any exemption so granted shall be credited by
19 the department of finance against the assessed valuation of such real
20 property; the reduction in real property taxes realized thereby shall be
21 credited by the cooperative apartment corporation against the amount of
22 such taxes otherwise payable by or chargeable to such tenant-stockhold-
23 er. Each cooperative apartment corporation shall notify each tenant-
24 stockholder in residence thereof of such provisions as are set forth in
25 this section.

26 b. Notwithstanding any other provision of law, a tenant-stockholder
27 who resides in a dwelling which is subject to the provisions of either
28 article two, four, five or eleven of the private housing finance law and
29 who is eligible for a rent increase exemption pursuant to chapter seven
30 of title twenty-six of the code of the preceding municipality shall not
31 be eligible for an exemption pursuant to this subdivision. Notwithstand-
32 ing any other provision of law, a tenant-stockholder who resides in a
33 dwelling which is subject to the provisions of either article two, four,
34 five or eleven of the private housing finance law and who is not eligi-
35 ble for a rent increase exemption pursuant to chapter seven of title
36 twenty-six of this code but who meets the requirements for eligibility
37 for an exemption pursuant to this section shall be eligible for such
38 exemption provided that such exemption shall be in an amount determined
39 by multiplying the exemption otherwise allowable pursuant to this
40 section by a fraction having a numerator equal to the amount of real
41 property taxes or payments in lieu of taxes that were paid with respect
42 to such dwelling and a denominator equal to the full amount of real
43 property taxes that would have been owed with respect to such dwelling
44 had it not been granted an exemption or abatement of real property taxes
45 pursuant to any provision of law, provided, however, that any reduction
46 in real property taxes received with respect to such dwelling pursuant
47 to chapter seven of title twenty-six of this code or pursuant to this
48 section shall not be considered in calculating such numerator. Any
49 tenant-stockholder who resides in a dwelling which was or continues to
50 be subject to a mortgage insured or initially insured by the federal
51 government pursuant to section two hundred thirteen of the national
52 housing act, as amended, and who is eligible for both a rent increase
53 exemption pursuant to chapter seven of title twenty-six of this code and
54 an exemption pursuant to this subdivision, may apply for and receive
55 either a rent increase exemption pursuant to such chapter or an
56 exemption pursuant to this subdivision, but not both.

1 11. Exemption Option. Notwithstanding any provision of this part to
2 the contrary, real property owned by one or more persons where one of
3 such owners qualifies for a real property tax exemption pursuant to this
4 section or section 11-245.4 of this part, and another of such owners
5 qualifies for a different tax exemption pursuant to such sections of
6 this part as authorized by state law, such owners shall have the option
7 of choosing the one exemption which is most beneficial to such owners.
8 Such owners shall not be prohibited from taking one such exemption sole-
9 ly on the basis that such owners qualify for more than one exemption and
10 therefore are not eligible for any exemptions.

11 § 11-245.4 Exemption for persons with disabilities. 1. (a) Real prop-
12 erty owned by one or more persons with disabilities, or real property
13 owned by a husband, wife, or both, or by siblings, at least one of whom
14 has a disability, or real property owned by one or more persons, some of
15 whom qualify under this section and section 11-245.3 of this part, and
16 whose income, as hereafter defined, is limited by reason of such disa-
17 bility, shall be exempt from taxes on real estate to the extent of fifty
18 per centum of the assessed valuation thereof as hereinafter provided.
19 For purposes of this section, sibling shall mean a brother or a sister,
20 whether related through half blood, whole blood or adoption.

21 (b) For purposes of this section, a person with a disability is one
22 who has a physical or mental impairment, not due to current use of alco-
23 hol or illegal drug use, which substantially limits such person's abili-
24 ty to engage in one or more major life activities, such as caring for
25 one's self, performing manual tasks, walking, seeing, hearing, speaking,
26 breathing, learning and working, and who (i) is certified to receive
27 social security disability insurance (SSDI) or supplemental security
28 income (SSI) benefits under the federal social security act, or (ii) is
29 certified to receive railroad retirement disability benefits under the
30 federal railroad retirement act, or (iii) has received a certificate
31 from the state commission for the blind and visually handicapped stating
32 that such person is legally blind, or (iv) is certified to receive a
33 United States postal service disability pension. An award letter from
34 the social security administration or the railroad retirement board or a
35 certificate from the state commission for the blind and visually hand-
36 icapped or an award letter from the United States postal service shall
37 be submitted as proof of disability.

38 2. Exemption from taxation for school purposes shall not be granted in
39 the case of real property where a child resides if such child attends a
40 public school of elementary or secondary education.

41 3. No exemption shall be granted:

42 (a) if the income of the owner or the combined income of the owners of
43 the property for the income tax year immediately preceding the date of
44 making application for exemption exceeds the sum of twenty-six thousand
45 dollars beginning July first, two thousand six, twenty-seven thousand
46 dollars beginning July first, two thousand seven, twenty-eight thousand
47 dollars beginning July first, two thousand eight, twenty-nine thousand
48 dollars beginning July first, two thousand nine, and fifty thousand
49 dollars beginning July first, two thousand seventeen. Income tax year
50 shall mean the twelve-month period for which the owner or owners filed a
51 federal personal income tax return, or if no such return is filed, the
52 calendar year. Where title is vested in either the husband or the wife,
53 their combined income may not exceed such sum, except where the husband
54 or wife, or ex-husband or ex-wife is absent from the property due to
55 divorce, legal separation or abandonment, then only the income of the
56 spouse or ex-spouse residing on the property shall be considered and may

1 not exceed such sum. Such income shall include social security and
 2 retirement benefits, interest, dividends, total gain from the sale or
 3 exchange of a capital asset which may be offset by a loss from the sale
 4 or exchange of a capital asset in the same income tax year, net rental
 5 income, salary or earnings, and net income from self-employment, but
 6 shall not include a return of capital, gifts, inheritances or monies
 7 earned through employment in the federal foster grandparent program and
 8 any such income shall be offset by all medical and prescription drug
 9 expenses actually paid which were not reimbursed or paid for by insur-
 10 ance. In computing net rental income and net income from self-employment
 11 no depreciation deduction shall be allowed for the exhaustion, wear and
 12 tear of real or personal property held for the production of income;

13 (b) unless the property is used exclusively for residential purposes,
 14 provided, however, that in the event any portion of such property is not
 15 so used exclusively for residential purposes but is used for other
 16 purposes, such portion shall be subject to taxation and the remaining
 17 portion only shall be entitled to the exemption provided by this
 18 section;

19 (c) unless the real property is the legal residence of and is occupied
 20 in whole or in part by the disabled person; except where the disabled
 21 person is absent from the residence while receiving health-related care
 22 as an inpatient of a residential health care facility, as defined in
 23 section twenty-eight hundred one of the public health law, provided that
 24 any income accruing to that person shall be considered income for
 25 purposes of this section only to the extent that it exceeds the amount
 26 paid by such person or spouse or sibling of such person for care in the
 27 facility.

28 4. Application for such exemption must be made annually by the owner,
 29 or all of the owners of the property, on forms prescribed by the state
 30 board, and shall be filed with the department of finance on or before
 31 the fifteenth day of March of the appropriate year; provided, however,
 32 proof of a permanent disability need be submitted only in the year
 33 exemption pursuant to this section is first sought or the disability is
 34 first determined to be permanent.

35 5. At least sixty days prior to the fifteenth day of March of the
 36 appropriate year, the department of finance shall mail to each person
 37 who was granted exemption pursuant to this section on the latest
 38 completed assessment roll an application form and a notice that such
 39 application must be filed on or before the fifteenth day of March and be
 40 approved in order for the exemption to continue to be granted. Failure
 41 to mail such application form or the failure of such person to receive
 42 the same shall not prevent the levy, collection and enforcement of the
 43 payment of the taxes on property owned by such person.

44 6. Notwithstanding the maximum income exemption eligibility level
 45 provided in subdivision three of this section, an exemption, subject to
 46 all other provisions of this section, shall be granted as indicated in
 47 the following schedule:

48 49 Annual Income as of July 1, 2006	Percentage Assessed Valuation Exempt From Taxation
50 More than \$26,000 but less than \$27,000	45 per centum
51 \$27,000 or more but less than \$28,000	40 per centum
52 \$28,000 or more but less than \$29,000	35 per centum
53 \$29,000 or more but less than \$29,900	30 per centum
54 \$29,900 or more but less than \$30,800	25 per centum

1	\$30,800 or more but less than \$31,700	20 per centum
2	\$31,700 or more but less than \$32,600	15 per centum
3	\$32,600 or more but less than \$33,500	10 per centum
4	\$33,500 or more but less than \$34,400	5 per centum
5		
6	Annual Income as of July 1, 2007	Percentage Assessed Valuation Exempt From Taxation
7	More than \$27,000 but less than \$28,000	45 per centum
8	\$28,000 or more but less than \$29,000	40 per centum
9	\$29,000 or more but less than \$30,000	35 per centum
10	\$30,000 or more but less than \$30,900	30 per centum
11	\$30,900 or more but less than \$31,800	25 per centum
12	\$31,800 or more but less than \$32,700	20 per centum
13	\$32,700 or more but less than \$33,600	15 per centum
14	\$33,600 or more but less than \$34,500	10 per centum
15	\$34,500 or more but less than \$35,400	5 per centum
16		
17	Annual Income as of July 1, 2008	Percentage Assessed Valuation Exempt From Taxation
18	More than \$28,000 but less than \$29,000	45 per centum
19	\$29,000 or more but less than \$30,000	40 per centum
20	\$30,000 or more but less than \$31,000	35 per centum
21	\$31,000 or more but less than \$31,900	30 per centum
22	\$31,900 or more but less than \$32,800	25 per centum
23	\$32,800 or more but less than \$33,700	20 per centum
24	\$33,700 or more but less than \$34,600	15 per centum
25	\$34,600 or more but less than \$35,500	10 per centum
26	\$35,500 or more but less than \$36,400	5 per centum
27		
28	Annual Income as of July 1, 2009	Percentage Assessed Valuation Exempt From Taxation
29	More than \$29,000 but less than \$30,000	45 per centum
30	\$30,000 or more but less than \$31,000	40 per centum
31	\$31,000 or more but less than \$32,000	35 per centum
32	\$32,000 or more but less than \$32,900	30 per centum
33	\$32,900 or more but less than \$33,800	25 per centum
34	\$33,800 or more but less than \$34,700	20 per centum
35	\$34,700 or more but less than \$35,600	15 per centum
36	\$35,600 or more but less than \$36,500	10 per centum
37	\$36,500 or more but less than \$37,400	5 per centum
38		
39	Annual Income as of July 1, 2017	Percentage Assessed Valuation Exempt From Taxation
40	More than \$50,000 but less than \$51,000	45 per centum
41	\$51,000 or more but less than \$52,000	40 per centum
42	\$52,000 or more but less than \$53,000	35 per centum
43	\$53,000 or more but less than \$53,900	30 per centum
44	\$53,900 or more but less than \$54,800	25 per centum
45	\$54,800 or more but less than \$55,700	20 per centum
46	\$55,700 or more but less than \$56,600	15 per centum

1	\$56,600 or more but less than \$57,500	10 per centum
2	\$57,500 or more but less than \$58,400	5 per centum

3 7. Any exemption provided by this section shall be computed after all
 4 other partial exemptions allowed by law have been subtracted from the
 5 total amount assessed; provided, however, that no parcel may receive an
 6 exemption pursuant to both this section and section 11-245.3.

7 8. (a) For purposes of this section, title to that portion of real
 8 property owned by a cooperative apartment corporation in which a
 9 tenant-stockholder of such corporation resides, and which is represented
 10 by his or her share or shares of stock in such corporation as determined
 11 by its or their proportional relationship to the total outstanding stock
 12 of the corporation, including that owned by the corporation, shall be
 13 deemed to be vested in such tenant-stockholder. That proportion of the
 14 assessment of such real property owned by a cooperative apartment corpo-
 15 ration determined by the relationship of such real property vested in
 16 such tenant-stockholder to such entire parcel and the buildings thereon
 17 owned by such cooperative apartment corporation in which such tenant-
 18 stockholder resides shall be subject to exemption from taxation pursuant
 19 to this section and any exemption so granted shall be credited by the
 20 department of finance against the assessed valuation of such real prop-
 21 erty; the reduction in real property taxes realized thereby shall be
 22 credited by the cooperative apartment corporation against the amount of
 23 such taxes otherwise payable by or chargeable to such tenant-stockhold-
 24 er.

25 (b) Notwithstanding any other provision of law, a tenant-stockholder
 26 who resides in a dwelling which is subject to the provisions of either
 27 article two, four, five or eleven of the private housing finance law
 28 shall not be eligible for an exemption pursuant to this subdivision.

29 9. Notwithstanding any other provision of law to the contrary, the
 30 provisions of this section shall apply to real property held in trust
 31 solely for the benefit of a person or persons who would otherwise be
 32 eligible for a real property tax exemption, pursuant to subdivision one
 33 of this section, were such person or persons the owner or owners of such
 34 real property.

35 10. Exemption Option. Notwithstanding any provision of this part to
 36 the contrary, real property owned by one or more persons where one of
 37 such owners qualifies for a real property tax exemption pursuant to this
 38 section or section 11-245.3 of this part, and another of such owners
 39 qualifies for a different tax exemption pursuant to such sections of
 40 this part as authorized by state law, such owners shall have the option
 41 of choosing the one exemption which is most beneficial to such owners.
 42 Such owners shall not be prohibited from taking one such exemption sole-
 43 ly on the basis that such owners qualify for more than one exemption and
 44 therefore are not eligible for any exemptions.

45 § 11-245.45 Exemption for veterans. Pursuant to paragraph (d) of
 46 subdivision eight of section four hundred fifty-eight of the real prop-
 47 erty tax law, the city hereby authorizes real property owned by a coop-
 48 erative apartment corporation to be exempt from taxation in accordance
 49 with such section and any local laws adopted pursuant to such section
 50 beginning July first, nineteen hundred ninety-eight.

51 § 11-245.46 Exemption for veterans; taxes for school purposes
 52 exempted. Pursuant to paragraph three of subdivision one of section
 53 four hundred fifty-eight of the real property tax law, the city hereby
 54 provides that the exemption authorized pursuant to such section shall be
 55 applicable to taxes for school purposes.

1 § 11-245.5 Alternative exemption for veterans. Pursuant to paragraph
2 (d) of subdivision six of section four hundred fifty-eight-a of the real
3 property tax law, the city hereby authorizes real property owned by a
4 cooperative apartment corporation to be exempt from taxation in accord-
5 ance with such section and any local laws adopted pursuant to such
6 section beginning July first, nineteen hundred ninety-eight.

7 § 11-245.6 Alternative exemption for veterans; maximum exemptions
8 allowable. Pursuant to subparagraph (ii) of paragraph (d) of subdivision
9 two of section four hundred fifty-eight-a of the real property tax law,
10 the city hereby increases the maximum exemptions allowable in paragraphs
11 (a), (b) and (c) of subdivision two of section four hundred
12 fifty-eight-a of the real property tax law. The maximum exemption allow-
13 able in such paragraph (a) shall be fifteen percent of the assessed
14 value of the qualifying residential real property; provided, however,
15 that such exemption shall not exceed forty-eight thousand dollars or the
16 product of forty-eight thousand dollars multiplied by the latest class
17 ratio, whichever is less. In addition to the exemption provided by such
18 paragraph (a), as increased by this section, the maximum exemption
19 allowable in such paragraph (b) shall be ten percent of the assessed
20 value of the qualifying residential real property; provided, however,
21 that such exemption shall not exceed thirty-two thousand dollars or the
22 product of thirty-two thousand dollars multiplied by the latest class
23 ratio, whichever is less. In addition to the exemptions provided by such
24 paragraphs (a) and (b), as increased by this section, the maximum
25 exemption allowable in such paragraph (c) shall be the product of the
26 assessed value of the qualifying residential real property multiplied by
27 fifty percent of the veteran's disability rating; provided, however,
28 that such exemption shall not exceed one hundred sixty thousand dollars
29 or the product of one hundred sixty thousand dollars multiplied by the
30 latest class ratio, whichever is less. The maximum exemptions allowable
31 in such paragraphs (a), (b) and (c), as increased by this section, shall
32 not apply to any assessment roll completed and filed prior to the first
33 day of January, two thousand six.

34 § 11-245.7 Alternative exemption for veterans; gold star parent.
35 Pursuant to paragraph (b) of subdivision seven of section four hundred
36 fifty-eight-a of the real property tax law, and in accordance with such
37 section and any local laws adopted pursuant thereto, the city hereby
38 includes a gold star parent within the definition of "qualified owner"
39 as provided in paragraph (c) of subdivision one of such section, and
40 includes property owned by a gold star parent within the definition of
41 "qualifying residential real property" as provided in paragraph (d) of
42 subdivision one of such section, provided that such property is the
43 primary residence of the gold star parent.

44 § 11-245.75 Alternative exemption for veterans; school district taxa-
45 tion exempted. Pursuant to subparagraph (i) of paragraph (d) of subdivi-
46 sion two of section four hundred fifty-eight-a of the real property tax
47 law, the city hereby provides that the exemptions allowable in para-
48 graphs (a), (b) and (c) of subdivision two of section four hundred
49 fifty-eight-a of the real property tax law shall be applicable to school
50 district taxation.

51 § 11-245.8 ENERGY STAR appliances. a. For the purposes of this
52 section, the following definitions shall apply in conjunction with the
53 definitions found in sections 27-232 and 27-2004 of this code:

54 (1) The term "ENERGY STAR" shall mean a designation from the United
55 States environmental protection agency or department of energy indicat-

1 ing that a product meets the energy efficiency standards set forth by
2 the agency for compliance with the ENERGY STAR program.

3 (2) The term "household appliance" shall mean any refrigerator, room
4 air conditioner, dishwasher or clothes washer, within a dwelling unit in
5 a multiple dwelling that is provided by the owner of such multiple
6 dwelling. This definition shall also include any boiler or furnace that
7 provides heat or hot water for any dwelling unit in a multiple dwelling.

8 b. For any building for which any benefit is conferred pursuant to
9 four hundred eighty-nine of the real property tax law, whenever any
10 household appliance in any dwelling unit, or any household appliance
11 that provides heat or hot water for any dwelling unit in a multiple
12 dwelling, is installed or replaced with a new household appliance, such
13 new appliance shall be certified as Energy Star.

14 c. For any building for which any benefit is conferred pursuant to
15 section four hundred twenty-one-a of the real property tax law, whenever
16 any household appliance in any dwelling unit, or any household appliance
17 that provides heat or hot water for any dwelling unit in a multiple
18 dwelling, is installed or replaced with a new household appliance, such
19 new appliance shall be certified as Energy Star.

20 d. The commissioner may enact rules requiring additional energy
21 conservation measures for any building for which any benefit is
22 conferred pursuant to section four hundred eighty-nine of the real prop-
23 erty tax law or section four hundred twenty-one-a of the real property
24 tax law.

25 e. The commissioner shall inform applicants for any benefits affected
26 by this section of the requirements of this section.

27 f. The requirements of subdivisions b and c of this section shall not
28 apply where:

29 1) an ENERGY STAR certified household appliance of appropriate size is
30 not manufactured, such that movement of walls or fixtures would be
31 necessary to create sufficient space for such appliance; or

32 2) an ENERGY STAR certified boiler or furnace of sufficient capacity
33 is not manufactured.

34 § 11-245.9 Notice of residential property tax exemptions. a. The
35 commissioner of finance, or his or her designee, shall provide a notice
36 relating to the lien sale process to all property owners included with
37 the notice of value sent to property owners by the department of finance
38 and, in addition, no later than October thirty-first of each year, to
39 any property owner who is delinquent in the payment of any real property
40 taxes, assessments, or any other charges that are made a lien subject to
41 the provisions of chapter three of this title, except sewer rents, sewer
42 charges and water rents, if such delinquency, in the aggregate, equals
43 or exceeds the sum of one thousand dollars. This notice shall include,
44 but not be limited to, actions homeowners can take if a lien is sold on
45 such property; the type of debt that can be sold in a lien sale; a time-
46 line of statutory notifications required pursuant to section 11-320 of
47 this title; a clear, concise explanation of the consequences of the sale
48 of a tax lien; the telephone number and electronic mail address of the
49 employee or employees designated pursuant to subdivision f of section
50 11-320 of this title; a conspicuous statement that an owner of any class
51 of property may enter into a payment plan for the satisfaction of delin-
52 quent real property taxes, assessments, sewer rents, sewer surcharges,
53 water rents, and any other charges that are made a lien subject to the
54 provisions of chapter three of this title, or exclusion from the tax
55 lien sale; credits and property tax exemptions that may exclude certain
56 class one real property from a tax lien sale; and clear and concise

1 instructions on how an owner of any class of property may register to
2 receive information from the department, through electronic mail,
3 regarding outreach sessions relating to the sale of tax liens conducted
4 pursuant to subdivision j of section 11-320 of this title. Such notice
5 shall also include information on the following real property tax cred-
6 its or real property tax exemptions:

7 1. the senior citizen homeowner exemption pursuant to section 11-245.3
8 of this part;

9 2. the exemption for persons with disabilities pursuant to section
10 11-245.4 of this part;

11 3. the exemptions for veterans pursuant to sections four hundred
12 fifty-eight and four hundred fifty-eight-a of the real property tax law;

13 4. the school tax relief (STAR) exemption pursuant to section four
14 hundred twenty-five of the real property tax law;

15 5. the enhanced school tax relief (STAR) exemption pursuant to subdi-
16 vision four of section four hundred twenty-five of the real property tax
17 law;

18 6. the state circuit breaker income tax credit pursuant to subsection
19 (e) of section six hundred six of the tax law; and

20 7. any other credit or residential real property tax exemption, which,
21 in the discretion of the commissioner, should be included in such
22 notice.

23 Upon such property owner's written request, or verbal request to 311
24 or any employee designated pursuant to subdivision f of section 11-320
25 of this title, a Chinese, Korean, Russian or Spanish translation of such
26 notice shall be provided promptly to such property owner.

27 b. The notice required pursuant to this section shall include:

28 1. a brief description of each exemption program; and

29 2. a phone number at the department and a website address where
30 taxpayers can obtain additional information on the exemption programs
31 and all necessary forms and applications.

32 c. The notice that is required, pursuant to this section, to be
33 provided by the commissioner of finance or his or her designee no later
34 than October thirty-first of each year shall include contact information
35 for the office of financial empowerment at the department of consumer
36 and worker protection.

37 § 11-245.10 Alternative exemption for veterans; transfer of title. 1.
38 Pursuant to subdivision eight of section four hundred fifty-eight-a of
39 the real property tax law, where a veteran, the spouse of a veteran or
40 unremarried surviving spouse already receiving an exemption pursuant to
41 such section sells the property receiving such exemption and purchases
42 property within the city, the department of finance shall transfer and
43 prorate, for the remainder of the fiscal year, the exemption received.
44 The prorated exemption shall be based upon the date the veteran, the
45 spouse of the veteran or unremarried surviving spouse obtains title to
46 the new property and shall be calculated by multiplying the tax rate for
47 which taxes were levied, on the appropriate tax roll used for the fiscal
48 year during which the transfer occurred, multiplied by the previously
49 granted exempt amount, multiplied by the fraction of each fiscal year
50 remaining subsequent to the transfer of title.

51 2. Nothing in this section shall be construed to remove the require-
52 ment that any such veteran, the spouse of the veteran or unremarried
53 surviving spouse transferring an exemption pursuant to subdivision one
54 of this section shall reapply for the exemption authorized pursuant to
55 section four hundred fifty-eight-a of the real property tax law on or
56 before the following taxable status date, in the event such veteran, the

1 spouse of the veteran or unremarried surviving spouse wishes to receive
2 the exemption in future fiscal years.

3 PART 2

4 EXEMPTION FOR CERTAIN NONPROFIT ORGANIZATIONS

5 § 11-246 Taxation of property of nonprofit organizations, pharmaceu-
6 tical societies and dental societies. 1. a. Pursuant to the requirements
7 of sections four hundred twenty-a and four hundred forty-six of the real
8 property tax law, real property owned by a corporation or association
9 which is organized or conducted exclusively for religious, charitable,
10 hospital, educational or cemetery purposes, or for the purposes of the
11 moral or mental improvement of men, women or children or for two or more
12 such purposes shall not be taxable.

13 b. Real property owned by a corporation or association which is organ-
14 ized or conducted exclusively for Bible, tract, benevolent, missionary,
15 infirmary, public playground, scientific, literary, library, patriotic
16 or historical purposes, for the development of good sportsmanship for
17 persons under the age of eighteen years through the conduct of super-
18 vised athletic games, or for the enforcement of laws relating to chil-
19 dren or animals, or for two or more such purposes, and used exclusively
20 for carrying out thereupon one or more of such purposes either by the
21 owning corporation or association, or by another such corporation or
22 association as provided in section four hundred twenty-b of the real
23 property tax law shall not be taxable. Any corporation or association
24 which uses real property exempted from taxation pursuant to this para-
25 graph shall make available to the council, the commissioner of finance
26 and the public a report, in such form as may be prescribed by the
27 commissioner of finance, setting forth the efforts of such corporation
28 or association undertaken in the previous calendar year to provide
29 assistance to city programs and city residents, by filing such report
30 with the city clerk not later than June first of each year.

31 c. Real property owned by a corporation or association which is organ-
32 ized or conducted exclusively for bar association or medical society
33 purposes, or both such purposes, and used exclusively for carrying out
34 thereupon one or both such purposes either by the owning corporation or
35 association, or by another such corporation or association shall be
36 taxable pursuant to the authority contained in section four hundred
37 twenty-b of the real property tax law.

38 2. Real property from which no rent is derived and which is owned by
39 an incorporated pharmaceutical society which is either wholly or partly
40 within the city, which society has heretofore been or may hereafter be
41 authorized and empowered by act of the legislature to establish and
42 which has established or may hereafter establish a college of pharmacy
43 in this city shall be taxable.

44 3. Real property from which no income is derived which is owned by a
45 dental society of any judicial district which judicial district is whol-
46 ly or partly within the city, which dental society was incorporated
47 under the education law shall be taxable.

48 4. Real property previously exempt from taxation but made taxable
49 pursuant to this section as of the first of January, nineteen hundred
50 seventy-two shall be taxed for the period from the first of January to
51 and including the thirtieth of June, nineteen hundred seventy-two by
52 applying one-half of the tax rate for the fiscal year nineteen hundred
53 seventy-one, seventy-two to the assessments made and exemptions claimed
54 with reference to the taxable status date falling on the twenty-fifth of

1 January, nineteen hundred seventy-two. The taxes thus computed for the
2 period from the first of January to and including the thirtieth of June,
3 nineteen hundred seventy-two shall be due and payable on the first of
4 June, nineteen hundred seventy-two.

5 5. Real property which is taxable under this section shall be subject
6 to any special ad valorem levies and special assessments which are
7 imposed to defray the cost of improvements or services furnished by the
8 city.

9 § 11-246.1 Denial; information required. The commissioner of finance
10 shall include, in any written communication with a property owner
11 related to the denial of a real property tax exemption pursuant to
12 section four hundred twenty-a, four hundred twenty-b, four hundred
13 forty-six, or four hundred sixty-two of the real property tax law,
14 information on actions a property owner can take, upon notice of a sale
15 of a tax lien of property of such owner, that may prevent the sale of
16 such tax lien.

17 PART 3

18 TAX EXEMPTION FOR CERTAIN INDUSTRIAL AND
19 COMMERCIAL PROPERTIES

20 § 11-247 Definitions. When used in this part:

21 a. "Applicant" means any person or corporation obligated to pay real
22 property taxes on the property for which an exemption is sought, or in
23 the case of exempt property, the record owner thereof, provided, howev-
24 er, that such property is not commercial property located in an area
25 designated as excluded pursuant to section 11-249 of this part;

26 b. "Board" means the industrial and commercial incentive board;

27 c. "Commercial" means any non-residential property used primarily for
28 the buying, selling or otherwise providing of goods or services,
29 provided that the use of such property has not been designated as a
30 restricted commercial use pursuant to section 11-249 of this part;

31 d. "Construction" means the building of new industrial or commercial
32 structures on vacant or predominantly vacant land, or the modernization,
33 rehabilitation or expansion or other improvements of an existing commer-
34 cial structure where such modernization, rehabilitation, expansion or
35 other improvement is not physically or functionally integrated with the
36 existing structure or results in additional usable square footage fifty
37 per centum greater than the square footage of the existing structure;

38 e. "Industrial" means property used primarily for the manufacturing or
39 assembling of goods or the processing of raw materials;

40 f. "Predominantly vacant land" means land, including land under water,
41 on which not more than fifteen percent of the lot area contains
42 enclosed, permanent improvements; in addition, such land may include
43 existing foundations. A fence, shed, garage, attendant's booth, paving,
44 pier, bulkhead, lighting fixtures, and similar items, or any improvement
45 having an assessed value of less than two thousand dollars shall not
46 constitute an enclosed, permanent improvement;

47 g. "Reconstruction" means the modernization, rehabilitation, expansion
48 or other improvement of an existing commercial or industrial structure
49 where the total proposed project cost is in an amount equal to at least
50 twenty per centum of the assessed value of the property at the time an
51 application for a certificate of eligibility pursuant to this part is
52 made, and where such modernization, rehabilitation, expansion or other
53 improvement is physically and functionally integrated with the existing
54 structure and does not create additional usable square footage greater

1 than fifty per centum of the usable square footage of the existing
2 structure except in a case where the existing structure has been
3 substantially destroyed by fire or other casualty;

4 h. "Residential property" shall mean property, other than property
5 used for hotel purposes, on which will exist upon completion of
6 construction a building or structure containing more than one independ-
7 ent dwelling unit or where more than one-third of the total square
8 footage of said structure is to be used for residential purposes; it
9 shall also mean, in the case of reconstruction, property on which exists
10 or will exist upon completion of the reconstruction a building or struc-
11 ture where more than one-third of the total square footage is used or is
12 to be used for dwelling purposes;

13 i. "Vacant land" means land, including land under water, which
14 contains no enclosed, permanent improvement. A fence, shed, garage,
15 attendant's booth, paving, pier, bulkhead, lighting fixtures, and simi-
16 lar items, or any improvement having an assessed value of less than two
17 thousand dollars shall not constitute an enclosed, permanent improve-
18 ment.

19 § 11-248 Industrial and commercial incentive board. There shall be an
20 industrial and commercial incentive board to consist of the deputy mayor
21 who shall be chairperson of the board, the commissioner of finance, the
22 director of planning and the director of budget, each of whom shall have
23 the power to designate an alternate to represent him or her at board
24 meetings with all the rights and powers, including the right to vote,
25 reserved to all board members, provided that such designation be in
26 writing to the chairperson of the board, and three other members to be
27 appointed by the mayor. The members of the board who shall be agents,
28 officers, or employees of the city shall serve without compensation but
29 shall be reimbursed for expenses necessarily incurred in the performance
30 of their duties. The members of the board who are not agents, officers,
31 or employees of the city shall receive as compensation for their
32 services one hundred dollars per diem, provided, however, that the total
33 compensation paid to any such member shall not exceed twelve hundred
34 dollars for any calendar year. Four members of the board shall consti-
35 tute a quorum.

36 § 11-249 Functions, powers and duties of the board; annual desig-
37 nation of exemption areas and restricted commercial uses. a. The
38 members of the board shall have the following functions, powers and
39 duties:

40 1. to receive and review applications for certificates of eligibility
41 pursuant to the charter and pursuant to subdivision thirteen of section
42 11-604 and subdivision (e) of section 11-503 of this title;

43 2. to make findings and determinations on the qualifications of
44 applicants for certificates of eligibility pursuant to this part and
45 subdivision (e) of section 11-503 of this title;

46 3. to issue certificates of eligibility and amendments thereto;

47 4. to make recommendations to the tax commission on the termination of
48 a tax exemption pursuant to section 11-253 of this part;

49 5. to designate annually, pursuant to subdivision b of this section,
50 areas in which exemptions for commercial construction or reconstruction
51 shall be granted as of right, areas from which such exemptions shall be
52 excluded and commercial uses for which the granting of exemptions shall
53 be restricted; and

54 6. to make and promulgate rules and regulations to carry out the
55 purposes of the board.

1 b. (1) Not later than October first of each year the board shall
2 publish a notice at least once in the official paper or a newspaper of
3 general circulation in the city setting forth: (i) the proposed bounda-
4 ries of areas in which commercial construction or reconstruction shall
5 be granted exemptions as of right, proposed boundaries of areas from
6 which exemptions for commercial construction or reconstruction shall be
7 excluded and proposed restricted commercial uses; and (ii) the date, not
8 earlier than ten nor later than thirty days following the publication of
9 such notice, on which the board will hold a public hearing to hear all
10 persons interested in the designation of such boundaries and restricted
11 commercial uses.

12 (2) Not earlier than ten nor later than thirty days following the
13 conclusion of the public hearing provided for in paragraph one of this
14 subdivision, the board shall designate the boundaries of areas in which
15 exemptions for commercial construction or reconstruction shall be grant-
16 ed as of right and areas from which such exemptions shall be excluded
17 and shall also designate restricted commercial uses. Such designations
18 shall be made upon the following determinations:

19 (i) With respect to areas in which exemption for commercial
20 construction or reconstruction shall be granted as of right, the board
21 shall determine that market conditions in each area are such that
22 exemptions are required to attract commercial construction or recon-
23 struction to the area and that attracting such construction or recon-
24 struction, and the granting of exemptions therefor, are in the public
25 interest. In making such determination, the board may consider, among
26 other factors, that the area is experiencing economic distress or is
27 characterized by an unusually large number of vacant, underutilized,
28 unsuitable or substandard structures, or by other substandard, unsani-
29 tary, deteriorated or deteriorating conditions, with or without tangible
30 blight, or that commercial development in the area will be beneficial to
31 the city's economy.

32 (ii) With respect to areas from which exemptions for commercial
33 construction or reconstruction are to be excluded, the board shall
34 determine that market conditions in each area are such that exemptions
35 are not required to attract commercial construction or reconstruction to
36 the area, or that it is not in the public interest to grant exemptions
37 for commercial construction or reconstruction in the area. No applica-
38 tions for exemptions for commercial construction or reconstruction shall
39 be accepted from such areas.

40 (iii) With respect to restricted commercial uses, the board shall
41 determine that it is not in the public interest to grant exemptions for
42 such uses unless the board further determines that in certain areas
43 designated pursuant to this subdivision, such uses will have an espe-
44 cially positive impact on the area's economy. All applications for
45 exemptions for restricted commercial uses shall be determined pursuant
46 to paragraphs two and three of subdivision b of section 11-251 of this
47 part.

48 (3) Designations made pursuant to this subdivision shall be effective
49 on the first of January of each year.

50 c. So far as practicable and subject to the approval of the mayor, the
51 services of all other city departments and agencies shall be made avail-
52 able by their respective heads to the board for the carrying out of the
53 functions stated in this part. The head of any department or agency
54 shall furnish information in the possession of such department or agency
55 when the board, after consultation with the mayor, so requests.

1 § 11-250 Real property tax exemption. a. A real property tax
 2 exemption pursuant to this part shall be granted to an applicant who,
 3 within a period of thirty-six months, or following an extension pursuant
 4 to section 11-254 of this part within a period of forty-eight months,
 5 from the date of issuance of a certificate of eligibility has completed
 6 reconstruction or construction work in accordance with the plans
 7 approved by the board in the certificate of eligibility. The amount of
 8 the tax exemption shall be determined as follows:

9 (1) In the case of an applicant who has completed industrial
 10 construction or reconstruction work, or commercial reconstruction work
 11 designated as of right pursuant to section 11-249 of this part or as
 12 specially needed pursuant to section 11-251 of this part, the tax
 13 exemption shall continue for nineteen tax years in an amount decreasing
 14 by five per centum each year from an exemption of ninety-five per centum
 15 of the exemption base, as defined in paragraph four of this subdivision.

16 (2) In the case of an applicant who has completed other commercial
 17 reconstruction work, or new commercial construction work designated as
 18 of right pursuant to section 11-249 of this part or as specially needed
 19 pursuant to section 11-251 of this part, the tax exemption shall contin-
 20 ue for ten tax years, in an amount decreasing by five per centum each
 21 year from an exemption of fifty per centum of the exemption base.

22 (3) In the case of an applicant who has completed other new commercial
 23 construction work, the exemption shall continue for five tax years in an
 24 amount decreasing by ten per centum each year from an exemption of fifty
 25 per centum of the exemption base.

26 (4) The term "exemption base" shall mean the difference between the
 27 final assessed value of the property as determined upon completion of
 28 the construction or reconstruction work and the lesser of (i) the
 29 assessed value of the property at the time an application for certif-
 30 icate of eligibility pursuant to this part is made, or (ii) the assessed
 31 value as may thereafter be reduced pursuant to application to the tax
 32 commission.

33 The tax exemption shall be computed according to the following tables:

34 CONSTRUCTION OR RECONSTRUCTION OF INDUSTRIAL STRUCTURES OR
 35 RECONSTRUCTION OF AS OF RIGHT OR SPECIALLY NEEDED COMMERCIAL STRUCTURES

36 =====

37 Year following	38 completion	39 Percentage
40 of work		40 of exemption
41 1.....		41 95
42 2.....		42 90
43 3.....		43 85
44 4.....		44 80
45 5.....		45 75
46 6.....		46 70
47 7.....		47 65
48 8.....		48 60
49 9.....		49 55
50 10.....		50 50
51 11.....		51 45
52 12.....		52 40
53 13.....		53 35

1	14.....	30
2	15.....	25
3	16.....	20
4	17.....	15
5	18.....	10
6	19.....	5
7	=====	

8 RECONSTRUCTION OF OTHER COMMERCIAL STRUCTURES OR CONSTRUCTION OF AS OF
9 RIGHT OR SPECIALLY NEEDED COMMERCIAL STRUCTURES

11	Year following	
12	completion of	Percentage
13	work	of exemption
14	-----	-----
15	1.....	50
16	2.....	45
17	3.....	40
18	4.....	35
19	5.....	30
20	6.....	25
21	7.....	20
22	8.....	15
23	9.....	10
24	10.....	5
25	=====	

26 CONSTRUCTION OF OTHER NEW COMMERCIAL STRUCTURES

28	Year following	
29	completion of	Percentage
30	work	of exemption
31	-----	-----
32	1.....	50
33	2.....	40
34	3.....	30
35	4.....	20
36	5.....	10
37	=====	

38 b. The taxes payable during the period from the issuance of a certifi-
39 cate of eligibility to the approval of the tax exemption pursuant to
40 section 11-252 of this part shall be paid on the lesser of:

- 41 (1) the assessed value of the property at the time an application for
- 42 a certificate of eligibility pursuant to this part is made, or
- 43 (2) the assessed value as may thereafter be reduced pursuant to appli-
- 44 cation to the tax commission, provided, however, that if reconstruction
- 45 or construction is not completed in accordance with the plans approved
- 46 in the certificate of eligibility including any amendments thereto,
- 47 taxes shall be due and payable retroactively as otherwise required by
- 48 law.

49 c. In all cases where the board shall have issued a certificate of
50 eligibility prior to January first, nineteen hundred eighty-two, the
51 exemption percentage shall apply to any subsequent increase in the

1 assessed valuation of the property during the tenure of the exemption.
2 Where the board has issued a certificate of eligibility on or after
3 January first, nineteen hundred eighty-two, the exemption percentage
4 shall apply to any subsequent increase in the assessed valuation of the
5 property during the first two years after approval of the tax exemption
6 pursuant to section 11-252 of this part. Commencing two years after
7 approval of the tax exemption pursuant to section 11-252 of this part,
8 the exemption percentage shall apply to any subsequent increase in
9 assessed valuation of the property only to the extent such increase is
10 attributable to the construction or reconstruction work approved in the
11 certificate of eligibility.

12 d. The provisions of this part shall not apply to any increase in
13 assessed value resulting from the construction or reconstruction of a
14 residential structure on any property receiving an exemption under the
15 provisions of this part. The provisions of this part shall apply exclu-
16 sively to those structures and the lands underlying them which were
17 identified explicitly in the certificate of eligibility.

18 e. The provisions of this part shall not apply if any new or rehabili-
19 tated construction displaces or replaces a building or buildings
20 containing more than twenty-five occupied dwelling units in existence on
21 the date an application for certificate of eligibility is submitted for
22 preliminary approval pursuant to section 11-251 of this part, which are
23 administered under the local emergency housing rent control act, the
24 rent stabilization law of nineteen hundred sixty-nine or the emergency
25 tenant protection act of nineteen seventy-four, or their successor stat-
26 utes applicable to the city of Staten Island, unless a certificate of
27 eviction has been issued for any of the displaced or replaced units
28 pursuant to the powers granted by the city rent and rehabilitation law.

29 f. The provisions of this part shall not apply to an applicant who
30 has commenced construction or reconstruction work prior to the granting
31 of a certificate of eligibility except where applicant, having filed an
32 application for a certificate of eligibility, receives written permis-
33 sion to commence from the board or its designated representative prior
34 to the granting of a certificate of eligibility. Demolition of existing
35 structures, site preparation limited to grading, filling or clearing, or
36 the curing of a safety or sanitary hazard shall not be deemed to be
37 commencement of construction or reconstruction work.

38 g. Any property enjoying the benefits of a tax exemption approved by
39 the board shall be ineligible for any subsequent or additional tax
40 exemption pursuant to the provisions of this part until the expiration
41 of the original exemption period or earlier termination of the existing
42 exemption by action of the tax commission.

43 § 11-251 Applications for certificates of eligibility. a. Applica-
44 tions for a certificate of eligibility pursuant to this part shall be
45 submitted for preliminary approval to the office for economic develop-
46 ment commencing immediately after March first, nineteen hundred eighty-
47 two and continuing until the thirty-first of January, nineteen hundred
48 eighty-six, on such form or forms as shall be prescribed by the board.
49 In addition to any other information required by the board, the applica-
50 tion shall include plans for reconstruction or construction that have
51 been certified by a professional engineer or an architect of the appli-
52 cant's choice and cost estimates or bids for the proposed reconstruction
53 or construction. Upon a finding by such office that the application
54 satisfies the requirements of reconstruction or construction as defined
55 in this part, the application shall be presented to the board for evalu-

1 ation and written notice thereof shall be given to the community board
2 of the district in which the application site is located.

3 b. (1) In the case of an application for construction or recon-
4 struction of an industrial structure or a commercial structure located
5 in an area designated as of right, the board shall issue a certificate
6 of eligibility upon determining that the application satisfies the
7 requirements of construction or reconstruction as defined in this part,
8 that the applicant has obtained plans for construction or reconstruction
9 certified by a professional engineer or architect, and that the appli-
10 cant has otherwise complied with the provisions of this part and other
11 applicable provisions of law.

12 (2) In the case of an application for construction or reconstruction
13 of a commercial structure not located in an as of right area, or involv-
14 ing a restricted commercial use, the board shall issue a certificate of
15 eligibility upon making the determination specified in paragraph one of
16 this subdivision and upon making the further determination that the
17 granting of a tax exemption for the construction or reconstruction of
18 such a structure in the proposed location is in the public interest. In
19 making such determination, the board shall make findings that there is a
20 need in the area for the services the enterprise will provide, that the
21 enterprise will generate or retain employment in the area, and that a
22 tax incentive is required to attract construction or reconstruction of
23 such a structure to the area. In addition, the board shall consider the
24 economic impact such commercial structure will have in the area.

25 (3) In the case of an application for construction or reconstruction
26 of a commercial structure not located in an as of right area, or involv-
27 ing a restricted commercial use, the board may make a further determi-
28 nation that special circumstances warrant designating the proposed
29 construction or reconstruction as "specially needed". In making such
30 determination, the board shall make findings that the commercial
31 services to be provided will have an especially positive impact on the
32 area's or the city's economy and that the applicant has demonstrated
33 that the project cannot go forward without the greater exemption granted
34 by such designation.

35 c. Any meeting of the board at which an application for a certificate
36 of eligibility is to be considered shall be open to the public, and
37 notice of such meeting shall be given at least two weeks prior thereto
38 by publication in a newspaper of general circulation within the city.

39 d. The burden of proof shall be on the applicant to show by clear and
40 convincing evidence that the requirements for granting a tax exemption
41 pursuant to this part have been satisfied, and the board shall have the
42 authority to require that statements made in consideration of the appli-
43 cation be taken under oath.

44 e. After the issuance of a certificate of eligibility the applicant
45 shall apply to the city tax commission, during the period provided by
46 law for filing applications for corrections of assessed valuations, for
47 a tax exemption as provided for in section 11-250 of this part. The
48 application shall be accompanied by a copy of the certificate of eligi-
49 bility.

50 § 11-252 Approval of tax exemption. On completion of the recon-
51 struction or construction work the applicant shall notify the board in
52 writing of said completion. The board shall determine the eligibility
53 of the applicant for the tax exemption as provided in section 11-250 of
54 this part and shall notify the tax commission of such determination. If
55 the applicant is determined to be qualified the commission shall approve
56 the tax exemption.

1 § 11-253 Continuation of tax exemption; termination of tax exemption.
2 The tax exemption approved by the board shall continue in accordance
3 with this part, provided that the applicant files an annual certificate
4 of continuing use stating that the structure and property continue to be
5 used for the industrial or commercial purposes justifying the issuance
6 of the certificate of eligibility. The certificate of continuing use
7 shall be filed with the tax commission on such form or forms and
8 containing such information as shall be prescribed by the tax commis-
9 sion. The tax commission shall have authority to terminate a tax
10 exemption on failure of an applicant to file an annual certificate of
11 continuing use or on the recommendation of the commissioner of finance
12 who, in reviewing the certificate filed by an applicant, has determined
13 that the structure or property has ceased to be used for the industrial
14 or commercial purposes justifying the issuance of the certificate of
15 eligibility.

16 § 11-254 Extension of time for completion. Where an applicant has
17 received a certificate of eligibility but has not completed or will not
18 be able to complete the construction or reconstruction work within thir-
19 ty-six months, the board shall, upon application, extend to forty-eight
20 months, from the time of issuance of such certificate, the time for
21 completion of the construction or reconstruction work; provided the
22 applicant has completed not less than two-thirds of the work as speci-
23 fied in the certified plans previously filed with the application at the
24 time of such application for extension.

25 § 11-255 Prior certificates of eligibility. Any project for which a
26 certificate of eligibility has been approved by the board prior to the
27 enactment of this section shall be eligible for a tax exemption computed
28 according to the tax exemption tables and formulae in effect on the date
29 of such approval.

30 PART 4
31 TAX EXEMPTION AND DEFERRAL OF TAX
32 PAYMENT FOR CERTAIN
33 INDUSTRIAL AND COMMERCIAL PROPERTIES

34 § 11-256 Definitions. When used in this part:

35 a. "Applicant" means any person obligated to pay real property taxes
36 on the property for which an exemption from or abatement or deferral of
37 real property tax payments is sought, or in the case of exempt property,
38 the record owner or lessee thereof.

39 b. "Approved plans" means plans submitted to and approved by the
40 department of buildings in connection with the applicant's building
41 permit, including any amendments to such plans approved by such depart-
42 ment before final inspection of the work for which such permit was
43 issued.

44 c. "Benefit period" means the period of time when a recipient is
45 eligible to receive benefits pursuant to this part including in the case
46 of a recipient of a certificate of eligibility for commercial
47 construction work in a deferral area, the period of time when tax
48 payments are to be deferred, the interim period when no tax payments are
49 to be deferred and no deferred tax payments are required to be made, and
50 the period of time when the deferred tax payments are to be made.

51 d. "Commission" means the temporary commercial incentive area boundary
52 commission.

53 e. "Commercial construction work" means the construction of a new
54 building or structure, or portion thereof, or the modernization, reha-

1 bilitation, expansion, or other improvement of an existing building or
2 structure, or portion thereof, for use as commercial property.

3 f. "Commercial property" means nonresidential property: (1) on which
4 will exist after completion of commercial construction work, a building
5 or structure used for the buying, selling or otherwise providing of
6 goods or services including hotel services, or for other lawful busi-
7 ness, commercial or manufacturing activities; and (2) (a) where, except
8 as provided in subparagraph (b) of this paragraph and paragraph (3) of
9 this subdivision, not more than fifteen per centum of the total net
10 square footage of any building or structure on such property was used
11 for manufacturing activities at any one or more times during the twen-
12 ty-four months immediately preceding the date of application for a
13 certificate of eligibility or (b) where not more than fifteen per centum
14 of the total net square footage of any building or structure on such
15 property was used for manufacturing activities at any one or more times
16 during the sixty months immediately preceding the date of application
17 for a certificate of eligibility if such property is located, in whole
18 or in part, in the area in the borough of Manhattan lying south of the
19 center line of 96th Street; and (3) in the commercial revitalization
20 area, and with respect to an application for a certificate of eligibil-
21 ity filed on or after July first, two thousand, "commercial property"
22 means nonresidential property on which will exist after completion of
23 commercial construction work, a building or structure used for the
24 buying, selling or otherwise providing of goods or services including
25 hotel services, or for other lawful business, commercial or manufactur-
26 ing activities.

27 f-1. "Commercial revitalization area" means any district that is zoned
28 C4, C5, C6, M1, M2 or M3 in accordance with the zoning resolution in any
29 area of the city.

30 g. "Deferral area" means an area in which deferral of payment of real
31 property taxes in accordance with section 11-257 of this part shall be
32 available to a recipient who has performed commercial construction work.

33 h. "Excluded area" means each area specified in paragraphs (1), (2)
34 and (3) of subdivision d of section 11-258 of this part.

35 i. "Exemption base". (1) For purposes of computing the exemption
36 pursuant to subdivision a, b, c or d of section 11-257 of this part,
37 "exemption base" shall mean, with respect to property that is the
38 subject of a certificate of eligibility with an effective date of June
39 thirtieth, nineteen hundred ninety-two or before: (a) for the first,
40 second and third taxable years following the effective date of a certif-
41 icate of eligibility, the assessed value of improvements made since the
42 effective date of such certificate which are attributable exclusively to
43 commercial or industrial construction work described in approved plans;
44 and (b) for all other years, the assessed value of such improvements
45 which have been made before the fourth taxable status date following the
46 effective date of such certificate.

47 (2) For purposes of computing the exemption pursuant to subdivision c,
48 d or e of section 11-257 of this part, "exemption base" shall mean, with
49 respect to property that is the subject of a certificate of eligibility
50 with an effective date of July first, nineteen hundred ninety-two or
51 after: (a) for the first through fifth taxable years following the
52 effective date of a certificate of eligibility, the assessed value of
53 improvements made since the effective date of such certificate which are
54 attributable exclusively to commercial or renovation construction work
55 described in approved plans; and (b) for all other years, the assessed

1 value of such improvements which have been made before the sixth taxable
2 status date following the effective date of such certificate.

3 (3) For purposes of computing the exemption pursuant to subdivision a
4 or b of section 11-257 of this part, "exemption base" shall mean, with
5 respect to property that is the subject of a certificate of eligibility
6 with an effective date of July first, nineteen hundred ninety-two or
7 after: (a) for the first through fifth taxable years following the
8 effective date of a certificate of eligibility, the assessed value of
9 improvements made since the effective date of such certificate which are
10 attributable exclusively to commercial or industrial construction work
11 described in approved plans plus any equalization increases or minus any
12 equalization decreases in the assessed value of the property so improved
13 (excluding the land) occurring subsequent to the effective date of such
14 certificate; and (b) for all other years, the assessed value of such
15 improvements made before the sixth taxable status date following the
16 effective date of such certificate plus any equalization increases or
17 minus any equalization decreases in the assessed value of the property
18 so improved (excluding the land) occurring subsequent to the effective
19 date of such certificate but before the fourteenth taxable status date
20 following the effective date of such certificate. For purposes of the
21 preceding sentence: no adjustment shall be made to the assessed value of
22 the improvements referred to in subparagraphs (a) and (b) of this para-
23 graph for any portion of an equalization increase or decrease which is
24 being phased in pursuant to section eighteen hundred five of the real
25 property tax law subsequent to the effective date of the certificate of
26 eligibility if such increase or decrease occurred prior to such effec-
27 tive date; with respect to any taxable year, an adjustment for an equal-
28 ization increase or decrease shall reflect only the portion of such
29 increase or decrease which is being phased in during such taxable year
30 or which was phased in during a prior taxable year; no adjustment for an
31 equalization decrease shall reduce the exemption base to an amount less
32 than the assessed value of the improvements referred to in subparagraphs
33 (a) and (b) of this paragraph, and, to the extent that any such decrease
34 would reduce the exemption base below such amount, such decrease shall
35 reduce the taxable portion of the assessed value; and no adjustment
36 shall be made for an equalization increase or decrease if the improve-
37 ments referred to in subparagraphs (a) and (b) of this paragraph do not
38 result in a physical increase in the assessed value of the property.

39 (4) Notwithstanding paragraph one of this subdivision, for purposes of
40 computing the exemption pursuant to subdivision a of section 11-257 of
41 this part, "exemption base" shall mean, with respect to industrial prop-
42 erty that is located in the area in Staten Island; and that is the
43 subject of a certificate of eligibility with an effective date after
44 December thirty-first, nineteen hundred eighty-nine and before July
45 first, nineteen hundred ninety-two: (a) for the first, second and third
46 taxable years following the effective date of a certificate of eligibil-
47 ity, the assessed value of improvements made since the effective date of
48 such certificate which are attributable exclusively to industrial
49 construction work described in approved plans; and (b) for all other
50 years, the assessed value of such improvements made before the fourth
51 taxable status date following the effective date of such certificate
52 plus any equalization increases or minus any equalization decreases in
53 the assessed value of the property so improved (excluding the land)
54 occurring subsequent to the fourth taxable status date following the
55 effective date of such certificate but before the fourteenth taxable
56 status date following the effective date of such certificate. For

1 purposes of the preceding sentence: no adjustment shall be made to the
2 assessed value of the improvements referred to in subparagraphs (a) and
3 (b) of this paragraph for any portion of an equalization increase or
4 decrease which is being phased in pursuant to section eighteen hundred
5 five of the real property tax law subsequent to the effective date of
6 the certificate of eligibility if such increase or decrease occurred
7 prior to such effective date; with respect to any taxable year, an
8 adjustment for an equalization increase or decrease shall reflect only
9 the portion of such increase or decrease which is being phased in during
10 such taxable year or which was phased in during a prior taxable year; no
11 adjustment for an equalization decrease shall reduce the exemption base
12 to an amount less than the assessed value of the improvements referred
13 to in subparagraphs (a) and (b) of this paragraph, and, to the extent
14 that any such decrease would reduce the exemption base below such
15 amount, such decrease shall reduce the taxable portion of the assessed
16 value; and no adjustment shall be made for an equalization increase or
17 decrease if the improvements referred to in subparagraphs (a) and (b) of
18 this paragraph do not result in a physical increase in the assessed
19 value of the property.

20 (5) For purposes of computing the exemption: (a) pursuant to subdivi-
21 sion e.1 of section 11-257 of this part, "exemption base" shall mean,
22 with respect to property that is the subject of a certificate of eligi-
23 bility with an effective date of July first, nineteen hundred ninety-
24 five or after and that is located in the new construction exemption area
25 specified in paragraph one of subdivision e of section 11-258 of this
26 part: for any taxable year following the effective date of a certificate
27 of eligibility, the assessed value of improvements made since the effec-
28 tive date of such certificate which are attributable exclusively to the
29 construction of a new building or structure that meets the requirements
30 set forth in subdivision i of section 11-259 of this part as described
31 in approved plans, provided such improvements are made within thirty-six
32 months of the effective date of such certificate or by December thirty-
33 first, nineteen hundred ninety-nine, whichever is earlier; and (b)
34 pursuant to subdivision e.1 of section 11-257 of this part, "exemption
35 base" shall mean, with respect to property that is the subject of a
36 certificate of eligibility with an effective date of July first, nine-
37 teen hundred ninety-five or after and that is located in the new
38 construction exemption area specified in paragraph two of subdivision e
39 of section 11-258 of this part: for any taxable year following the
40 effective date of a certificate of eligibility, the assessed value of
41 improvements made since the effective date of such certificate which are
42 attributable exclusively to the construction of a new building or struc-
43 ture that meets the requirements set forth in subdivision i of section
44 11-259 of this part as described in approved plans, provided such
45 improvements are made within forty-two months of the effective date of
46 such certificate.

47 (6) For purposes of this subdivision "equalization increase or
48 decrease" means an increase or decrease in the assessed value of proper-
49 ty which is not attributable to construction work, fire, demolition,
50 destruction or other change in the physical characteristics of the prop-
51 erty (excluding gradual physical deterioration or obsolescence), or to a
52 change in the description or boundaries of the property.

53 j. "Industrial construction work" means the construction of a new
54 building or structure or the modernization, rehabilitation, expansion or
55 improvement of an existing building or structure for use as industrial
56 property.

1 k. "Industrial property" means nonresidential property on which will
2 exist after completion of industrial construction work a building or
3 structure wherein at least seventy-five per centum of the total net
4 square footage is used or immediately available and held out for use for
5 manufacturing activities involving the assembly of goods or the fabri-
6 cation or processing of raw materials.

7 l. "Initial assessed value" means the lesser of: (1) the taxable
8 assessed value of real property appearing on the books of the annual
9 record of the assessed valuation of real property on the effective date
10 of a recipient's certificate of eligibility; or (2) the assessed value
11 to which such assessment is thereafter reduced pursuant to application
12 to the tax commission or court order. Where the real property is used
13 for both residential and nonresidential purposes on the effective date
14 of such certificate of eligibility, the initial assessed value of such
15 real property, determined as provided in the preceding sentence, shall
16 be apportioned between the residential and nonresidential portions ther-
17 eof in such manner as shall properly reflect the initial assessed value
18 of each such portion. Such apportionment shall be in accordance with
19 rules promulgated by the department of finance.

20 m. "Manufacturing activity" means an activity involving the assembly
21 of goods or the fabrication or processing of raw materials.

22 n. "Minimum required expenditure" means expenditure for commercial,
23 renovation or industrial construction work in an amount equal to twenty
24 per centum of the initial assessed value; provided, however, that with
25 respect to a recipient who filed an application on or after July first,
26 nineteen hundred ninety-five for a certificate of eligibility for indus-
27 trial construction work or for commercial construction work in a special
28 exemption area or a regular exemption area, minimum required expenditure
29 means expenditure for such work in an amount equal to ten per centum of
30 the initial assessed value; provided, however, that with respect to a
31 recipient who filed an application on or after July first, nineteen
32 hundred ninety-five for a certificate of eligibility for industrial
33 construction work and for the purpose of receiving an abatement of real
34 property taxes in accordance with paragraph (3) of subdivision a of
35 section 11-257 of this part, minimum required expenditure means expendi-
36 ture for such work in an amount equal to twenty-five per centum of the
37 initial assessed value; and provided further that if the department of
38 finance, after consultation with the deputy mayor for finance and
39 economic development, determines that a greater expenditure is required
40 to encourage significant industrial and commercial development it may
41 establish by rule a higher percentage of initial assessed value, not to
42 exceed fifty per centum thereof, as the minimum required expenditure.
43 Expenditure for residential construction work shall not be included in
44 the minimum required expenditure; provided, however, that for mixed-use
45 property, expenditures for construction work related to the common areas
46 and systems of such property shall be allocated, in accordance with
47 rules promulgated by the department of finance, between the residential
48 and nonresidential portions of the property. If real property was used
49 for both residential and nonresidential purposes on the effective date
50 of the certificate of eligibility, the initial assessed value of such
51 real property, for purposes of this subdivision, shall be the initial
52 assessed value apportioned to the nonresidential portions thereof.

53 o. "Person" means an individual, corporation, partnership, associ-
54 ation, agency, trust, estate, foreign or domestic government or subdivi-
55 sion thereof, or other entity.

1 p. "Recipient" means an applicant to whom a certificate of eligibility
2 has been issued pursuant to this part, or the successor in interest of
3 such applicant, provided that where a person who has entered into a
4 lease or purchase agreement with the owner or lessee of exempt property
5 has been a co-applicant, such person or the successor in interest of
6 such person shall be the recipient.

7 q. "Regular exemption area" means an area in which a regular exemption
8 from taxes in accordance with section 11-257 of this part shall be
9 available to a recipient who performs commercial construction work.

10 r. "Residential construction work" means any construction, moderniza-
11 tion, rehabilitation, expansion or improvement of dwelling units other
12 than dwelling units in a hotel.

13 s. "Residential property" means property, other than property used for
14 hotel purposes, on which exists, or will exist upon completion of
15 construction work, a building or structure used for residential
16 purposes.

17 t. "Restricted activity" means any entertainment activity which the
18 department of finance has identified in regulations promulgated pursuant
19 to this part as an activity which, in the public interest, should not be
20 encouraged through the benefits of this part.

21 u. "Special exemption area" means an area in which the commission has
22 determined that a special exemption from real property taxes in accord-
23 ance with subdivision b of section 11-257 of this part shall be avail-
24 able to a recipient who performs commercial construction work and, in
25 addition, means the area specified in paragraph four of subdivision c of
26 section 11-258 of this part.

27 v. "Mixed-use property" means property on which exists, or will exist
28 upon completion of construction work, a building or structure used for
29 both residential and nonresidential purposes.

30 w. "Renovation construction work" means the modernization, rehabili-
31 tation, expansion or improvement of an existing building or structure,
32 or portion thereof, for use as commercial property in a renovation
33 exemption area where such modernization, rehabilitation, expansion or
34 improvement is physically and functionally integrated with the existing
35 building or structure, or portion thereof, does not increase the bulk of
36 the existing building or structure by more than thirty per centum and
37 does not increase the height of the existing building or structure by
38 more than thirty per centum.

39 x. "Renovation exemption area" means the area specified in paragraph
40 (4) of subdivision d of section 11-258 of this part in which a reno-
41 vation exemption from taxes in accordance with subdivision e of section
42 11-257 of this part shall be available to a recipient who performs reno-
43 vation construction work.

44 y. "New construction exemption areas" means the areas specified in
45 subdivision e of section 11-258 of this part in which an exemption from
46 real property taxes in accordance with subdivision e.1 of section 11-257
47 of this part shall be available to a recipient who constructs a new
48 building or structure that meets the requirements set forth in subdivi-
49 sion i of section 11-259 of this part.

50 § 11-257 Real property tax exemption; deferral of tax payments. The
51 city shall be divided into six classes of areas as provided in this part
52 and pursuant to designation of areas to be made by the temporary commer-
53 cial incentive area boundary commission. Within such areas, the follow-
54 ing benefits shall be available to qualified recipients:

55 a. (1) A recipient who, following the effective date of a certificate
56 of eligibility, has performed industrial construction work in any area

1 of the city shall be eligible for an exemption from real property taxes
 2 as follows: For the first thirteen tax years, the recipient shall be
 3 exempt from taxation on one hundred per centum of the exemption base.
 4 For the following nine tax years, the recipient shall be exempt from
 5 taxation on a percentage of the exemption base beginning at ninety per
 6 centum thereof in the fourteenth tax year and decreasing by ten per
 7 centum of said exemption base each year.

8 The following table shall illustrate the computation of the exemption
 9 for industrial construction work:

10	Tax year following effective	
11	date of certificate	
12	of eligibility:	Amount of exemption:
13	1 through 13	Tax on 100% of exemption base
14	14	Tax on 90% of exemption base
15	15	Tax on 80% of exemption base
16	16	Tax on 70% of exemption base
17	17	Tax on 60% of exemption base
18	18	Tax on 50% of exemption base
19	19	Tax on 40% of exemption base
20	20	Tax on 30% of exemption base
21	21	Tax on 20% of exemption base
22	22	Tax on 10% of exemption base

23 (2) Notwithstanding paragraph one of this subdivision, a recipient who
 24 filed an application for a certificate of eligibility for industrial
 25 construction work in any area of such city on or after July first, nine-
 26 teen hundred ninety-five, and who, following the effective date of such
 27 certificate of eligibility, has performed such industrial construction
 28 work shall be eligible for an exemption from real property taxes as
 29 follows: for the first sixteen tax years, the recipient shall be exempt
 30 from taxation on one hundred per centum of the exemption base. For the
 31 following nine tax years, the recipient shall be exempt from taxation on
 32 a percentage of the exemption base beginning at ninety per centum there-
 33 of in the seventeenth tax year and decreasing by ten per centum of said
 34 exemption base each year.

35 The following table shall illustrate the computation of the exemption
 36 for industrial construction work pursuant to this paragraph:

37	Tax year following effective	
38	date of certificate of	
39	eligibility:	Amount of exemption:
40	1 through 16.....	Tax on 100% of exemption base
41	17	Tax on 90% of exemption base
42	18	Tax on 80% of exemption base
43	19	Tax on 70% of exemption base
44	20	Tax on 60% of exemption base
45	21	Tax on 50% of exemption base
46	22	Tax on 40% of exemption base
47	23	Tax on 30% of exemption base
48	24	Tax on 20% of exemption base
49	25	Tax on 10% of exemption base

50 (3)(a) A recipient who filed an application for a certificate of
 51 eligibility for industrial construction work in any area of such city on
 52 or after July first, nineteen hundred ninety-five, and who, following

1 the effective date of such certificate of eligibility, both commenced
2 and completed such work, shall be eligible for an abatement of real
3 property taxes as follows: for the first tax year immediately following
4 completion of such work, and for the second, third and fourth tax years
5 following completion of such work, the abatement shall equal fifty per
6 centum of the real property tax that was imposed on the property which
7 is the subject of the certificate of eligibility for the tax year imme-
8 diately preceding the effective date of such certificate of eligibility,
9 provided, however, that if such property was fully or partially exempt
10 from real property taxes during such tax year, then the abatement shall
11 equal fifty per centum of the real property tax that would have been
12 imposed on such property but for such full or partial exemption. For the
13 fifth and sixth tax years, the abatement shall equal forty per centum of
14 such amount; for the seventh and eighth tax years, the abatement shall
15 equal thirty per centum of such amount; for the ninth and tenth tax
16 years, the abatement shall equal twenty per centum of such amount; and
17 for the eleventh and twelfth tax years, the abatement shall equal ten
18 per centum of such amount. Notwithstanding any inconsistent provision of
19 this paragraph, a recipient shall not be eligible for an abatement for
20 the first tax year following completion of such work, unless the recipi-
21 ent submits proof satisfactory to the department of finance that such
22 work was completed on or before the taxable status date for such first
23 tax year no later than thirty days after such taxable status date. Where
24 the recipient fails to submit such proof in accordance with the forego-
25 ing sentence, a recipient shall not be eligible for an abatement until
26 the second tax year following completion of such work. In such case, a
27 recipient shall submit proof satisfactory to the department of finance
28 that such work was completed on or before the taxable status date for
29 such first tax year no later than thirty days after the taxable status
30 date for such second tax year. A recipient whose abatement begins in the
31 second tax year following completion of such work shall not thereby have
32 his or her twelve-year benefit period shortened.

33 The following table shall illustrate the computation of the abatement
34 for industrial construction work pursuant to this paragraph:

35 Tax year following completion	
36 of industrial construction	
37 work:	Amount of abatement:
38 1	50%
39 2	50%
40 3	50%
41 4	50%
42 5	40%
43 6	40%
44 7	30%
45 8	30%
46 9	20%
47 10	20%
48 11	10%
49 12	10%

50 (b) If, due to a determination of the department of finance or tax
51 commission of such city or a court, the real property tax imposed on
52 such property for the tax year immediately preceding the effective date
53 of such certificate of eligibility is changed, then any abatement that
54 was granted in accordance with this paragraph prior to such reduction

1 shall be recalculated and any abatement to be granted in accordance with
2 this paragraph shall be based on the real property tax imposed on such
3 property for the tax year immediately preceding the effective date of
4 such certificate of eligibility, as changed by such determination. The
5 amount equal to the difference between the abatement originally granted
6 and the abatement as so recalculated shall be deducted from any refund
7 otherwise payable or remission otherwise due as a result of a change due
8 to such determination, and any balance of such amount remaining unpaid
9 after making any such deduction shall be paid to the department of
10 finance within thirty days from the date of mailing by the department of
11 finance of a notice of the amount payable. Such amount payable shall
12 constitute a tax lien on such property as of the date of such notice
13 and, if not paid within such thirty-day period, penalty and interest at
14 the rate applicable to delinquent taxes on such property shall be
15 charged and collected on such amount from the date of such notice to the
16 date of payment.

17 (c) No property which is the subject of a certificate of eligibility
18 pursuant to this part shall receive more than one abatement pursuant to
19 this part and no abatement shall exceed one consecutive twelve-year
20 period as specified in subparagraph (a) of this paragraph.

21 (d) In no event shall an abatement granted pursuant to this part
22 exceed in any tax year the real property taxes imposed on the property
23 which is the subject of a certificate of eligibility pursuant to this
24 part.

25 (e) For the purpose of calculating an abatement of real property taxes
26 pursuant to this part, where a tax lot contains more than one building
27 or structure and not all of the buildings or structures comprising such
28 tax lot are the subject of a certificate of eligibility for industrial
29 construction work pursuant to this part, the real property taxes imposed
30 on such tax lot for the year immediately preceding the effective date of
31 such certificate of eligibility shall be apportioned among the build-
32 ings, structures and land comprising such tax lot and only such real
33 property taxes as are allocable to the property which is the subject of
34 the certificate of eligibility pursuant to this part shall be abated in
35 accordance with this paragraph. Such apportionment shall be in accord-
36 ance with rules promulgated by the department of finance.

37 (f) A recipient who filed an application for a certificate of eligi-
38 bility for industrial construction work in the commercial revitalization
39 area on or after July first, two thousand, and who, following the effec-
40 tive date of such certificate of eligibility, both commenced and
41 completed such work, shall be eligible for an abatement of real property
42 taxes in accordance with subparagraph (a) of this paragraph, provided,
43 however, that where the total net square footage of the industrial prop-
44 erty used or immediately available and held out for use for manufactur-
45 ing activities involving the assembly of goods or the fabrication or
46 processing of raw materials is less than seventy-five per centum of the
47 total net square footage of the industrial property, the abatement of
48 real property taxes shall be determined in accordance with rules promul-
49 gated by the department of finance. Notwithstanding the foregoing
50 sentence, no such abatement shall be allowed where the total net square
51 footage of the industrial property used or immediately available and
52 held out for use for such manufacturing activities after completion of
53 industrial construction work is less than the total net square footage
54 used or immediately available and held out for use for such manufactur-
55 ing activities before the commencement of such construction work. For
56 purposes of this subparagraph only, the term "industrial construction

1 work" shall mean the modernization, rehabilitation, expansion or
 2 improvement of an existing building or structure for use as industrial
 3 property and the term "industrial property" shall mean nonresidential
 4 property on which will exist after completion of industrial construction
 5 work a building or structure wherein at least twenty-five per centum of
 6 the total net square footage is used or immediately available and held
 7 out for use for manufacturing activities involving the assembly of goods
 8 or the fabrication or processing of raw materials.

9 b. (1) A recipient who, following the effective date of a certificate
 10 of eligibility, has performed commercial construction work in a special
 11 exemption area shall be eligible for an exemption from real property
 12 taxes as follows: For the first thirteen tax years, the recipient shall
 13 be exempt from taxation on one hundred per centum of the exemption base.
 14 For the following nine tax years, the recipient shall be exempt from
 15 taxation on a percentage of the exemption base beginning at ninety per
 16 centum thereof in the fourteenth tax year and decreasing by ten per
 17 centum of said exemption base each year.

18 The following table shall illustrate the computation of the exemption
 19 for commercial construction work in a special exemption area:

20	Tax year following effective	
21	date of certificate	
22	of eligibility:	Amount of exemption:
23	1 through 13	Tax on 100% of exemption base
24	14	Tax on 90% of exemption base
25	15	Tax on 80% of exemption base
26	16	Tax on 70% of exemption base
27	17	Tax on 60% of exemption base
28	18	Tax on 50% of exemption base
29	19	Tax on 40% of exemption base
30	20	Tax on 30% of exemption base
31	21	Tax on 20% of exemption base
32	22	Tax on 10% of exemption base

33 (2) Notwithstanding paragraph one of this subdivision, a recipient who
 34 filed an application for a certificate of eligibility for commercial
 35 construction work in a special exemption area on or after July first,
 36 nineteen hundred ninety-five, and who, following the effective date of
 37 such certificate of eligibility, has performed such commercial
 38 construction work shall be eligible for an exemption from real property
 39 taxes as follows: For the first sixteen tax years, the recipient shall
 40 be exempt from taxation on one hundred per centum of the exemption base.
 41 For the following nine tax years, the recipient shall be exempt from
 42 taxation on a percentage of the exemption base beginning at ninety per
 43 centum thereof in the seventeenth tax year and decreasing by ten per
 44 centum of said exemption base each year.

45 The following table shall illustrate the computation of the exemption
 46 for commercial construction work in a special exemption area pursuant to
 47 this paragraph:

48	Tax year following effective	
49	date of certificate	
50	of eligibility:	Amount of exemption:
51	1 through 16	Tax on 100% of exemption base
52	17	Tax on 90% of exemption base
53	18	Tax on 80% of exemption base

1	19	.....	Tax on 70% of exemption base
2	20	.....	Tax on 60% of exemption base
3	21	.....	Tax on 50% of exemption base
4	22	.....	Tax on 40% of exemption base
5	23	.....	Tax on 30% of exemption base
6	24	.....	Tax on 20% on exemption base
7	25	.....	Tax on 10% of exemption base

8 c. (1) A recipient who, following the effective date of a certificate
9 of eligibility, has performed commercial construction work in a regular
10 exemption area shall be eligible for an exemption from real property
11 taxes as follows: For the first eight tax years, the recipient shall be
12 exempt from taxation on one hundred per centum of the exemption base.
13 For the following four tax years, the recipient shall be exempt from
14 taxation on a percentage of the exemption base beginning at eighty per
15 centum thereof in the ninth tax year and decreasing by twenty per centum
16 of said exemption base each year.

17 The following table shall illustrate the computation of the exemption
18 for commercial construction work in a regular exemption area:

19	Tax year following effective	
20	date of certificate	
21	of eligibility:	Amount of exemption:
22	1 through 8	Tax on 100% of exemption base
23	9	Tax on 80% of exemption base
24	10	Tax on 60% of exemption base
25	11	Tax on 40% of exemption base
26	12	Tax on 20% of exemption base

27 (2) Notwithstanding paragraph one of this subdivision, a recipient who
28 filed an application for a certificate of eligibility for commercial
29 construction work in a regular exemption area on or after July first,
30 nineteen hundred ninety-five, and who, following the effective date of
31 such certificate of eligibility, has performed such commercial
32 construction work shall be eligible for an exemption from real property
33 taxes as follows: For the first eleven tax years, the recipient shall be
34 exempt from taxation on one hundred per centum of the exemption base.
35 For the following four tax years, the recipient shall be exempt from
36 taxation on a percentage of the exemption base beginning at eighty per
37 centum thereof in the twelfth tax year and decreasing by twenty per
38 centum of said exemption base each year.

39 The following table shall illustrate the computation of the exemption
40 for commercial construction work in a regular exemption area pursuant to
41 this paragraph:

42	Tax year following effective	
43	date of certificate	
44	of eligibility:	Amount of exemption:
45	1 through 11	Tax on 100% of exemption base
46	12	Tax on 80% of exemption base
47	13	Tax on 60% of exemption base
48	14	Tax on 40% of exemption base
49	15	Tax on 20% of exemption base

50 d. Except as provided in paragraphs two and three of subdivision d of
51 section 11-258 of this part, a recipient who, following the effective

1 date of a certificate of eligibility, has performed commercial
 2 construction work in a deferral area shall be eligible for a deferral of
 3 tax payments as follows: For the first three tax years following the
 4 effective date of a certificate of eligibility, the tax payment on one
 5 hundred per centum of the exemption base shall be deferred. For the
 6 following four tax years, the tax payment on a percentage of the
 7 exemption base beginning at eighty per centum thereof in the fourth tax
 8 year and decreasing by twenty per centum each year shall be deferred.
 9 The total amount of tax payments deferred pursuant to this part shall be
 10 paid subsequently over the course of ten tax years as follows: Commenc-
 11 ing in the eleventh tax year following the effective date of the certif-
 12 icate of eligibility, through and including the twentieth tax year
 13 following such effective date, an amount equal to ten per centum of the
 14 total amount of tax payments deferred pursuant to this section shall be
 15 added to the amount of tax otherwise assessed and payable in each such
 16 tax year on the property subject to such deferral.

17 The following table shall illustrate the computation of deferral and
 18 payment of taxes for commercial construction work in a deferral area:

19	Tax year following	
20	effective date of	
21	certificate of	
22	eligibility:	Amount of tax payments to be deferred or paid:
23	1 through 3	Deferral of tax payment on 100% of the exemption base
24	4	Deferral of tax payment on 80% of the exemption base
25	5	Deferral of tax payment on 60% of the exemption base
26	6	Deferral of tax payment on 40% of the exemption base
27	7	Deferral of tax payment on 20% of the exemption base
28	8 through 10	No tax payments are to be deferred and no deferred
29		tax payments are required to be made
30	11 through 20	Payment each year of 10% of total dollar amount of
31		tax payments deferred pursuant to this part

32 e. A recipient who, following the effective date of a certificate of
 33 eligibility, has performed renovation construction work in a renovation
 34 exemption area shall be eligible for an exemption from real property
 35 taxes as follows: For the first eight tax years, the recipient shall be
 36 exempt from taxation on one hundred per centum of the exemption base.
 37 For the following four tax years, the recipient shall be exempt from
 38 taxation on a percentage of the exemption base beginning at eighty per
 39 centum thereof in the ninth tax year and decreasing by twenty per centum
 40 of said exemption base each year.

41 The following table shall illustrate the computation of the exemption
 42 for renovation construction work in a renovation exemption area:

43	Tax year following effective	
44	date of certificate	
45	of eligibility:	Amount of exemption:
46	1 through 8	Tax on 100% of exemption base
47	9	Tax on 80% of exemption base
48	10	Tax on 60% of exemption base
49	11	Tax on 40% of exemption base
50	12	Tax on 20% of exemption base

51 e.1. A recipient who, following the effective date of a certificate of
 52 eligibility, constructs a new building or structure that meets the

1 requirements set forth in subdivision i of section 11-259 of this part
 2 in the new construction exemption area specified in paragraph one, two
 3 or three of subdivision e of section 11-258 of this part shall be eligi-
 4 ble for an exemption from real property taxes as follows: for the first
 5 four tax years, the recipient shall be exempt from taxation on one
 6 hundred per centum of the exemption base. For the following four tax
 7 years, the recipient shall be exempt from taxation on a percentage of
 8 the exemption base beginning at eighty per centum thereof in the fifth
 9 tax year and decreasing by twenty per centum of said exemption base each
 10 year.

11 The following table shall illustrate the computation of the exemption
 12 for the construction of a new building or structure that meets the
 13 requirements set forth in subdivision i of section 11-259 of this part
 14 in the new construction exemption area specified in paragraph one, two
 15 or three of subdivision e of section 11-258 of this part:

16 Tax year following effective	Amount of exemption:
17 date of certificate	
18 of eligibility:	
19 1 through 4	Tax on 100% of exemption base
20 5	Tax on 80% of exemption base
21 6	Tax on 60% of exemption base
22 7	Tax on 40% of exemption base
23 8	Tax on 20% of exemption base

24 f. There shall be no exemption from or deferral of payment of real
 25 property taxes available pursuant to this part to any person who
 26 performs commercial or renovation construction work in an excluded area.

27 g. The benefits of this part shall be granted exclusively for indus-
 28 trial, commercial or renovation construction work described in approved
 29 plans. No benefits shall be granted for residential construction work.
 30 Any parcel which is partly located in an excluded area shall be deemed
 31 to be entirely located in such area.

32 h. No benefits pursuant to this part shall be granted for work which
 33 is the subject of a certificate of eligibility issued pursuant to part
 34 three of this subchapter.

35 § 11-258 Temporary commercial incentive area boundary commission;
 36 classes of area; excluded areas. a. There shall be a temporary commer-
 37 cial incentive area boundary commission to consist of the deputy mayor
 38 for economic development and planning, the commissioner of finance, the
 39 chair of the city planning commission, the director of management and
 40 budget, the borough presidents, the speaker of the city council and a
 41 public member appointed by the mayor to serve at the mayor's pleasure.
 42 Each member except the public member shall have the power to designate
 43 an alternate to represent him or her at commission meetings to exercise
 44 all the rights and powers of such member, including the right to vote,
 45 provided that such designation be made in writing to the chair of the
 46 commission. The deputy mayor for economic development and planning shall
 47 be the chair of the commission. Each borough president shall be entitled
 48 to vote only on the designation of areas within his or her borough.
 49 Commission members who shall be officers or employees of the city shall
 50 serve without compensation but shall be reimbursed for expenses neces-
 51 sarily incurred in the performance of their duties. Any other commission
 52 member shall receive as exclusive compensation for his or her services
 53 one hundred dollars per diem, provided, however, that the total compen-
 54 sation paid to any such member shall not exceed twelve hundred dollars

1 for any calendar year. A majority of members of such commission entitled
2 to vote on a matter shall constitute a quorum for such issue. Decisions
3 shall be made by majority vote of those present entitled to vote on a
4 matter.

5 b. (1) The commission shall meet in nineteen hundred ninety-two, nine-
6 teen hundred ninety-five and nineteen hundred ninety-nine to determine
7 the boundaries of the various areas which it is authorized to designate
8 pursuant to this section. The areas designated by the commission in
9 effect as of December thirty-first, nineteen hundred ninety-one shall
10 remain in effect until the first taxable status date after the city
11 council approves a new designation pursuant to paragraph four of this
12 subdivision.

13 (2) Not later than October first of each year when areas are to be
14 designated, the commission shall publish notice of proposed boundaries
15 of areas to be designated, and the date, not earlier than five nor later
16 than fifteen days following the publication of such notice, on which the
17 commission will hold a public hearing to hear all persons interested in
18 the designation of areas. The notice required by this paragraph shall be
19 published in the City Record and a newspaper of general circulation in
20 the city, and copies thereof shall be forwarded to each council member
21 and community board.

22 (3) The commission shall make such designation, and notify the city
23 council of such designation, not later than November first of each year
24 when areas are to be designated. The designation shall be effective as
25 provided in paragraph four of this subdivision.

26 (4) Within thirty days after the first stated meeting of the city
27 council following the receipt of notice of such designation, the city
28 council may, by majority vote, disapprove such designation. If, within
29 such thirty-day period, the city council fails to act or fails to act by
30 the required vote, the city council shall be deemed to have approved
31 such designation. Such designation shall be effective as of the first
32 taxable status date after the city council approves such designation and
33 shall remain in effect until the first taxable status date after the
34 city council approves a new designation pursuant to this paragraph.

35 c. (1) The commission may designate any area other than the area lying
36 south of the center line of ninety-sixth street in the borough of
37 Manhattan to be a special exemption area if it determines that market
38 conditions in the area are such that the availability of a special
39 exemption is required in order to encourage commercial construction work
40 in such area. In making such determination, the commission shall consid-
41 er, among other factors, the existence in such area of a special need
42 for commercial and job development, high unemployment, economic distress
43 or unusually large numbers of vacant, underutilized, unsuitable or
44 substandard structures, or other substandard, unsanitary, deteriorated
45 or deteriorating conditions, with or without tangible blight.

46 (2) Any area in the city, which the commission has not designated as a
47 special exemption area shall be a regular exemption area.

48 (3) On or after January first, nineteen hundred ninety-two, the
49 commission shall not designate any area to be either a deferral area or
50 an excluded area, nor shall the commission make any new designation in
51 any urban renewal area designated pursuant to article fifteen of the
52 general municipal law so as to reduce the level of benefits available
53 pursuant to this title in such area.

54 (4) Notwithstanding any other provision of this part, any area in the
55 city designated as an empire zone in accordance with article eighteen-b
56 of the general municipal law, which the commission has not designated as

1 a special exemption area, shall be a special exemption area as of July
2 first, nineteen hundred ninety-five or as of the date of the designation
3 of such area as an empire zone, whichever is later.

4 § 11-259 Eligibility for benefits. a. A recipient of a certificate of
5 eligibility with an effective date of June thirtieth, nineteen hundred
6 ninety-two or before must make one-half the minimum required expenditure
7 within eighteen months of the effective date of such recipient's certifi-
8 cate of eligibility, and make the minimum required expenditure within
9 thirty-six months of the effective date of such certificate to be eligi-
10 ble to receive the benefits of this part. A recipient of a certificate
11 of eligibility with an effective date of July first, nineteen hundred
12 ninety-two or after must make one-half the minimum required expenditure
13 within thirty months of the effective date of such recipient's certifi-
14 cate of eligibility, and make the minimum required expenditure within
15 sixty months of the effective date of such certificate to be eligible to
16 receive the benefits of this part. Any recipient who shall fail to make
17 such expenditures shall become ineligible and shall pay, with interest,
18 any taxes for which an exemption or deferral was claimed pursuant to
19 this section. This subdivision shall not apply to the recipient of a
20 certificate of eligibility for construction of a new building or struc-
21 ture that meets the requirements set forth in subdivision i of section
22 11-259 of this part in a new construction exemption area.

23 b. No benefits pursuant to this part shall be granted for construction
24 work on any condominium unit unless such unit is in a building or struc-
25 ture which, if viewed as a whole and as if it were under single owner-
26 ship, would qualify as commercial or industrial property. The minimum
27 required expenditure applicable to any recipient of a certificate of
28 eligibility for construction work on a condominium unit shall be equal
29 to the minimum expenditure which would apply if a certificate of eligi-
30 bility were issued for construction work on the entire property where
31 such unit is located. Nothing in this subdivision shall be construed to
32 prevent owners of condominium units in the same property from forming an
33 association to be a recipient. This subdivision shall not apply to any
34 applicant whose property would be, or recipient whose property is, the
35 subject of a certificate of eligibility with an effective date of July
36 first, nineteen hundred ninety-two or after.

37 c. No benefits pursuant to this part shall be granted for any
38 construction work unless the applicant filed an application for such
39 benefits on or before the date of issuance of a building permit for such
40 work. The requirements of this subdivision may be satisfied where the
41 applicant's architect, contractor or other representative authorized to
42 file the application for such building permit files with the department
43 of finance on behalf of the applicant a preliminary application contain-
44 ing such information as the department of finance shall prescribe by
45 regulation.

46 d. No benefits pursuant to this part shall be granted to any recipient
47 for construction work on property any part of which is to be used for a
48 restricted activity.

49 e. No benefits pursuant to this part shall be granted for any
50 construction work unless the applicant shall file, together with the
51 application, an affidavit setting forth the following information:

52 (1) a statement that within the seven years immediately preceding the
53 date of application for a certificate of eligibility, neither the appli-
54 cant, nor any person owning a substantial interest in the property as
55 defined in paragraph four of this subdivision, nor any officer, director
56 or general partner of the applicant or such person was finally adjudi-

1 cated by a court of competent jurisdiction to have violated section two
2 hundred thirty-five of the real property law or any section of article
3 one hundred fifty of the penal law or any similar arson law of another
4 state with respect to any building, or was an officer, director or
5 general partner of a person at the time such person was finally adjudi-
6 cated to have violated such law;

7 (2) a statement setting forth any pending charges alleging violation
8 of section two hundred thirty-five of the real property law or any
9 section of article one hundred fifty of the penal law or any similar
10 arson law of another jurisdiction with respect to any building by the
11 applicant or any person owning a substantial interest in the property as
12 defined in paragraph four of this subdivision, or any officer, director
13 or general partner of the applicant or such person; and

14 (3) a statement that the applicant has posted notice in a conspicuous
15 place at the premises which are the subject of the application and
16 published notice in a newspaper of general circulation in the city, in
17 such form as shall be prescribed by the department of finance, stating
18 that persons having information concerning any violation by the appli-
19 cant or a person having a substantial interest in the property as
20 defined in paragraph four of this subdivision has violated section two
21 hundred thirty-five of the real property law or any section of article
22 one hundred fifty of the penal law or any similar arson law of another
23 jurisdiction may submit such information to the department of finance to
24 be considered in determining the applicant's eligibility for benefits.

25 (4) "Substantial interest" as used in this subdivision shall mean
26 ownership and control of an interest of ten per centum or more in a
27 property or of any person owning a property.

28 f. If any person described in the statement required by paragraph two
29 of subdivision e of this section is finally adjudicated by a court of
30 competent jurisdiction to be guilty of any charge listed in such state-
31 ment, the recipient shall cease to be eligible for benefits pursuant to
32 this part and shall pay with interest any taxes for which an exemption,
33 abatement or deferral was claimed pursuant to this part.

34 g. In addition to any other qualifications for exemption from or
35 abatement or deferral of payment of taxes set forth in this part, an
36 applicant must be:

37 (1) obligated to pay real property tax on the property for which an
38 exemption, abatement or deferral is sought, whether such obligation
39 arises because of record ownership of such property, or because the
40 obligation to pay such tax has been assumed by contract; or

41 (2) the record owner or lessee of property which is exempt from real
42 property taxation who has entered into an agreement to sell or lease
43 such property to another person. Such person shall be a co-applicant
44 with such owner or lessee.

45 h. A co-applicant with a public entity shall be an eligible recipient
46 pursuant to this part, provided that for such period as the property
47 which is the subject of the certificate of eligibility is exempt from
48 real property taxation because it is owned or controlled by a public
49 entity no benefits shall be available to such recipient pursuant to this
50 part. Such recipient shall receive benefits pursuant to this part when
51 such property ceases to be eligible for exemption pursuant to other
52 provisions of law, as follows: the recipient shall, commencing with the
53 date such tax exemption ceases, and continuing until the expiration of
54 the benefit period pursuant to this part, receive the benefits to which
55 such recipient is entitled in the corresponding tax year pursuant to
56 this part.

1 i. (1) No benefits pursuant to this part shall be granted for
2 construction of a new building or structure in a new construction
3 exemption area unless such building or structure meets the requirements
4 set forth in subparagraphs two and three of this paragraph and, in addi-
5 tion, meets at least two of the five requirements set forth in subpara-
6 graphs four through eight of this paragraph.

7 (2) The height of at least fifty per centum of the floors in such
8 building or structure shall be not less than twelve feet, nine inches
9 measured from the top of the slab comprising the floor to the bottom of
10 the slab comprising the ceiling;

11 (3) Such building or structure shall be served by fiber optic telecom-
12 munications wiring and shall contain vertical penetrations for the
13 distribution of fiber optic cabling to individual tenants on each floor;

14 (4) The total square footage of such building or structure is not less
15 than five hundred thousand gross square feet;

16 (5) A minimum of two hundred thousand gross square feet or twenty-five
17 per centum of such building or structure is comprised of floors of not
18 less than forty thousand gross square feet;

19 (6) At least ten per centum of the gross square footage of such build-
20 ing or structure is comprised of floors that contain no more than eight
21 structural columns, excluding any columns within the core or on the
22 periphery of such building or structure;

23 (7) The electrical capacity of such building or structure is not less
24 than six watts per net square foot;

25 (8) Emergency backup power sufficient to accommodate a need of six
26 watts per net square foot is available in at least two hundred thousand
27 gross square feet or twenty-five per centum of such building or struc-
28 ture.

29 j. No benefits pursuant to this part shall be granted for construction
30 work performed pursuant to a building permit issued after July thirty-
31 first, two thousand eight, except that if a building permit is issued on
32 or before July thirty-first, two thousand eight for construction work on
33 a building or structure described in an application for a certificate of
34 eligibility filed on or before June thirtieth, two thousand eight,
35 construction work performed as described in such application pursuant to
36 any additional building permit issued on or after August first, two
37 thousand eight shall be eligible for benefits pursuant to this part in
38 accordance with this subdivision.

39 (1) Except as provided in paragraph two of this subdivision, all
40 construction work performed pursuant to any such application shall be
41 completed on or before December thirty-first, two thousand thirteen. No
42 benefits shall be granted for construction work performed after such
43 date, and any exemption granted pursuant to this part in relation to
44 property on which such construction work was performed shall not exceed
45 the amount of the exemption in effect for such property on the tax roll
46 for which the taxable status date is January fifth, two thousand four-
47 teen.

48 (2) All construction work performed pursuant to any such application
49 for the construction of a new building or structure in the new
50 construction exemption area specified in paragraph three of subdivision
51 e of section 11-258 of this part shall be completed in accordance with
52 paragraph four of subdivision i of this section and, if not completed in
53 accordance with such subparagraph, shall not be eligible for benefits
54 pursuant to this part.

55 (3) For purposes of this subdivision, construction work as described
56 in an application for a certificate of eligibility shall be deemed

1 completed on the date on which the department of buildings issues a
2 temporary or final certificate of occupancy or, if such construction
3 work does not require the issuance of a certificate of occupancy, the
4 date on which the applicant and the applicant's architect or profes-
5 sional engineer for such construction work submit to the department of
6 finance an affidavit certifying that such construction work has been
7 completed. For purposes of this subdivision, a demolition permit shall
8 be deemed to be a building permit issued for construction work.

9 § 11-260 Application for certificate of eligibility. a. Application
10 for a certificate of eligibility pursuant to this part may be made imme-
11 diately and continuing until June thirtieth, two thousand eight; and
12 provided, further, however, that no benefits pursuant to this part shall
13 be granted for construction work performed pursuant to a building permit
14 issued after July thirty-first, two thousand eight. Such application
15 shall state whether it is for industrial, commercial or renovation
16 construction work, and shall be filed with the department of finance. In
17 addition to any other information required by such department, the
18 application shall include cost estimates or bids for the proposed
19 construction and an affidavit of a professional engineer or architect of
20 the applicant's choice, certifying that detailed plans for the
21 construction work have been submitted to the department of buildings.
22 Such application shall also state that the applicant agrees to comply
23 with and be subject to the rules issued from time to time by the depart-
24 ment of finance to secure compliance with all applicable city, state and
25 federal laws or which implement mayoral directives and executive orders
26 designed to ensure equal employment opportunity. Such application shall
27 also certify that all taxes currently due and owing on the property
28 which is the subject of the application have been paid or are currently
29 being paid in timely installments pursuant to written agreement with the
30 department of finance.

31 b. The burden of proof shall be on the applicant to show by clear and
32 convincing evidence that the requirements for granting an exemption from
33 or abatement or deferral of payment of taxes pursuant to this part have
34 been satisfied. The department of finance shall have the authority to
35 require that statements in connection with the application be made under
36 oath.

37 c. Upon receipt of an application, the department of finance shall
38 send written notice thereof to the council member representing the
39 district where the proposed construction work is to take place.

40 d. The department of finance shall issue a certificate of eligibility
41 upon determining that the applicant satisfies the requirements for
42 industrial, commercial or renovation construction work in an area where
43 benefits are available for such work. Such certificate shall state
44 whether such benefits are to be granted for industrial, commercial or
45 renovation construction work, and in which class of area the property is
46 located. The effective date of such certificate, except as provided in
47 paragraph two or paragraph four of subdivision c of section 11-259 of
48 this part, shall be the earlier of (1) the date on which a building
49 permit for the construction work is issued by the department of build-
50 ings, or (2) the last day before the effective date of any designation
51 of boundaries by the commission which changes the class of area in which
52 the property is located so as to reduce the level of benefits for
53 commercial construction work on such property. Where the effective date
54 of the certificate of eligibility is July first, nineteen hundred nine-
55 ty-two or after, the benefits granted for industrial, commercial or
56 renovation construction work pursuant to this part shall be in accord-

1 ance with the provisions of this part. Where the effective date of the
2 certificate of eligibility is June thirtieth, nineteen hundred ninety-
3 two or before, the benefits granted for industrial or commercial
4 construction work pursuant to this part shall be in accordance with the
5 provisions of this part as it was in effect until June thirtieth, nine-
6 teen hundred ninety-two. No recipient whose property is the subject of
7 a certificate of eligibility for commercial construction work in a
8 deferral area shall be eligible to apply for a certificate of eligibil-
9 ity for renovation construction work on the same property, where the
10 renovation construction work is the same as, or similar to, the commer-
11 cial construction work for which the deferral area certificate was
12 issued, until three years after the effective date of the deferral area
13 certificate. No recipient shall receive a tax deferral and a tax
14 exemption for the same expenditure on eligible construction work.

15 e. A copy of the certificate of eligibility shall be filed by the
16 department of finance in the manner prescribed for recording a mortgage
17 pursuant to section two hundred ninety-one-d of the real property law.

18 f. The department of finance may provide by rule for reasonable admin-
19 istrative charges or fees necessary to defray expenses in administering
20 the benefit program provided by this part.

21 § 11-261 Reporting requirement; termination of benefits. a. Upon
22 approval by the department of buildings of the plans submitted in
23 connection with the building permit and any amendments to such plans,
24 the recipient shall file with the department of finance a narrative
25 description of such approved plans describing the industrial, commercial
26 or renovation construction work for which such recipient seeks benefits
27 pursuant to this part.

28 b. For the duration of the benefit period the recipient shall file
29 annually with the department of finance, on or before the taxable status
30 date, a certificate of continuing use stating the purposes for which the
31 property described in the certificate of eligibility is being used and
32 the net square footage allotted to each such purpose. Such certificate
33 of continuing use shall be on a form prescribed by the department of
34 finance and shall state the total number of workers employed on the
35 property and the number of such workers who are city residents. The
36 department of finance shall have authority to terminate benefits pursu-
37 ant to this part upon failure of a recipient to file such certificate by
38 the taxable status date. The burden of proof shall be on the recipient
39 to establish continuing eligibility for benefits and the department of
40 finance shall have the authority to require that statements made in such
41 certificate shall be made under oath.

42 c. A recipient shall file an amendment to the latest certificate of
43 continuing use prior to (1) converting square footage within property
44 which is the subject of a certificate of eligibility for industrial
45 construction work from use for the manufacturing activities described in
46 such certificate of continuing use where such conversion results in less
47 than sixty-five per centum of total net square footage being used or
48 held out for use for manufacturing activities; or (2) converting any
49 portion of property which is the subject of a certificate of eligibility
50 to use for any restricted activity or as residential property.

51 d. No later than eighteen months after the effective date of a certifi-
52 cate of eligibility with an effective date of June thirtieth, nineteen
53 hundred ninety-two or before, the recipient shall present evidence to
54 the department of finance demonstrating that the recipient has made
55 one-half of the minimum required expenditure. Not later than thirty-six
56 months after the effective date of such certificate, such recipient

1 shall present evidence to such department demonstrating that the recipi-
2 ent has made the minimum required expenditure. Not later than thirty
3 months after the effective date of a certificate of eligibility with an
4 effective date of July first, nineteen hundred ninety-two or after, the
5 recipient shall present evidence to the department of finance demon-
6 strating that the recipient has made one-half of the minimum required
7 expenditure. Such evidence shall be presented in the form and manner
8 prescribed by such department. The burden of proof shall be on the
9 recipient to show by clear and convincing evidence that the required
10 expenditures have been made. This subdivision shall not apply to the
11 recipient of a certificate of eligibility for construction of a new
12 building or structure that meets the requirements set forth in subdivi-
13 sion i of section 11-259 of this part in a new construction exemption
14 area.

15 e. A recipient of a certificate of eligibility for construction of a
16 new building or structure in a new construction exemption area shall
17 present evidence to the department of finance demonstrating that the
18 requirements of subdivision i of section 11-259 of this part have been
19 met. Such evidence shall be presented in the form and manner and at the
20 time prescribed by such department. The burden of proof shall be on the
21 recipient to show by clear and convincing evidence that such require-
22 ments have been met.

23 § 11-262 Conversion of property. a. Any recipient whose property is
24 the subject of a certificate of eligibility for commercial or renovation
25 construction work, and who, prior to the expiration of the benefit peri-
26 od, uses such property as industrial property, shall continue to receive
27 benefits for commercial or renovation construction work as the case may
28 be.

29 b. Any recipient whose property is the subject of a certificate of
30 eligibility for industrial construction work, and who, prior to the
31 expiration of the benefit period, uses such property as commercial prop-
32 erty, shall cease to be eligible for further exemption or abatement for
33 industrial construction work as of the last date to which such recipient
34 proves by clear and convincing evidence that such property was used as
35 industrial property, and shall pay with interest any taxes for which an
36 exemption or abatement was claimed after such date, except that:

37 (1) a recipient of a certificate of eligibility for industrial
38 construction work in a special exemption area who would have been eligi-
39 ble to receive a certificate of eligibility for commercial construction
40 work at the time such recipient applied for benefits shall continue to
41 receive an exemption for industrial construction; and

42 (2) a recipient of a certificate of eligibility for industrial
43 construction work in a regular exemption area who would have been eligi-
44 ble to receive a certificate of eligibility for commercial construction
45 work at the time such recipient applied for benefits shall, commencing
46 with the date of conversion to commercial property and continuing until
47 the expiration of the benefit period for commercial construction work,
48 receive any exemption which such recipient would have received in the
49 corresponding tax year pursuant to a certificate of eligibility for
50 commercial construction work; and

51 (3) a recipient of a certificate of eligibility for industrial
52 construction work in any area of the city on whose property at least
53 sixty-five per centum of the net square footage continues to be used or
54 held out for use for manufacturing activities after conversion to
55 commercial property, shall not be required to pay the pro rata share of

1 tax for which an exemption was claimed during the tax year in which such
2 conversion occurred.

3 c. Except as provided in subdivision d of this section, any recipient
4 whose property is the subject of a certificate of eligibility for
5 commercial, industrial or renovation construction work, and who uses
6 such property as residential property or for any restricted activity
7 prior to the expiration of the benefit period, shall cease to be eligi-
8 ble for further exemption, abatement or deferral as of the date such
9 property was first used as residential property or for any restricted
10 activity. In the case of property in an area that was designated as an
11 exemption area at the time the certificate of eligibility was issued,
12 such recipient shall pay with interest any taxes for which an exemption
13 was claimed after such date, including the pro rata share of tax for
14 which any exemption was claimed during the tax year in which such use
15 occurred. In the case of industrial property, such recipient shall pay
16 with interest any taxes for which an exemption or abatement was claimed
17 after such date, including the pro rata share of tax for which any
18 exemption or abatement was claimed during the tax year in which such use
19 occurred. In the case of property in an area that was designated as a
20 deferral area at the time the certificate of eligibility was issued, all
21 deferred tax payments on the property shall become due and payable im-
22 mediately.

23 d. Notwithstanding subdivision c of this section, any recipient whose
24 property is the subject of a certificate of eligibility for commercial
25 or renovation construction work with an effective date of July first,
26 nineteen hundred ninety-two or after, and who, prior to the expiration
27 of the benefit period, uses a portion of such property as residential
28 property, shall cease to be eligible for further exemption for commer-
29 cial or renovation construction work for that portion of such property
30 used as residential property as of the date such portion of the property
31 was first used as residential property. Such recipient shall pay, with
32 interest, any taxes for which an exemption was claimed after such date
33 attributable to that portion of the property used as residential proper-
34 ty, including the pro rata share of tax for which such exemption was
35 claimed during the tax year in which such use occurred. Such recipient
36 shall continue to receive an exemption for commercial or renovation
37 construction work for that portion of the property which continues to be
38 used as commercial property.

39 § 11-263 Administration of the benefit program. The department of
40 finance shall have, in addition to any other functions, powers and
41 duties which have been or may be conferred on it by law, the following
42 functions, powers and duties:

43 (1) To publicize the availability of benefits pursuant to this part
44 for industrial, commercial and renovation construction work.

45 (2) To receive and review applications for certificates of eligibil-
46 ity, issue such certificates where authorized pursuant to section 11-260
47 of this part, and record the issuance of such certificates as prescribed
48 in such section.

49 (3) To receive evidence of expenditures made for construction, and
50 where such expenditures do not equal the amount required to qualify for
51 exemption from or abatement or deferral of tax payments to take appro-
52 priate action, including but not limited to denying, reducing, suspend-
53 ing, terminating or revoking benefits pursuant to this part.

54 (4) To enter and inspect property to determine whether it is indus-
55 trial or commercial or mixed-use and to determine whether (a) any such
56 property is being used for any restricted use, or (b) any property which

1 is the subject of a certificate of eligibility for industrial
2 construction work is being used as commercial property, or (c) any
3 industrial or commercial property is being used as residential or mixed-
4 use property, or (d) all or part of the nonresidential portion of mixed-
5 use property is being used as residential property.

6 (5) To collect all real property taxes for which payment is deferred
7 pursuant to this part.

8 (6) To collect all real property taxes, with interest, due and owing
9 as a result of reduction, suspension, termination or revocation of any
10 exemption from or abatement or deferral of taxes granted pursuant to
11 this part.

12 (7) To make and promulgate regulations to carry out the purposes of
13 this part including, but not limited to, regulations requiring appli-
14 cants to publish notice of their applications, defining manufacturing
15 and commercial activities and specifying the nature of work for which
16 expenses may be included in the minimum required expenditure, provided,
17 however, that any regulation increasing the minimum required expenditure
18 shall not apply to any person who is a recipient on the effective date
19 of such regulation. Such regulations shall include a requirement that
20 with respect to the construction work recipients and their contractors
21 shall be equal opportunity employers and shall also provide that persons
22 employed in the construction work shall implement a training program for
23 economically disadvantaged persons enrolled or eligible to be enrolled
24 in training programs approved by the department of labor, with partic-
25 ular reference to city residents.

26 § 11-264 Tax lien; interest rate. a. All taxes plus interest required
27 to be paid retroactively pursuant to this part shall constitute a tax
28 lien as of the date it is determined such taxes and interest are owed.
29 All interest shall be calculated from the date the taxes would have been
30 due but for the exemption, abatement or deferral claimed pursuant to
31 this part at three per centum above the applicable rate of interest
32 imposed by the city generally for non-payment of real property tax on
33 such date.

34 b. All taxes for which payment is deferred pursuant to section 11-257
35 of this part shall constitute a tax lien as of the date they are due and
36 payable in accordance with the provisions of that section.

37 § 11-265 Penalties for non-compliance, false statements and omissions.

38 a. The department of finance may deny, reduce, suspend, revoke or termi-
39 nate any exemption from or abatement or deferral of tax payments pursu-
40 ant to this part whenever:

41 (1) a recipient fails to comply with the requirements of this part or
42 the rules and regulations promulgated by the department of finance
43 pursuant thereto; or

44 (2) an application, certificate, report or other document delivered by
45 an applicant or recipient hereunder contains a false or misleading
46 statement as to a material fact or omits to state any material fact
47 necessary in order to make the statements therein not false or mislead-
48 ing, and may declare any applicant or recipient who makes such false or
49 misleading statement or omission to be ineligible for future exemption,
50 abatement or deferral pursuant to this part for the same or other prop-
51 erty.

52 b. Notwithstanding any other law to the contrary, a recipient shall be
53 personally liable for any taxes owed pursuant to this part whenever such
54 recipient fails to comply with such law and rules or makes such false or
55 misleading statement or omission, and the department of finance deter-
56 mines that such act was due to the recipient's willful neglect, or that

1 under the circumstances such act constituted a fraud on the department
2 of finance or a buyer or prospective buyer of the property. The remedy
3 provided herein for an action in personam shall be in addition to any
4 other remedy or procedure for the enforcement of collection of delin-
5 quent taxes provided by any general, special or local law. Any lease
6 provision which obligates a tenant to pay taxes which become due because
7 of willful neglect or fraud by the recipient, or otherwise relieve or
8 indemnify the recipient from any personal liability arising hereunder,
9 shall be void as against public policy except where the imposition of
10 such taxes or liability is occasioned by actions of the tenant in
11 violation of the lease.

12 § 11-266 Code violations; suspension of benefits. a. If a court, or
13 the environmental control board of the preceding municipality with
14 respect to matters within its jurisdiction, finds that at the property
15 which is the subject of a certificate of eligibility there has been a
16 violation of any of the provisions of the building, fire and air
17 pollution control codes of the preceding municipality set forth in
18 subdivision b of this section, all benefits pursuant to such certificate
19 shall be suspended unless within one hundred eighty days after the
20 department of finance has sent notice of such finding to the recipient,
21 and all other persons having a financial interest in the property who
22 have filed a timely request for such notice in such form as may be
23 prescribed by the department of finance, the recipient submits to the
24 department of finance, certification from the department of buildings,
25 the fire department or the department of environmental protection
26 respectively that the underlying code violation has been cured. If the
27 recipient fails to submit the required certification within the one
28 hundred eighty day period, the period of suspension shall be effective
29 retroactively to the time of the finding by the court or the environ-
30 mental control board. The suspension of benefits shall continue until
31 the recipient submits to the department of finance the required certifi-
32 cation that the violation has been cured.

33 If the original finding of violation or the denial of certification is
34 appealed and a court or appropriate governmental agency finally deter-
35 mines that the finding of violation or denial of certification was
36 invalid, any benefits lost pursuant to this section to which the recipi-
37 ent was entitled shall be restored retroactively.

38 As applied to a recipient who is eligible for deferral of tax payments
39 pursuant to subdivision d of section 11-257 of this part, suspension of
40 benefits shall be deferred by operation of such section and interest at
41 the rate charged by the department of finance for overdue taxes shall be
42 charged on the amount of any tax payments already deferred by operation
43 of such section. The interest charged shall accrue from the beginning of
44 the period of suspension.

45 b. The provisions of subdivision a of this section shall apply to
46 violations of the following provision of the code of the preceding muni-
47 cipality:

- 48 (1) section 27-4260 of the preceding municipality;
- 49 (2) section 27-4265 of the preceding municipality;
- 50 (3) section 27-4267 of the preceding municipality;
- 51 (4) section 27-954 of the preceding municipality;
- 52 (5) section 27-339 of the preceding municipality;
- 53 (6) subdivision (c) of section 27-353 of the preceding municipality;
- 54 (7) paragraph twelve of subdivision (f) of section 27-972 of the
55 preceding municipality;

1 (8) paragraph ten of subdivision (g) of section 27-972 of the
2 preceding municipality;

3 (9) subdivision (c) of section 27-975 of the preceding municipality;

4 (10) subdivision (c) of section 27-989 of the preceding munici-
5 pality;

6 (11) the following provisions to the extent applicable to cabarets
7 as defined in article two of subchapter two of the building code of
8 the preceding municipality:

9 (a) section 27-542 of the preceding municipality;

10 (b) subparagraph d of paragraph two of subdivision (b) of section
11 27-547 of the preceding municipality;

12 (c) paragraph three of subdivision (a) of section 27-549 of the
13 preceding municipality;

14 (d) subdivision (b) of section 27-549 of the preceding municipality;

15 (12) section 27-127 of the preceding municipality when the violation
16 concerns an unsafe condition on a facade of a building which exceeds
17 six stories in height;

18 (13) section five hundred one of reference standard 13-1 of the
19 preceding municipality;

20 (14) section one thousand three of reference standard 13-1 of the
21 preceding municipality;

22 (15) paragraph six of subdivision (b) of section 24-178 of the
23 preceding municipality; and

24 (16) section 24-185 of the preceding municipality.

25 § 11-267 Annual report. The department of finance shall submit an
26 annual report to the council, on April first of each year, concerning
27 the status of the program established pursuant to this part and its
28 effects in the city, including information on certificates of eligibil-
29 ity issued and jobs created in each area where benefits are available.

30 CHAPTER 3

31 TAX LIENS AND TAX SALES

32 § 11-301 When taxes, assessments, sewer rents, sewer surcharges and
33 water rents to be liens on land assessed. All taxes and all assessments
34 and all sewer rents, sewer surcharges and water rents, and the interest
35 and charges thereon, which may be laid or may have heretofore been laid,
36 upon any real estate now in the city, shall continue to be, until paid,
37 a lien thereon, and shall be preferred in payment to all other charges.
38 The words "water rents" whenever they are used in this chapter shall
39 include uniform annual charges and extra and miscellaneous charges for
40 the supply of water, charges in accordance with meter rates, minimum
41 charges for the supply of water by meter, annual service charges and
42 charges for meters and their connections and for their setting, repair
43 and maintenance, penalties and fines and all lawful charges for the
44 supply of water imposed pursuant to the New York city municipal water
45 finance authority act, which is set forth in title two-A of article five
46 of the public authorities law. Charges for expense of meters, their
47 connections, setting, repair or maintenance shall not be due or become a
48 charge or lien on the premises where a water meter shall be installed or
49 against which a charge shall be made, until such charge shall have been
50 definitely fixed by the commissioner of environmental protection, and an
51 entry of the amount thereof shall have been made with the date of such
52 entry in the book in which the charges for water supplied by meter
53 against such premises are to be entered. A charge in accordance with
54 meter rates or minimum charges for the supply of water measured by
55 meter, and a service charge shall not be due or become a lien or charge
56 upon the premises where such meter is installed until an entry shall

1 have been made indicating that such premises are metered, with the date
2 of such entry in the book in which the charges for water by meter meas-
3 urement against such premises are to be entered. The words "sewer rents"
4 when used in this chapter shall mean any rents or charges imposed pursu-
5 ant to section 24-514 of the code of the preceding municipality or
6 pursuant to the New York city municipal water finance authority act,
7 which is set forth in title two-A of article five of the public authori-
8 ties law. The words "sewer surcharges" when used in this chapter shall
9 mean the charges imposed pursuant to section 24-523 of the code of the
10 preceding municipality or pursuant to the New York city municipal water
11 finance authority act, which is set forth in title two-A of article five
12 of the public authorities law. Whenever an increase in the amount of
13 uniform annual charges or extra or miscellaneous charges shall have been
14 made or a charge shall have been made for water services for any build-
15 ing completed subsequent to the first day of January in each year, the
16 amount of such increase of the charge or new charge for such new build-
17 ing shall not be due or become a lien or charge against the premises
18 until the amounts thereof shall have been entered with the date of such
19 entries, respectively, in the books in which the uniform annual charges
20 and extra or miscellaneous charges against such premises are to be
21 entered. The words "tax lien" when used in this chapter shall mean the
22 lien arising pursuant to the provisions of this chapter or pursuant to
23 the New York city municipal water finance authority act, which is set
24 forth in title two-A of article five of the public authorities law, as a
25 result of the nonpayment of taxes, assessments, sewer rents, sewer
26 surcharges, water rents, any other charges that are made a lien subject
27 to the provisions of this chapter, the costs of any advertisements and
28 notices given pursuant to this chapter, any other charges that are due
29 and payable, a surcharge pursuant to section 11-332 of this chapter if
30 the tax lien is sold, interest and penalties thereon and the right of
31 the city to receive such amounts. The words "tax lien certificate" when
32 used in this chapter shall mean the instrument evidencing a tax lien and
33 executed by the commissioner of finance or his or her designee at such
34 time as such lien is transferred to a purchaser upon sale of such lien
35 by the city.

36 § 11-302 Interest rates not to be reduced. The commissioner of
37 finance shall not reduce the rate of interest upon any taxes or assess-
38 ment below the amount fixed by law.

39 § 11-302.1 Error in record of payment of tax or assessment. (a) If the
40 records of the department of finance show a charge as paid due to a
41 misapplied payment or other error, and the department later corrects the
42 records, interest shall not be imposed until after the department (i)
43 corrects the error and (ii) sends a statement of account or other simi-
44 lar bill or notice stating the amount due and when the charge must be
45 paid to avoid the accrual of interest.

46 (b) The provisions of this section shall not apply to an installment
47 of tax or an assessment for which payment, made electronically, by
48 check, or by other means, was dishonored.

49 (c) The provisions of this section shall not apply where the error in
50 the records of the department was made as a result of fraud or other
51 criminal conduct by the taxpayer or any person acting on his or her
52 behalf or at his or her request.

53 § 11-303 Arrears to be provided for in assessment rolls. There shall
54 be ruled in the yearly assessment rolls of the taxes in each section or
55 ward, a column headed "arrears," in which the commissioner of finance
56 shall annually before any taxes for the year are collected, cause to be

1 entered the word "arrears" opposite to the ward, lot, town, block and
2 map numbers on which any arrears of taxes, sewer rents, sewer surcharges
3 or water rents shall be due, or on which any assessment shall remain
4 unpaid which was due or confirmed one month prior to the first of July,
5 then last past.

6 § 11-304 Bills for taxes to show arrears. There shall be ruled a
7 column for "arrears" in every bill rendered for taxes for lots on which
8 such arrears or assessments, sewer rents, sewer surcharges or water
9 rents, and interest and penalties thereon, may be due as aforesaid, or
10 may have been sold and yet be redeemable, in which shall be written in a
11 conspicuous place, "arrears". The columns for arrears indicate lots
12 sold for arrears, or to be sold therefor; arrears to be paid and lots
13 redeemed at the office of the city collector.

14 § 11-305 Commissioner of finance to publish notice of confirmation of
15 assessments. It shall be the duty of the commissioner of finance to
16 give public notice, by advertisement, for at least ten days, in the City
17 Record and as soon as practicable and within ten days after the confir-
18 mation of any assessment, that the same has been confirmed, specifying
19 the title of such assessment, and the date of its confirmation, and also
20 the date of entry in the record of titles of assessments kept in the
21 department of finance, addressed as a class to all persons, owners of
22 property affected by any such assessment, that unless the amount
23 assessed for benefit on any person or property shall be paid within
24 ninety days after the date of the entry of any such assessment, interest
25 shall be thereafter collected thereon as provided in section 11-306 of
26 this chapter.

27 § 11-306 Interest to be charged if assessments unpaid for ninety days;
28 payment in installments. If any assessment shall remain unpaid for the
29 period of ninety days after the date of the entry thereof on the record
30 of titles of assessments, it shall be the duty of the commissioner of
31 finance or his or her designee to charge, collect and receive interest
32 thereon, at the rate of seven percent per annum, to be calculated to the
33 date of payment from the date when such assessment became a lien as
34 provided by section three hundred fourteen of the New York city charter
35 in force at the time of the adoption of the New York city charter by
36 referendum in the year nineteen hundred sixty-one, provided, however,
37 that the city collector shall accept and credit as payments on account
38 of assessments now or hereafter levied against any parcel or plot of
39 property, such sums of money not less than twenty-five dollars or multi-
40 ples thereof in amount as may be tendered for payment on account of any
41 assessment now or hereafter levied against any property. Upon requis-
42 ition by the commissioner of finance for the assessed valuation of the
43 property affected by any assessment, the president of the tax commis-
44 sion, or any tax commissioner duly assigned by him or her, shall forth-
45 with certify the same to the commissioner of finance.

46 § 11-307 Payments in installments of assessments heretofore or here-
47 after confirmed. Upon the application in writing of the owner of a
48 parcel of real property affected by an unpaid assessment heretofore or
49 hereafter confirmed the amount of which is one hundred dollars or more,
50 the commissioner of finance shall divide the assessment upon such parcel
51 into fifteen parts or, if the application so requests, into five parts,
52 as nearly equal as may be, or if the amount of such assessment is fifty
53 dollars or more but less than one hundred dollars the commissioner of
54 finance shall divide the assessment upon such parcel into five parts as
55 nearly equal as may be. One part thereof in any event shall be due and
56 payable, and in each case as many more of such parts shall be due and

1 payable as years may have elapsed since the entry of such original
2 assessment for collection. Such parts thereof with interest at the rate
3 of seven percent per annum on the amount of the assessment unpaid shall
4 be paid at the time of application as a condition of the extension of
5 time of payment of the remainder as provided in this section. Upon
6 payment of such parts and interests, the balance of such assessments
7 shall cease to be a lien upon such real property except as hereinafter
8 provided; and the remaining parts shall be paid in annual installments
9 as herein provided. Of such installments the first, with interest at
10 the rate of four percent thereon, and on the installments thereafter to
11 become due, from the date of payment of the parts of such assessment
12 paid as hereinbefore provided, shall become due and payable and be a
13 lien on the real property assessed, on the next ensuing anniversary of
14 the date of entry of the assessment in the record of titles of assess-
15 ments confirmed; and one, with interest at the rate of four percent per
16 annum thereon and on the installments thereafter to become due shall
17 become due and payable and be a lien upon the real property assessed,
18 annually thereafter. After the time herein specified for annual
19 installments and interest to become due, the amount of the lien thereon
20 shall bear interest at the rate of seven percent per annum. Any
21 installment assessment shall not be further divided into installments.
22 The first installment of an assessment divided within the ninety-day
23 period provided by section 11-306 of this chapter during which assess-
24 ment may be paid without interest shall not be subject to interest, but
25 the second installment with interest at the rate of four percent per
26 annum from the original date of entry shall become due and payable and
27 be a lien upon the real property on the anniversary date of entry of the
28 assessment and the remaining installments with interest shall become due
29 and payable and be a lien on the real property as hereinbefore provided.
30 The installments not due with interest at the rate of four percent per
31 annum to the date of payment may be paid at any time. The provisions of
32 this chapter with reference to the sale of tax liens shall apply to the
33 several unpaid installments and the interest thereon in the same manner
34 as if each installment and the interest thereon had been imposed as an
35 assessment payable in one payment, at the time such installment became a
36 lien. In the event of the acquisition by condemnation by the city for
37 public purposes any property upon which there are installments not due,
38 such installments shall become due as of the date of the entry of the
39 final order of the supreme court or the confirmation of the report of
40 the commissioners in the condemnation proceedings, and shall be set off
41 against an award that may be made for the property acquired.

42 When an award for damage shall accrue to the same person who is or was
43 at the time the assessment was confirmed liable for the assessments for
44 benefit on the abutting property in the same proceedings, only the
45 portion of the assessment in excess of such award may be considered in
46 levying in installments under the provisions of this section. Except as
47 provided in this section, no such annual installment shall be a lien or
48 deemed to be an encumbrance upon the title to the real property assessed
49 until it becomes due as herein provided.

50 § 11-308 Apportionment of assessment. If a sum of money in gross has
51 been or shall be assessed upon any lands or premises in the city, any
52 person or persons claiming any divided or undivided part thereof may pay
53 such part of the sums of money so assessed, also of the interest and
54 charges due or charged thereon, as the commissioner of finance may deem
55 to be just and equitable. The remainder of the sum of money so
56 assessed, together with the interest and charges, shall be a lien upon

1 the residue of the land and premises only, and the tax lien upon such
2 residue may be sold in pursuance of the provisions of this chapter, to
3 satisfy the residue of such assessment, interest, or charges thereon, in
4 the same manner as though the residue of such assessment had been
5 imposed upon such residue of such land or premises.

6 § 11-309 Notifying taxpayers of assessments. a. The owner of any lot,
7 piece or parcel of land in the city of Staten Island or any person
8 interested in such lot, piece or parcel, may file with the department of
9 finance, a statement containing a brief description of such land,
10 together with the section, block and lot number thereof, or such other
11 identifying information as at the time is established by the department
12 of finance, and a statement of the applicant's interest therein, togeth-
13 er with a written request that such lot, piece or parcel of land be
14 registered in the name of the applicant. In such statement the applicant
15 shall designate a post office address to which notifications addressed
16 to such applicant shall be sent. A brief description of such lot, piece
17 or parcel of land corresponding to the description thereof in the state-
18 ment so filed, together with the name of the applicant and his or her
19 post office address and the date of such application, shall thereupon be
20 registered in the department of finance.

21 b. As soon as any assessment for a local improvement shall have been
22 confirmed, including assessments confirmed by a court of record, and the
23 list thereof shall have been entered and filed in the department of
24 finance, such assessment list shall be examined and thereupon, within
25 twenty days after such entry there shall be mailed a notice addressed to
26 each person in whose name any lot, piece or parcel of land, affected by
27 such assessment, is registered, at the post office address registered in
28 the records of the department of finance, which notice shall contain the
29 brief description of the lot, piece or parcel of land registered in the
30 name of the person to whom such notice is addressed, together with the
31 amount assessed thereon, date of entry, and title of the improvement for
32 which such assessment is made, and a statement of the rate of interest
33 or penalty imposed for the nonpayment of such assessment, and the date
34 from which the interest or penalty will be computed. Failure to comply
35 with the provisions herein however, shall in no manner affect the valid-
36 ity or collectability of any assessment heretofore or hereafter
37 confirmed, nor shall any claim arise or exist against the comptroller,
38 the commissioner of finance, or any officer of the city by reason of
39 such failure.

40 c. The commissioner of finance or his or her designee shall for the
41 purpose of this section provide appropriate records for each section of
42 the city, included within the respective boroughs, as the same shall
43 appear upon the tax maps of the city.

44 § 11-310 Water charges and sewer rents to be transmitted to commis-
45 sioner of finance. The commissioner of environmental protection shall
46 cause to be transmitted to the commissioner of finance an account of all
47 water rents, charges, fines and penalties and all sewer rents, charges,
48 fines and penalties as the same become due or accrue.

49 § 11-311 Sewer surcharges to be transmitted to commissioner of
50 finance. The commissioner of environmental protection shall cause to be
51 transmitted to the commissioner of finance an account of all sewer
52 surcharges, fines and penalties as the same become due or accrue.

53 § 11-312 Water rents; when payable; penalty for nonpayment. a. One-
54 half (i) the uniform annual water charges and extra and miscellaneous
55 charges for water not metered and (ii) annual service charges shall
56 become due and payable, in advance if entered on January first, nineteen

1 hundred seventy-four for the period commencing January first, nineteen
2 hundred seventy-four and ending June thirtieth, nineteen hundred seven-
3 ty-four. Commencing on June thirtieth, nineteen hundred seventy-four,
4 uniform annual water charges and extra and miscellaneous charges for
5 water not metered and annual service charges shall be due and payable in
6 advance on the thirtieth day of June in each year, if entered. If any of
7 such rents and charges which become due and payable on or before June
8 thirtieth, nineteen hundred seventy-six shall not have been paid to the
9 commissioner of finance or his or her designee on or before the last day
10 of the month following the month of entry, it shall be the duty of the
11 commissioner of finance or his or her designee to charge, collect and
12 receive interest thereon to be calculated at the rate of seven percent
13 per annum from the date when such rents and charges became due and paya-
14 ble to December thirty-first, nineteen hundred seventy-six, and at the
15 rate of fifteen percent per annum from January first, nineteen hundred
16 seventy-seven to the date of payment. If any of such rents and charges
17 which shall become due and payable on or after June thirtieth, nineteen
18 hundred seventy-seven are not paid to the commissioner of finance or his
19 or her designee on or before the last day of the month following the
20 month of entry, it shall be the duty of the commissioner of finance or
21 his or her designee to charge, collect and receive interest thereon to
22 be calculated at the rate of fifteen percent per annum from the date
23 when such rents and charges became due and payable to the date of
24 payment. If not so entered and payable, but entered at any time subse-
25 quent thereto, they shall be due and payable when entered and notice
26 thereof shall be mailed within five days of such entry to the premises
27 against which they are imposed addressed to either the owner or the
28 occupant and, if entered on or before December thirty-first, nineteen
29 hundred seventy-six but not paid on or before the last day of the month
30 following the month of entry, it shall be the duty of the commissioner
31 of finance or his or her designee to charge, collect and receive inter-
32 est thereon to be calculated at the rate of seven percent per annum from
33 the date of entry to December thirty-first, nineteen hundred seventy-
34 six, and at the rate of fifteen percent per annum from January first,
35 nineteen hundred seventy-seven to the date of payment; if entered on or
36 after January first, nineteen hundred seventy-seven but not paid on or
37 before the last day of the month following the month of entry, it shall
38 be the duty of the commissioner of finance or his or her designee to
39 charge, collect and receive interest thereon to be calculated at the
40 rate of fifteen percent per annum from the date of entry to the date of
41 payment.

42 b. All charges for meters and their connections and for their setting,
43 repair and maintenance, and all charges in accordance with meter rates
44 for supply of water measured by meter, including minimum charges for the
45 supply of water measured by meter, shall be due and payable when
46 entered, and notice thereof shall be mailed within five days of such
47 entry stating the amount due and the nature of the rent or charge to the
48 last known address of the person whose name appears on the record of
49 such rents and charges as being the owner, occupant or agent or, where
50 no name appears, to the premises addressed to either the owner or the
51 occupant, and if entered on or before December thirty-first, nineteen
52 hundred seventy-six but not paid on or before the last day of the month
53 following the month of entry, it shall be the duty of the commissioner
54 of finance or his or her designee to charge, collect and receive inter-
55 est thereon to be calculated at the rate of seven percent per annum from
56 the date of entry to December thirty-first, nineteen hundred seventy-

1 six, and at the rate of fifteen percent per annum from January first,
2 nineteen hundred seventy-seven to the date of payment; if entered on or
3 after January first, nineteen hundred seventy-seven but not paid on or
4 before the thirtieth day following the date of entry, it shall be the
5 duty of the commissioner of finance or his or her designee to charge,
6 collect and receive interest thereon to be calculated at the rate of
7 fifteen percent per annum from the date of entry to the date of payment.

8 § 11-313 Sewer rents; when payable; penalty for nonpayment. a. As used
9 in this section:

10 1. The term "metered premises" shall mean premises, or any part there-
11 of, (a) to which water is supplied by the municipal water supply system
12 or by a private water company, and (b) at which the quantity of water
13 supplied is measured by a water meter.

14 2. The term "unmetered premises" shall mean premises, or any part
15 thereof, (a) to which water is supplied by the municipal water supply
16 system or by a private water company, and (b) at which the quantity of
17 water supplied is not measured by a water meter.

18 b. The sewer rents charged against metered premises in accordance with
19 the provisions of paragraphs two and three of subdivision b of section
20 24-514 of the code of the preceding municipality and the rules duly
21 promulgated pursuant to such section, including the minimum rents for
22 the use of the sewer system, charged pursuant to such section and rules,
23 and the sewer rents charged against any premises in accordance with the
24 provisions of paragraphs four and five of subdivision b of section
25 24-514 of the code of the preceding municipality and rules duly promul-
26 gated pursuant to such section, including the minimum rents for the use
27 of the sewer system, charged pursuant to such section and rules shall
28 become due and shall become a charge or lien on the premises when the
29 amount thereof shall have been fixed by the commissioner of environ-
30 mental protection, and an entry thereof shall have been made against
31 such premises with the date of such entry, in the book in which sewer
32 rents are to be entered. The sewer surcharges charged against any prem-
33 ises pursuant to section 24-523 of the code of the preceding municipi-
34 pality shall become due and shall become a charge or lien on the prem-
35 ises when the amount thereof shall have been fixed by the commissioner
36 of environmental protection and an entry thereof shall have been made
37 against such premises in the book in which sewer surcharges are to be
38 entered. A notice thereof, stating the amount due and the nature of the
39 rent, surcharge or charge shall be mailed, within five days after such
40 entry, to the last known address of the person whose name appears upon
41 the records in the office of the department of finance as being the
42 owner, occupant or agent or, where no name appears, to the premises
43 addressed to either the owner or the occupant. If such rent, surcharge
44 or charge shall have been entered on or before December thirty-first,
45 nineteen hundred seventy-six but not paid on or before the last day of
46 the month following the month of entry, it shall be the duty of the
47 commissioner of finance or his or her designee to charge, collect and
48 receive interest thereon to be calculated at the rate of seven percent
49 per annum from the date of entry to December thirty-first, nineteen
50 hundred seventy-six, and at the rate of fifteen percent per annum from
51 January first, nineteen hundred seventy-seven to the date of payment; if
52 entered on or after January first, nineteen hundred seventy-seven but
53 not paid on or before the thirtieth day following the date of entry, it
54 shall be the duty of the commissioner of finance or his or her designee
55 to charge, collect and receive interest thereon to be calculated at the
56 rate of fifteen percent per annum from the date of entry to the date of

1 payment. The rents or charges for the use of the sewer system charged
2 during any specified period of time pursuant to the provisions of
3 section 24-514 of the code of the preceding municipality and the rules
4 promulgated thereunder shall be computed, in accordance with the
5 provisions of such section and the rules duly promulgated thereunder, on
6 the basis of water rents or charges computed for the same period.

7 c. Sewer rents charged against unmetered premises in accordance with
8 the provisions of paragraphs two and three of subdivision b of section
9 24-514 of the code of the preceding municipality and the rules duly
10 promulgated pursuant to such section, for the use of the sewer system
11 during the one-year period commencing on the first day of July of each
12 year, shall be due and payable and shall become a charge or lien on the
13 premises on the first day of January following such first day of July,
14 if entered, except that commencing on June thirtieth, nineteen hundred
15 seventy-four such sewer rents shall be due and payable in advance on the
16 thirtieth day of June in each year, if entered, and shall become a
17 charge or lien on the premises on such date. If any of such rents or
18 charges which became due and payable on or before June thirtieth, nine-
19 teen hundred seventy-six shall not have been paid to the commissioner of
20 finance or his or her designee within thirty days after such first day
21 of January, or, commencing on the thirtieth day of June, nineteen
22 hundred seventy-four, on or before the last day of the month following
23 the month of entry, it shall be the duty of the commissioner of finance
24 or his or her designee to charge, collect and receive interest thereon
25 to be calculated at the rate of seven percent per annum from the date
26 when such charges became due and payable to December thirty-first, nine-
27 teen hundred seventy-six, and at the rate of fifteen percent per annum
28 from January first, nineteen hundred seventy-seven to the date of
29 payment. If any of such rents or charges which shall become due and
30 payable on or after June thirtieth, nineteen hundred seventy-seven are
31 not paid to the commissioner of finance or his or her designee on or
32 before the last day of the month following the month of entry, it shall
33 be the duty of the commissioner of finance or his or her designee to
34 charge, collect and receive interest thereon to be calculated at the
35 rate of fifteen percent per annum from the date when such rents or
36 charges became due and payable to the date of payment. If not so entered
37 and payable, but entered at any time subsequent thereto, they shall be
38 due and payable and shall become a charge or lien on the premises when
39 entered and notice thereof shall be mailed within five days after such
40 entry, to the last known address of the person whose name appears upon
41 the records in the department of finance as the owner or the occupant or
42 if no name appears, to the premises addressed to either the owner or
43 occupant. If any of such rents or charges which were entered on or
44 before December thirty-first, nineteen hundred seventy-six but not paid
45 on or before the last day of the month following the month of entry, it
46 shall be the duty of the commissioner of finance or his or her designee
47 to charge, collect and receive interest thereon to be calculated at the
48 rate of seven percent per annum from the date of entry to December thir-
49 ty-first, nineteen hundred seventy-six, and at the rate of fifteen
50 percent per annum from January first, nineteen hundred seventy-seven to
51 the date of payment; if entered on or after January first, nineteen
52 hundred seventy-seven but not paid on or before the last day of the
53 month following the month of entry, it shall be the duty of the commis-
54 sioner of finance or his or her designee to charge, collect and receive
55 interest thereon to be calculated at the rate of fifteen percent per
56 annum from the date of entry to the date of payment. The sewer rents

1 charged against unmetered premises for the use of the sewer system
2 during the one-year period commencing on the first day of July of each
3 year shall be computed in accordance with the provisions of section
4 24-514 of the code of the preceding municipality and the rules duly
5 promulgated thereunder, upon the basis of water rents or charges
6 computed for the same period.

7 d. Whenever an increase in the amount of the sewer rent charged
8 against unmetered premises shall have been made or a charge shall have
9 been made for sewer services for any building completed subsequent to
10 the first day of July in each year, the amount of such increase of the
11 charge or new charge for such new building shall not be due or become a
12 lien or charge against the premises until the amounts thereof shall have
13 been entered with the date of such entries, respectively, in the books
14 in which sewer rents charged against such premises are to be entered.

15 e. No later than the twenty-fifth day of May in each year, the banking
16 commission shall transmit a written recommendation to the council of a
17 proposed interest rate to be charged for nonpayment of sewer rents. In
18 making such recommendations the commission shall consider the prevailing
19 interest rates charged for commercial loans extended to prime borrowers
20 by commercial banks operating in the city and shall propose a rate of at
21 least six per centum per annum greater than such rates. The council may
22 by resolution adopt an interest rate to be charged for nonpayment of
23 sewer rents pursuant to section 11-224 of the code and, for nonpayment
24 of sewer rents that become due and payable on or after July first, two
25 thousand five, pursuant to section 11-224.1 of the code, and may specify
26 in such resolution the date on which such interest rate is to take
27 effect.

28 § 11-314 Notice of rules and regulations; penalty for nonpayment;
29 water supply cut off. The rates and charges for supply of water, the
30 annual service charges and minimum charges, the sewer rents, the sewer
31 surcharges, the rules and regulations concerning the use of water, all
32 other rules and regulations affecting users of water or concerning
33 charges for supply of water, restrictions of the use of water, installa-
34 tion of meters, and all rules and regulations affecting property
35 connected with the sewer system, penalties and fines for violations of
36 rules and regulations shall be printed on each bill and permit so far as
37 in the judgment of the commissioner of environmental protection they are
38 applicable. This section and such printing and the printing of this
39 section on such bills and permits shall be sufficient notice to owners,
40 tenants or occupants of premises to authorize the imposition and recov-
41 ery of any charges, surcharges and fines imposed under such rules and
42 regulations and of any penalties imposed in pursuance of this chapter in
43 addition to cutting off the supply of water. Where water charges payable
44 in advance or sewer rents or charges payable as provided in subdivision
45 c of section 11-313 of this chapter, are not paid within the period
46 covered by such charges or rents, and a notice of such nonpayment is
47 mailed by the commissioner of finance to the premises addressed to
48 "owner or occupant," the commissioner of environmental protection may
49 shut off the supply of water to such premises. Where water charges not
50 payable in advance or sewer rents, sewer surcharges or charges payable
51 as provided in subdivisions b and d of section 11-313 of this chapter
52 have been made by the department and remain unpaid for more than thirty
53 days or where the commissioner of environmental protection has certified
54 that there is a flagrant and continued violation of a provision or
55 provisions of section 24-523 of the code or of any rule or regulation
56 promulgated pursuant thereto or of any order of the commissioner of

1 environmental protection issued pursuant thereto, after notice thereof
2 mailed to the premises addressed to "owner or occupant," the commission-
3 er of environmental protection may shut off the supply of water to the
4 premises.

5 § 11-315 Enforcement of collection of sewer rents, sewer surcharges
6 and water rents. Sewer rents, sewer surcharges, charges, penalties and
7 fines, and interest thereon, and water rents, charges, penalties and
8 fines, and interest thereon, shall after they are payable to the commis-
9 sioner of finance or his or her designee be enforced in the manner
10 provided in this chapter and chapter four of this title. In addition to
11 collecting sewer rents, sewer surcharges, charges, penalties and fines
12 and interest thereon and water rents, charges, penalties and fines and
13 interest thereon in the manner provided in this chapter and chapter four
14 of this title, the city may maintain an action for their recovery
15 against the person for whose benefit or by whom the water is taken or
16 used or for whose benefit or by whom sewer service is used.

17 § 11-316 Bills of arrears of taxes, assessments, sewer rents, sewer
18 surcharges and water rents, any other charges that are made a lien
19 subject to the provisions of this chapter, and interest and penalties
20 thereon to be furnished when requested. The commissioner of finance or
21 his or her designee, upon the written request of the owner, the proposed
22 vendee under a contract of sale, a mortgagee, any person having a vested
23 or contingent interest in any lot or lots or their duly authorized
24 agent, or any person who has made a filing pursuant to section 11-309 of
25 this chapter shall furnish a bill of all arrears of taxes on any lot or
26 lots due prior to the first of September, then last past, of sewer
27 rents, sewer surcharges and water rents, assessments, any other charges
28 that are made a lien subject to the provisions of this chapter, and
29 interest and penalties thereon, which are due and payable. Upon the
30 payment of such bill which shall be called a bill of arrears the receipt
31 of the commissioner of finance or his or her designee thereon shall be
32 conclusive evidence of such payment. The commissioner of finance or his
33 or her designee shall cause to be kept an account of amounts so
34 collected, and the certificate of the commissioner of finance or his or
35 her designee, that there are no tax liens on such lot or lots, shall
36 forever free such lot or lots from all liens of taxes, sewer rents,
37 sewer surcharges or water rents, assessments, any other charges that are
38 made a lien subject to the provisions of this chapter, and interest and
39 penalties thereon that are due and payable prior to the date of such
40 receipt or certificate, but not from the lien of any tax lien duly sold
41 and not theretofore satisfied.

42 § 11-317 Fees for searches to be added to bills. Fees for such search-
43 es shall be included in the bills mentioned in section 11-316 of this
44 chapter, and also charges for certificates, which shall be given by the
45 commissioner of finance or his or her designee respecting lots on which
46 there may be no arrears when searches are required. Such fees shall be
47 regulated by local law.

48 § 11-318 Fee for certified search and bill of arrears. A fee of twen-
49 ty-five dollars shall be paid to and collected by the commissioner of
50 finance or his or her designee on his or her furnishing a certified
51 search and bill of arrears on each lot or piece of property mentioned or
52 referred to in the written request therefor. The commissioner of finance
53 shall be authorized to waive or reduce such fee in connection with any
54 sale of a tax lien or tax liens pursuant to this chapter.

55 § 11-319 Sales of tax liens. a. A tax lien or tax liens on a property
56 or any component of the amount thereof may be sold by the city as

1 authorized by subdivision b of this section, when such tax lien or tax
2 liens shall have remained unpaid in whole or in part for one year,
3 provided, however, that a tax lien or tax liens on any class one proper-
4 ty or any class two property that is a residential condominium or resi-
5 dential cooperative, as such classes of property are defined in subdivi-
6 sion one of section eighteen hundred two of the real property tax law,
7 may be sold by the city only when the real property tax component of
8 such tax lien or tax liens shall have remained unpaid in whole or in
9 part for three years and, in the case of any such class one property
10 that is not vacant land or any such class two property that is a resi-
11 dential condominium or residential cooperative, as such classes of prop-
12 erty are defined in subdivision one of section eighteen hundred two of
13 the real property tax law, equals or exceeds the sum of five thousand
14 dollars, or, in the case of any class two residential property owned by
15 a company organized pursuant to article eleven of the private housing
16 finance law that is not a residential condominium or a residential coop-
17 erative, as such classes of property are defined in subdivision one of
18 section eighteen hundred two of the real property tax law, for two
19 years, and equals or exceeds the sum of five thousand dollars, or, in
20 the case of abandoned class one property or abandoned class two property
21 that is a residential condominium or residential cooperative, for eigh-
22 teen months, and after such sale, shall be transferred, in the manner
23 provided by this chapter, and provided, further, however, that (i) the
24 real property tax component of such tax lien may not be sold pursuant to
25 this subdivision on any: (A) residential real property in class one that
26 is receiving an exemption pursuant to section 11-245.3 or 11-245.4 of
27 this title, or pursuant to section four hundred fifty-eight of the real
28 property tax law with respect to real property purchased with payments
29 received as prisoner of war compensation from the United States govern-
30 ment, or pursuant to paragraph (b) or (c) of subdivision two of section
31 four hundred fifty-eight-a of the real property tax law, or where the
32 owner of such residential real property in class one is receiving bene-
33 fits in accordance with department of finance memorandum 05-3, or any
34 successor memorandum thereto, relating to active duty military person-
35 nel, or where the owner of such residential real property in class one
36 has been allowed a credit pursuant to subsection (e) of section six
37 hundred six of the tax law for the calendar year in which the date of
38 the first publication, pursuant to subdivision a of section 11-320 of
39 this chapter, of the notice of sale, occurs or for the calendar year
40 immediately preceding such date; or (B) real property that was granted
41 an exemption pursuant to section four hundred twenty-a, four hundred
42 twenty-b, four hundred forty-six, or four hundred sixty-two of the real
43 property tax law in one of the two fiscal years preceding the date of
44 such sale, provided that: (1) such exemption was granted to such real
45 property upon the application of a not-for-profit organization that owns
46 such real property on or after the date on which such real property was
47 conveyed to such not-for-profit organization; (2) the real property tax
48 component of such lien arose on or after the date on which such real
49 property was conveyed to such not-for-profit organization; and (3) such
50 not-for-profit organization is organized or conducted for one of the
51 purposes described in paragraph a or paragraph b of subdivision one of
52 section 11-246 of this title, and (ii) the sewer rents component, sewer
53 surcharges component or water rents component of such tax lien may not
54 be sold pursuant to this subdivision on any one family residential real
55 property in class one or on any two or three family residential real
56 property in class one that is receiving an exemption pursuant to section

1 11-245.3 or 11-245.4 of this title, or pursuant to section four hundred
2 fifty-eight of the real property tax law with respect to real property
3 purchased with payments received as prisoner of war compensation from
4 the United States government, or pursuant to paragraph (b) or (c) of
5 subdivision two of section four hundred fifty-eight-a of the real prop-
6 erty tax law, or where the owner of any two or three family residential
7 real property in class one is receiving benefits in accordance with
8 department of finance memorandum 05-3, or any successor memorandum ther-
9 eto, relating to active duty military personnel, or where the owner of
10 any two or three family residential real property in class one has been
11 allowed a credit pursuant to subsection (e) of section six hundred six
12 of the tax law for the calendar year in which the date of the first
13 publication, pursuant to subdivision a of section 11-320 of this chap-
14 ter, of the notice of sale, occurs or for the calendar year immediately
15 preceding such date. A tax lien or tax liens on any property classified
16 as a class two property, except a class two property that is a residen-
17 tial condominium or residential cooperative, or a class two residential
18 property owned by a company organized pursuant to article eleven of the
19 private housing finance law that is not a residential condominium or a
20 residential cooperative, or class three property, as such classes of
21 property are defined in subdivision one of section eighteen hundred two
22 of the real property tax law, shall not be sold by the city unless such
23 tax lien or tax liens include a real property tax component as of the
24 date of the first publication, pursuant to subdivision a of section
25 11-320 of this chapter, of the notice of sale. Notwithstanding any
26 provision of this subdivision to the contrary, any such tax lien or tax
27 liens that remain unpaid in whole or in part after such date may be sold
28 regardless of whether such tax lien or tax liens include a real property
29 tax component. A tax lien or tax liens on a property classified as a
30 class four property, as such class of property is defined in subdivision
31 one of section eighteen hundred two of the real property tax law, shall
32 not be sold by the city unless such tax lien or tax liens include a real
33 property tax component or sewer rents component or sewer surcharges
34 component or water rents component or emergency repair charges compo-
35 nent, where such emergency repair charges accrued on or after January
36 first, two thousand six and are made a lien pursuant to section 27-2144
37 of this code, as of the date of the first publication, pursuant to
38 subdivision a of section 11-320 of this chapter, of the notice of sale,
39 provided, however, that any tax lien or tax liens that remain unpaid in
40 whole or in part after such date may be sold regardless of whether such
41 tax lien or tax liens include a real property tax component, sewer rents
42 component, sewer surcharges component, water rents component or emergen-
43 cy repair charges component. For purposes of this subdivision, the words
44 "real property tax" shall not include an assessment or charge upon prop-
45 erty imposed pursuant to section 25-411 of this code. A sale of a tax
46 lien or tax liens shall include, in addition to such lien or liens that
47 have remained unpaid in whole or in part for one year, or, in the case
48 of any class one property or class two property that is a residential
49 condominium or residential cooperative, when the real property tax
50 component of such lien or liens has remained unpaid in whole or in part
51 for three years, or, in the case of any class two residential property
52 owned by a company organized pursuant to article eleven of the private
53 housing finance law that is not a residential condominium or a residen-
54 tial cooperative, when the real property tax component of such lien or
55 liens has remained unpaid in whole or in part for two years, and equals
56 or exceeds the sum of five thousand dollars, any taxes, assessments,

1 sewer rents, sewer surcharges, water rents, any other charges that are
2 made a lien subject to the provisions of this chapter, the costs of any
3 advertisements and notices given pursuant to this chapter, any other
4 charges that are due and payable, a surcharge pursuant to section 11-332
5 of this chapter, and interest and penalties thereon or such component of
6 the amount thereof as shall be determined by the commissioner of
7 finance. The commissioner of finance may promulgate rules defining
8 "abandoned" property, as such term is used in this subdivision.

9 a-1. A subsequent tax lien or tax liens on a property or any component
10 of the amount thereof may be sold by the city pursuant to this chapter,
11 provided, however, that notwithstanding any provision in this chapter to
12 the contrary, such tax lien or tax liens may be sold regardless of
13 whether such tax lien or tax liens have remained unpaid in whole or in
14 part for one year and, notwithstanding any provision in this chapter to
15 the contrary, in the case of any class one property or class two proper-
16 ty that is a residential condominium or residential cooperative or,
17 beginning January first, two thousand twelve, in the case of any class
18 two residential property owned by a company organized pursuant to arti-
19 cle eleven of the private housing finance law that is not a residential
20 condominium or a residential cooperative, such tax lien or tax liens may
21 be sold if the real property tax component of such tax lien or tax liens
22 has remained unpaid in whole or in part for one year, and provided,
23 further, however, that (i) the real property tax component of such tax
24 lien may not be sold pursuant to this subdivision on any residential
25 real property in class one that is receiving an exemption pursuant to
26 section 11-245.3 or 11-245.4 of this title, or pursuant to section four
27 hundred fifty-eight of the real property tax law with respect to real
28 property purchased with payments received as prisoner of war compen-
29 sation from the United States government, or pursuant to paragraph (b)
30 or (c) of subdivision two of section four hundred fifty-eight-a of the
31 real property tax law, or where the owner of such residential real prop-
32 erty in class one is receiving benefits in accordance with department of
33 finance memorandum 05-3, or any successor memorandum thereto, relating
34 to active duty military personnel, or where the owner of such residen-
35 tial real property in class one has been allowed a credit pursuant to
36 subsection (e) of section six hundred six of the tax law for the calen-
37 dar year in which the date of the first publication, pursuant to subdi-
38 vision a of section 11-320 of this chapter, of the notice of sale,
39 occurs or for the calendar year immediately preceding such date and (ii)
40 the sewer rents component, sewer surcharges component or water rents
41 component of such tax lien may not be sold pursuant to this subdivision
42 on any one family residential real property in class one or on any two
43 or three family residential real property in class one that is receiving
44 an exemption pursuant to section 11-245.3 or 11-245.4 of this title, or
45 pursuant to section four hundred fifty-eight of the real property tax
46 law with respect to real property purchased with payments received as
47 prisoner of war compensation from the United States government, or
48 pursuant to paragraph (b) or (c) of subdivision two of section four
49 hundred fifty-eight-a of the real property tax law, or where the owner
50 of any two or three family residential real property in class one is
51 receiving benefits in accordance with department of finance memorandum
52 05-3, or any successor memorandum thereto, relating to active duty mili-
53 tary personnel, or where the owner of any two or three family residen-
54 tial real property in class one has been allowed a credit pursuant to
55 subsection (e) of section six hundred six of the tax law for the calen-
56 dar year in which the date of the first publication, pursuant to subdi-

1 vision a of section 11-320 of this chapter, of the notice of sale,
2 occurs or for the calendar year immediately preceding such date. For
3 purposes of this subdivision, the term "subsequent tax lien or tax
4 liens" shall mean any tax lien or tax liens on property that become such
5 on or after the date of sale of any tax lien or tax liens on such prop-
6 erty that have been sold pursuant to this chapter, provided that the
7 prior tax lien or tax liens remain unpaid as of the date of the first
8 publication, pursuant to subdivision a of section 11-320 of this chap-
9 ter, of the notice of sale of the subsequent tax lien or tax liens. A
10 subsequent tax lien or tax liens on any property classified as a class
11 two property, except a class two property that is a residential condo-
12 minium or residential cooperative, or a class two residential property
13 owned by a company organized pursuant to article eleven of the private
14 housing finance law that is not a residential condominium or a residen-
15 tial cooperative, or class three property, as such classes of property
16 are defined in subdivision one of section eighteen hundred two of the
17 real property tax law, shall not be sold by the city unless such tax
18 lien or tax liens include a real property tax component as of the date
19 of the first publication, pursuant to subdivision a of section 11-320 of
20 this chapter, of the notice of sale. Notwithstanding any provision of
21 this subdivision to the contrary, any such tax lien or tax liens that
22 remain unpaid in whole or in part after such date may be sold regardless
23 of whether such tax lien or tax liens include a real property tax compo-
24 nent. A subsequent tax lien or tax liens on a property classified as a
25 class four property, as such class of property is defined in subdivision
26 one of section eighteen hundred two of the real property tax law, shall
27 not be sold by the city unless such tax lien or tax liens include a real
28 property tax component or sewer rents component or sewer surcharges
29 component or water rents component or emergency repair charges compo-
30 nent, where such emergency repair charges accrued on or after January
31 first, two thousand six and are made a lien pursuant to section 27-2144
32 of this code, as of the date of the first publication, pursuant to
33 subdivision a of section 11-320 of this chapter, of the notice of sale,
34 provided, however, that any tax lien or tax liens that remain unpaid in
35 whole or in part after such date may be sold regardless of whether such
36 tax lien or tax liens include a real property tax component, sewer rents
37 component, sewer surcharges component, water rents component or emergen-
38 cy repair charges component. For purposes of this subdivision, the words
39 "real property tax" shall not include an assessment or charge upon prop-
40 erty imposed pursuant to section 25-411 of this code. Nothing in this
41 subdivision shall be deemed to limit the rights conferred by section
42 11-332 of this chapter on the holder of a tax lien certificate with
43 respect to a subsequent tax lien.

44 a-2. In addition to any sale authorized pursuant to subdivision a or
45 subdivision a-1 of this section and notwithstanding any provision of
46 this chapter to the contrary, beginning on December first, two thousand
47 seven, the water rents, sewer rents and sewer surcharges components of
48 any tax lien on any class of real property, as such real property is
49 classified in subdivision one of section eighteen hundred two of the
50 real property tax law, may be sold by the city pursuant to this chapter,
51 where such water rents, sewer rents or sewer surcharges component of
52 such tax lien, as of the date of the first publication, pursuant to
53 subdivision a of section 11-320 of this chapter, of the notice of sale:
54 (i) shall have remained unpaid in whole or in part for one year and (ii)
55 equals or exceeds the sum of one thousand dollars or, beginning on March
56 first, two thousand eleven, in the case of any two or three family resi-

1 dential real property in class one, for one year, and equals or exceeds
2 the sum of two thousand dollars, or, beginning on January first, two
3 thousand twenty-one, in the case of any two or three family residential
4 real property in class one, for one year, and equals or exceeds the sum
5 of three thousand dollars, or, beginning on January first, two thousand
6 twelve, in the case of any class two residential property owned by a
7 company organized pursuant to article eleven of the private housing
8 finance law that is not a residential condominium or a residential coop-
9 erative, as such class of property is defined in subdivision one of
10 section eighteen hundred two of the real property tax law, for two
11 years, and equals or exceeds the sum of five thousand dollars; provided,
12 however, that such water rents, sewer rents or sewer surcharges compo-
13 nent of such tax lien may not be sold pursuant to this subdivision on
14 any one family residential real property in class one or on any two or
15 three family residential real property in class one that is receiving an
16 exemption pursuant to section 11-245.3 or 11-245.4 of this title, or
17 pursuant to section four hundred fifty-eight of the real property tax
18 law with respect to real property purchased with payments received as
19 prisoner of war compensation from the United States government, or
20 pursuant to paragraph (b) or (c) of subdivision two of section four
21 hundred fifty-eight-a of the real property tax law, or where the owner
22 of any two or three family residential real property in class one is
23 receiving benefits in accordance with department of finance memorandum
24 05-3, or any successor memorandum thereto, relating to active duty mili-
25 tary personnel, or where the owner of any two or three family residen-
26 tial real property in class one has been allowed a credit pursuant to
27 subsection (e) of section six hundred six of the tax law for the calen-
28 dar year in which the date of the first publication, pursuant to subdivi-
29 sion a of section 11-320 of this chapter, of the notice of sale,
30 occurs or for the calendar year immediately preceding such date. After
31 such sale, any such water rents, sewer rents or sewer surcharges compo-
32 nent of such tax lien may be transferred in the manner provided by this
33 chapter.

34 a-3. In addition to any sale authorized pursuant to subdivision a or
35 subdivision a-1 of this section and notwithstanding any provision of
36 this chapter to the contrary, beginning on December first, two thousand
37 seven, a subsequent tax lien on any class of real property, as such real
38 property is classified in subdivision one of section eighteen hundred
39 two of the real property tax law, may be sold by the city pursuant to
40 this chapter, regardless of whether such subsequent tax lien, or any
41 component of the amount thereof, shall have remained unpaid in whole or
42 in part for one year, and regardless of whether such subsequent tax
43 lien, or any component of the amount thereof, equals or exceeds the sum
44 of one thousand dollars or beginning on March first, two thousand elev-
45 en, in the case of any two or three family residential real property in
46 class one, a subsequent tax lien on such property may be sold by the
47 city pursuant to this chapter, regardless of whether such subsequent tax
48 lien, or any component of the amount thereof, shall have remained unpaid
49 in whole or in part for one year, and regardless of whether such subse-
50 quent tax lien, or any component of the amount thereof, equals or
51 exceeds the sum of two thousand dollars, or, beginning on January first,
52 two thousand twenty-one, in the case of any two or three family residen-
53 tial real property in class one, a subsequent tax lien on such property
54 may be sold by the city pursuant to this chapter, regardless of whether
55 such subsequent tax lien, or any component of the amount thereof, shall
56 have remained unpaid in whole or in part for one year, and regardless of

1 whether such subsequent tax lien, or any component of the amount there-
2 of, equals or exceeds the sum of three thousand dollars, or, beginning
3 on January first, two thousand twelve, in the case of any class two
4 residential property owned by a company organized pursuant to article
5 eleven of the private housing finance law that is not a residential
6 condominium or a residential cooperative, as such class of property is
7 defined in subdivision one of section eighteen hundred two of the real
8 property tax law, a subsequent tax lien on such property may be sold by
9 the city pursuant to this chapter, regardless of whether such subsequent
10 tax lien, or any component of the amount thereof, shall have remained
11 unpaid in whole or in part for two years, and regardless of whether such
12 subsequent tax lien, or any component of the amount thereof, equals or
13 exceeds the sum of five thousand dollars; provided, however, that such
14 subsequent tax lien may not be sold pursuant to this subdivision on any
15 one family residential real property in class one or on any two or three
16 family residential real property in class one that is receiving an
17 exemption pursuant to section 11-245.3 or 11-245.4 of this title, or
18 pursuant to section four hundred fifty-eight of the real property tax
19 law with respect to real property purchased with payments received as
20 prisoner of war compensation from the United States government, or
21 pursuant to paragraph (b) or (c) of subdivision two of section four
22 hundred fifty-eight-a of the real property tax law, or where the owner
23 of any two or three family residential real property in class one is
24 receiving benefits in accordance with department of finance memorandum
25 05-3, or any successor memorandum thereto, relating to active duty mili-
26 tary personnel, or where the owner of any two or three family residen-
27 tial real property in class one has been allowed a credit pursuant to
28 subsection (e) of section six hundred six of the tax law for the calen-
29 dar year in which the date of the first publication, pursuant to subdivi-
30 sion a of section 11-320 of this chapter, of the notice of sale,
31 occurs or for the calendar year immediately preceding such date. After
32 such sale, any such subsequent tax lien, or any component of the amount
33 thereof, may be transferred in the manner provided by this chapter. For
34 purposes of this subdivision, the term "subsequent tax lien" shall mean
35 the water rents, sewer rents or sewer surcharges component of any tax
36 lien on property that becomes such on or after the date of sale of any
37 water rents, sewer rents or sewer surcharges component of any tax lien
38 on such property that has been sold pursuant to this chapter, provided
39 that the prior tax lien remains unpaid as of the date of the first
40 publication, pursuant to subdivision a of section 11-320 of this chap-
41 ter, of the notice of sale of the subsequent tax lien. Nothing in this
42 subdivision shall be deemed to limit the rights conferred by section
43 11-332 of this chapter on the holder of a tax lien certificate with
44 respect to a subsequent tax lien.

45 a-4. In addition to any sale authorized pursuant to subdivision a,
46 a-1, a-2 or a-3 of this section and notwithstanding any provision of
47 this chapter to the contrary, beginning on March first, two thousand
48 eleven, the emergency repair charges component or alternative enforce-
49 ment expenses and fees component, where such emergency repair charges
50 accrued on or after January first, two thousand six and are made a lien
51 pursuant to section 27-2144 of this code, or where such alternative
52 enforcement expenses and fees are made a lien pursuant to section
53 27-2153 of this code, of any tax lien on any class of real property, as
54 such real property is defined in subdivision one of section eighteen
55 hundred two of the real property tax law, may be sold by the city pursu-
56 ant to this chapter, where such emergency repair charges component or

1 alternative enforcement expenses and fees component of such tax lien, as
2 of the date of the first publication, pursuant to subdivision a of
3 section 11-320 of this chapter, of the notice of sale: (i) shall have
4 remained unpaid in whole or in part for one year and (ii) equals or
5 exceeds the sum of one thousand dollars or, beginning on January first,
6 two thousand twelve, in the case of any class two residential property
7 owned by a company organized pursuant to article eleven of the private
8 housing finance law that is not a residential condominium or a residen-
9 tial cooperative, as such class of property is defined in subdivision
10 one of section eighteen hundred two of the real property tax law, for
11 two years, and equals or exceeds the sum of five thousand dollars;
12 provided, however, that such emergency repair charges component or
13 alternative enforcement expenses and fees component of such tax lien may
14 only be sold pursuant to this subdivision on any one, two or three fami-
15 ly residential real property in class one, where such one, two or three
16 family residential property in class one is not the primary residence of
17 the owner. After such sale, any such emergency repair charges component
18 or alternative enforcement expenses and fees component of such tax lien
19 may be transferred in the manner provided by this chapter.

20 a-5. In addition to any sale authorized pursuant to subdivision a,
21 a-1, a-2 or a-3 of this section and notwithstanding any provision of
22 this chapter to the contrary, beginning on March first, two thousand
23 eleven, a subsequent tax lien on any class of real property, or begin-
24 ning on January first, two thousand twelve in the case of any class two
25 residential property owned by a company organized pursuant to article
26 eleven of the private housing finance law that is not a residential
27 condominium or a residential cooperative, a subsequent tax lien on such
28 property, may be sold by the city pursuant to this chapter, regardless
29 of the length of time such subsequent tax lien, or any component of the
30 amount thereof, shall have remained unpaid, and regardless of the amount
31 of such subsequent tax lien. After such sale, any such subsequent tax
32 lien, or any component of the amount thereof, may be transferred in the
33 manner provided by this chapter. For purposes of this subdivision, the
34 term "subsequent tax lien" shall mean the emergency repair charges
35 component or alternative enforcement expenses and fees component, where
36 such emergency repair charges accrued on or after January first, two
37 thousand six and are made a lien pursuant to section 27-2144 of this
38 code, or where such alternative enforcement expenses and fees are made a
39 lien pursuant to section 27-2153 of this code, of any tax lien on prop-
40 erty that becomes such on or after the date of sale of any emergency
41 repair charges component or alternative enforcement expenses and fees
42 component, of any tax lien on such property that has been sold pursuant
43 to this chapter, provided that the prior tax lien remains unpaid as of
44 the date of the first publication, pursuant to subdivision a of section
45 11-320 of this chapter, of the notice of sale of the subsequent tax
46 lien. Nothing in this subdivision shall be deemed to limit the rights
47 conferred by section 11-332 of this chapter on the holder of a tax lien
48 certificate with respect to a subsequent tax lien.

49 a-6. Notwithstanding any provision of this chapter to the contrary,
50 beginning on September first, two thousand seventeen, a lien that
51 includes civil penalties for a violation of section 28-201.1 of this
52 code where such civil penalties accrued on or after July first, two
53 thousand seventeen, and became a lien pursuant to section 28-204.6.6 of
54 this code, may be sold by the city pursuant to this chapter, where such
55 civil penalties component of such lien, as of the date of the first
56 publication, pursuant to subdivision a of section 11-320 of this chap-

1 ter, of the notice of sale (i) shall have remained unpaid in whole or in
2 part for one year or more and (ii) equals or exceeds the sum of one
3 thousand dollars. After such sale, any such civil penalties component of
4 such lien may be transferred in the manner provided by this chapter.

5 b. The commissioner of finance, on behalf of the city, may sell tax
6 liens, either individually, in combinations, or in the aggregate, pursu-
7 ant to the procedures provided herein. The commissioner of finance shall
8 establish the terms and conditions of a sale of a tax lien or tax liens.

9 1. (i) The commissioner of finance may, in his or her discretion, sell
10 a tax lien or tax liens through a competitive sale. In addition to the
11 advertisement and notice required to be provided pursuant to section
12 11-320 of this chapter, the commissioner of finance or his or her desig-
13 nee shall cause to be published a notice of intention to sell a tax lien
14 or tax liens through a competitive sale, which notice shall include the
15 terms and conditions for such sale, the criteria by which bids shall be
16 evaluated, and a request for any other information or documents that the
17 commissioner of finance may require. Such notice shall be published in
18 one newspaper of general circulation in the city, not less than fifteen
19 days prior to the date designated by the commissioner for the submission
20 of bids.

21 (ii) The commissioner of finance may, in his or her discretion, estab-
22 lish criteria for the eligibility of bidders pursuant to section
23 11-321.1 of this chapter.

24 (iii) The commissioner of finance may reject any or all bids, or may
25 accept any combination of bids in a competitive sale.

26 2. (i) The commissioner of finance may, in his or her discretion, sell
27 a tax lien or tax liens through a negotiated sale. In addition to the
28 advertisement and notice required to be provided pursuant to section
29 11-320 of this chapter, the commissioner of finance or his or her desig-
30 nee shall cause to be published a notice of intention to sell a tax lien
31 or tax liens through a negotiated sale, which notice shall advise that a
32 request for statements of interest is available at the office of the
33 department of finance, and which may require the submission of any
34 information or documents that the commissioner deems appropriate,
35 provided, however, that if the negotiated sale is to a trust or other
36 entity created by the city or in which the city has an ownership or
37 residual interest, then the requirement that the notice advise that a
38 request for statements of interest is available at the office of the
39 department of finance shall not apply. Such notice shall be published in
40 one newspaper of general circulation in the city, not less than fifteen
41 days prior to the date designated by the commissioner for the receipt of
42 statements of interest, or if the negotiated sale is to such trust or
43 other entity, then such notice shall be published not less than fifteen
44 days prior to the date of sale. For purposes of this subparagraph, the
45 words "date of sale" shall have the same meaning provided in subdivision
46 e of section 11-320 of this chapter.

47 (ii) The commissioner of finance may engage in a negotiated sale in
48 accordance with criteria to be established pursuant to section 11-321.1
49 of this chapter.

50 (iii) The commissioner of finance may execute a purchase and sale
51 agreement and other necessary agreements with a designated purchaser or
52 purchasers to complete a negotiated sale.

53 3. The commissioner of finance may establish a minimum price for the
54 sale of tax liens that may be at a discount from or premium to the lien
55 amount. Notwithstanding the preceding sentence, the commissioner of
56 finance may not establish a minimum price for the sale of an individual

1 tax lien that is at a discount from the lien amount. The commissioner of
2 finance shall sell such tax liens at a purchase price that, in the
3 determination of such commissioner, is in the best interests of the
4 city. The commissioner of finance, in his or her discretion, may accept
5 cash or cash equivalent in immediately available funds, or other consid-
6 eration acceptable to the commissioner, or any combination thereof in
7 payment for a tax lien or tax liens.

8 4. The amount of a tax lien that is sold pursuant to this chapter
9 shall be the unpaid amount of the lien as of the date of sale, including
10 any interest and penalties thereon, any taxes, assessments, sewer rents,
11 sewer surcharges, water rents, any other charges that are made a lien
12 subject to the provisions of this chapter, the costs of any advertise-
13 ments and notices given pursuant to this chapter, any other charges that
14 are due and payable, any surcharge pursuant to section 11-332 of this
15 chapter, and interest and penalties thereon, or such component of the
16 amount thereof as shall be determined by the commissioner of finance,
17 notwithstanding the amount paid for purchase of the tax lien or compo-
18 nent of the amount thereof. For purposes of this paragraph, the words
19 "date of sale" shall have the same meaning provided in subdivision y of
20 section 11-320 of this chapter.

21 5. (i) The commissioner of finance may, subsequent to the offer for
22 sale of any tax lien or tax liens and the failure to complete such sale,
23 offer such tax lien or tax liens for sale again to any other person or
24 persons who satisfied the terms and conditions of the sale without
25 providing any additional advertisements or notices pursuant to this
26 chapter.

27 (ii) Notwithstanding subparagraph (i) of this paragraph, any tax lien
28 that was noticed for sale pursuant to this chapter, but was not sold on
29 the original date of sale, may be sold without any additional advertise-
30 ments or notices pursuant to this chapter if the subsequent date of sale
31 is within six months of the second publication, pursuant to subdivision
32 a of section 11-320 of this chapter, of the notice of the original date
33 of sale. If the subsequent date of sale is more than six months after
34 the second publication, pursuant to subdivision a of section 11-320 of
35 this chapter, of the notice of the original date of sale, then the
36 commissioner of finance, or his or her designee, shall provide notice of
37 the subsequent date of sale pursuant to subdivision b of section 11-320
38 of this chapter. No other additional advertisements or notices shall be
39 necessary prior to the date of sale.

40 6. The rate of interest on any tax lien certificate shall be the rate
41 adopted for nonpayment of taxes on real property, pursuant to subdivi-
42 sion (e) of section 11-224.1 of this title, that is in effect on January
43 first of the year in which the tax lien is sold.

44 7. It is the intent of the city that a sale of a tax lien or tax liens
45 pursuant to this chapter shall be a sale and not a borrowing.

46 8. Whenever any tax lien purchased at a tax lien sale is found to be
47 invalid, void or defective in whole or in part, or not to conform to any
48 representation or warranty with respect thereto, made by the commis-
49 sioner of finance in connection with the sale thereof, by judgment or decree
50 of a court of competent jurisdiction or by determination of the commis-
51 sioner of finance, the commissioner of finance may, in his or her
52 discretion, substitute for such tax lien or portion thereof another tax
53 lien that has a value equivalent to the value of the tax lien or portion
54 thereof found to be invalid, void, defective, or not to so conform, or
55 may refund such value of the tax lien or portion thereof found to be
56 invalid, void, defective, or not to so conform, or may use a combination

1 of substitution and refund. No other remedy shall be available to a
2 purchaser of a tax lien which is found to be invalid, void, defective,
3 or not to conform to a representation or warranty with respect thereto
4 made by the commissioner of finance in connection with the sale thereof,
5 in whole or in part. Whenever a tax lien of such equivalent value is to
6 be substituted for a tax lien that has been found invalid, void, defec-
7 tive, or not to so conform, in whole or in part, pursuant to this
8 section, the commissioner of finance or his or her designee shall
9 provide mailed notice of the intention to substitute such lien of such
10 equivalent value to any person required to be notified pursuant to
11 section 11-320(b) of this chapter.

12 9. The commissioner of finance may establish requirements for a
13 purchaser of a tax lien to provide any information and documents that
14 the commissioner of finance deems necessary, including information
15 concerning the collection and enforcement of tax liens. The commission-
16 er of finance shall require the purchaser of a tax lien to provide the
17 owner of property on which a tax lien has been sold pursuant to this
18 chapter a detailed itemization of taxes, interest, surcharges, and fees
19 charged to such owner on all tax lien statements of amounts due or bill
20 of charges. Such fees shall be bona fide, reasonable and, in the case of
21 attorneys' fees, customary.

22 10. (i) On and after January first, two thousand twelve, no tax lien
23 shall be sold pursuant to this chapter on any class two residential
24 property owned by a company organized pursuant to article eleven of the
25 private housing finance law that is a residential condominium or resi-
26 dential cooperative. If, notwithstanding the foregoing sentence, any
27 such tax lien is sold in error pursuant to this chapter on and after
28 January first, two thousand twelve on such property, then the provisions
29 of paragraph eight of this subdivision shall apply to such sale, includ-
30 ing the authority of the commissioner of finance to substitute for such
31 tax lien another tax lien that has a value equivalent to the value of
32 such tax lien or to refund the value of such tax lien. For the purposes
33 of this paragraph, property owned by such company shall be limited to
34 property owned for the purpose, as set forth in section five hundred
35 seventy-one of the private housing finance law, of providing housing for
36 families and persons of low income.

37 (ii) No later than May first, two thousand eleven, the commissioner of
38 finance, in consultation with the commissioner of housing preservation
39 and development, shall notify by mail any class two residential property
40 owned by a company organized pursuant to article eleven of the private
41 housing finance law that is not a residential condominium or residential
42 cooperative, of the authority of the commissioner of finance to sell the
43 tax liens on such property. Such notification shall include information
44 relating to the lien sale process, including, but not limited to,
45 actions homeowners can take if a lien is sold on such property; the type
46 of debt that can be sold in a lien sale; a timeline of statutory notifi-
47 cations required pursuant to section 11-320 of this chapter; a clear,
48 concise explanation of the consequences of the sale of a tax lien; the
49 telephone number and electronic mail address of the employee or employ-
50 ees designated pursuant to subdivision f of section 11-320 of this chap-
51 ter; a conspicuous statement that the owner of the property may enter
52 into a payment plan for exclusion from the tax lien sale; and credits
53 and property tax exemptions that may exclude a property from a tax lien
54 sale and any other credit or residential real property tax exemption
55 information, which, in the discretion of the commissioner of finance,
56 should be included in such notification.

1 Upon such property owner's written request, or verbal request to 311
2 or any employee designated pursuant to subdivision f of section 11-320
3 of this chapter, a Chinese, Korean, Russian or Spanish translation of
4 such notice shall be provided promptly to such property owner.

5 11. No later than the first of September in the year next succeeding
6 the effective date of this section, the appropriate agency shall promul-
7 gate rules identifying or describing any existing procedures governing
8 challenges to the validity of any real property tax, sewer rent, sewer
9 surcharge, water rent, emergency repair charge or alternative enforce-
10 ment expense or fee.

11 12. On or after January first, two thousand fifteen and before January
12 first, two thousand seventeen, no tax lien shall be sold pursuant to
13 this chapter on the following properties: (i) properties enrolled in the
14 city's Build It Back Program; and (ii) properties defined as "eligible
15 real property" pursuant to subdivision three of section four hundred
16 sixty-seven-g of the real property tax law. If, notwithstanding the
17 foregoing sentence, any such tax lien is sold in error pursuant to this
18 chapter during such time period on properties described in subparagraph
19 (i) or (ii) of this paragraph, then the provisions of paragraph eight of
20 this subdivision shall apply to such sale, including the authority of
21 the commissioner of finance to substitute for such tax lien another tax
22 lien that has a value equivalent to the value of such tax lien or to
23 refund the value of such lien.

24 13. Notwithstanding any provision of this chapter to the contrary, no
25 tax lien shall be sold pursuant to this chapter on any of the following
26 properties: (i) any real property for which the owner in good faith has
27 submitted an application that is pending with the department of finance
28 for a real property tax exemption pursuant to section four hundred twen-
29 ty-a, four hundred twenty-b, four hundred forty-six, or four hundred
30 sixty-two of the real property tax law; and (ii) any real property for
31 which the owner has in good faith filed an appeal with the tax commis-
32 sion of a denial of any such application and such appeal is pending.
33 There shall be a rebuttable presumption that an application or an appeal
34 referenced in the preceding sentence was not submitted in good faith
35 where, within the twenty-four months preceding the submission of such
36 application or such appeal, the period for the filing of an appeal of a
37 denial by the department of finance of a previous application for a real
38 property tax exemption pursuant to section four hundred twenty-a, four
39 hundred twenty-b, four hundred forty-six, or four hundred sixty-two of
40 the real property tax law has expired.

41 § 11-320 Notice of sale to be advertised and mailed. a. 1. The tax
42 lien on property in the city shall not be sold pursuant to section
43 11-319 of this chapter unless notice of such sale as provided herein has
44 been published twice, the first publication to be in a newspaper of
45 general circulation in the city, not less than ninety days preceding the
46 date of the sale, and the second publication to be in a publication
47 designated by the commissioner of finance, not less than ten days
48 preceding the date of the sale. Such publication shall include a
49 description by block and lot or by such other identification as the
50 commissioner of finance may deem appropriate, of the property upon which
51 the tax lien exists that may be included in the sale, and a statement
52 that a list of the tax liens that may be included in the sale is avail-
53 able for inspection in the office of the city register and the office of
54 the county clerk. The commissioner of finance shall file such list in
55 the office of the city register and the office of the county clerk not
56 less than ninety days prior to the date of sale.

1 2. Not less than ninety days preceding the date of the sale, the
2 commissioner of finance shall post online, to the extent such informa-
3 tion is available, the borough, block and lot of any property on which a
4 lien has been or will be noticed for sale in accordance with paragraph
5 one of this subdivision and that, in one or more of the five fiscal
6 years preceding the date of the sale, was in receipt of a real property
7 tax exemption pursuant to section four hundred twenty-a, four hundred
8 twenty-b, four hundred forty-six or four hundred sixty-two of the real
9 property tax law and, in addition, shall post online, to the extent such
10 information is available, the borough, block and lot of any vacant land
11 classified as class one or class four pursuant to section eighteen
12 hundred two of the real property tax law on which a lien has been or
13 will be noticed for sale in accordance with paragraph one of this subdivi-
14 sion. Any failure to comply with this paragraph shall not affect the
15 validity of any sale of tax liens pursuant to this chapter.

16 b. 1. A tax lien shall not be sold unless the commissioner of finance,
17 or his or her designee, notifies the owner of record at the address of
18 record and any other person who has registered pursuant to section
19 11-309 of this chapter, or pursuant to section 11-416 or 11-417 of this
20 title, by first class mail, of the intention to sell the tax lien. If no
21 such registrations have been filed then such commissioner, or his or her
22 designee, shall notify the person whose name and address, if any,
23 appears in the latest annual record of assessed valuations, by first
24 class mail, of the intention to sell the tax lien. Such mailed notice
25 shall include a description of the property by block and lot and such
26 other identifying information as the commissioner of finance may deem
27 appropriate, the amount of the tax lien, including all taxes, assess-
28 ments, sewer rents, sewer surcharges, water rents, any other charges
29 that are made a lien subject to the provisions of this chapter, as well
30 as an estimate of the costs of any advertisements and notices given
31 pursuant to this chapter, any other charges that are due and payable on
32 the date specified in such publication, a surcharge pursuant to section
33 11-332 of this chapter if the tax lien is sold, and interest and penal-
34 ties thereon, and shall be mailed to such owner and such other persons
35 four times: not less than ninety, sixty, thirty and ten days prior to
36 the date of sale. Such notice shall state that if default continues to
37 be made in payment of the amounts due on such property, the tax lien on
38 such property shall be sold as provided in section 11-319 of this chap-
39 ter. If, notwithstanding such notice, the owner shall continue to refuse
40 or neglect to pay the amounts due on such property, the commissioner of
41 finance may sell the tax lien on such property as provided in section
42 11-319 of this chapter.

43 2. (i) Such notices shall also include, with respect to any property
44 owner in class one or class two, as such classes of property are defined
45 in subdivision one of section eighteen hundred two of the real property
46 tax law, an exemption eligibility checklist. The exemption eligibility
47 checklist shall also be posted on the website of the department of
48 finance no later than the first business day after March fifteenth of
49 every year prior to the date of sale, and shall continue to be posted on
50 such website until ten days prior to the date of sale. Within ten busi-
51 ness days of receipt of a completed exemption eligibility checklist from
52 such property owner, provided that such receipt occurs prior to the date
53 of sale of any tax lien or tax liens on his or her property, the depart-
54 ment of finance shall review such checklist to determine, based on the
55 information provided by the property owner, whether such property owner
56 could be eligible for any exemption, credit or other benefit that would

1 entitle them to be excluded from a tax lien sale and, if the department
2 determines that such property owner could be eligible for any such
3 exemption, credit or other benefit, shall mail such property owner an
4 application for the appropriate exemption, credit or other benefit. If,
5 within twenty business days of the date the department mailed such
6 application, the department of finance has not received a completed
7 application from such property owner, such department shall mail such
8 property owner a second application, and shall telephone the property
9 owner, if the property owner has included his or her telephone number on
10 the exemption eligibility checklist.

11 (ii) Any such property owner who returns to the department of finance
12 a completed exemption eligibility checklist prior to the date of sale of
13 any tax lien or tax liens on his or her property and who subsequently
14 submits a completed application for the appropriate exemption, credit or
15 other benefit either prior to, on or up to ninety days after such sale,
16 shall have his or her application reviewed by the department of finance.
17 If, prior to the date of sale, the department of finance determines that
18 such property owner is qualified for such exemption, credit or other
19 benefit or will be qualified as of the date of sale, then the tax lien
20 or tax liens on his or her property shall not be sold on such date. If,
21 on or after the date of sale, the department of finance determines that
22 such property owner is or was qualified for such exemption, credit or
23 other benefit as of the date of sale, then any tax lien or tax liens on
24 his or her property that were sold shall be deemed defective.

25 (iii) Not later than thirty days prior to such date of sale, the
26 department of finance shall submit to the council a list, disaggregated
27 by council district, of all properties for which property owners
28 returned a completed eligibility checklist to the department of finance
29 at least thirty-five days prior to the date of sale, but for which prop-
30 erty owners have not yet submitted a completed application for the
31 appropriate exemption, credit or other benefit.

32 (iv) Not later than thirty days after such date of sale, the depart-
33 ment of finance shall submit to the council a list, disaggregated by
34 council district, of all properties for which property owners returned a
35 completed eligibility checklist to the department of finance prior to
36 the date of sale, but for which property owners have not yet submitted a
37 completed application for the appropriate exemption, credit or other
38 benefit.

39 (v) Upon the written or verbal request of such property owner, the
40 department of finance shall provide prompt assistance to such property
41 owner in completing an application for the appropriate exemption, credit
42 or other benefit.

43 2-a. If, prior to the date of sale, the department of finance confirms
44 that a property is the subject of (i) a judicial proceeding or (ii) an
45 investigation or a prosecution by any agency or office of the United
46 States or any state or subdivision thereof with regard to the ownership
47 of such property arising from the fraudulent transmittal of a deed
48 relating to such property, such department shall remove such property
49 from the sale, provided that the owner of such property has provided an
50 affidavit to such department and any such other documentation required
51 by such department to establish that such property is the subject of
52 such a proceeding, investigation or prosecution. Any such removal shall
53 relate only to the sale of a tax lien or tax liens for which the owner
54 has received notice pursuant to paragraph one of subdivision b of this
55 section. Failure by the department of finance to remove such property

1 shall not affect the validity of any sale of tax liens pursuant to this
2 chapter.

3 3. The notice provided not less than ninety days prior to the date of
4 sale shall also include information relating to the lien sale process,
5 including, but not limited to, actions homeowners can take if a lien is
6 sold on such property; the type of debt that can be sold in a lien sale;
7 a timeline of statutory notifications required pursuant to this section;
8 a clear, concise explanation of the consequences of the sale of a tax
9 lien; the telephone number and electronic mail address of the employee
10 or employees designated pursuant to subdivision f of this section; a
11 conspicuous statement that the owner of the property may enter into a
12 payment plan for exclusion from the tax lien sale; and credits and prop-
13 erty tax exemptions that may exclude certain class one real property
14 from a tax lien sale. Such notice shall also include information on the
15 following real property tax exemptions, credits or other benefits:

16 (i) the senior citizen homeowner exemption pursuant to section
17 11-245.3 of this title;

18 (ii) the exemption for persons with disabilities pursuant to section
19 11-245.4 of this title;

20 (iii) the exemption for veterans pursuant to section four hundred
21 fifty-eight of the real property tax law, with respect to real property
22 purchased with payments received as prisoner of war compensation from
23 the United States government;

24 (iv) the exemption for veterans pursuant to paragraph (b) or (c) of
25 subdivision two of section four hundred fifty-eight-a of the real prop-
26 erty tax law;

27 (v) the state circuit breaker income tax credit pursuant to subsection
28 (e) of section six hundred six of the tax law; and

29 (vi) the active duty military personnel benefit pursuant to department
30 of finance memorandum 05-3, or any successor memorandum thereto.

31 Upon such property owner's written request, or verbal request to 311
32 or any employee designated pursuant to subdivision f of this section, a
33 Chinese, Korean, Russian or Spanish translation of such notice shall be
34 provided promptly to such property owner.

35 4. Such notice shall also include, with respect to a property that was
36 in receipt of a real property tax exemption pursuant to section four
37 hundred twenty-a, four hundred twenty-b, four hundred forty-six, or four
38 hundred sixty-two of the real property tax law in one or more of the
39 three fiscal years preceding the date of the notice provided not less
40 than ninety days prior to the date of sale, or with respect to a proper-
41 ty in class four, as such class of property is defined in subdivision
42 one of section eighteen hundred two of the real property tax law, infor-
43 mation relating to the initial application and renewal process for such
44 property tax exemptions, and other actions available to the owner of
45 such property in the event such property is noticed for sale pursuant to
46 this subdivision, including, if available, an adjustment or cancellation
47 of back taxes. Upon request of the owner of such property, a translation
48 of such notice in any of the top ten languages most commonly spoken
49 within the city as determined by the department of city planning shall
50 be provided to such owner.

51 5. The department of finance and the department of environmental
52 protection shall, to the extent practicable, contact by telephone or
53 electronic mail any person who (i) has registered their telephone number
54 or electronic mail address with such departments and (ii) has received
55 the ninety-day notice described in paragraph one of this subdivision.
56 Any such contact shall be made within a time period reasonably proximate

1 to the mailing of such notice, shall inform such person of the intention
2 to sell a tax lien and shall provide such other information as the
3 respective commissioner deems appropriate, which may include, but need
4 not be limited to, the telephone numbers and electronic mail addresses
5 of the employees designated pursuant to subdivision f of this section.
6 The department of finance shall contact by electronic mail any person
7 who has registered pursuant to subdivision a of section 11-245.8 of this
8 title to receive information about the outreach sessions described in
9 subdivision j of this section and provide such information within a time
10 period reasonably proximate to the scheduled outreach session. Failure
11 by the department of finance or the department of environmental
12 protection to contact any such person by telephone or electronic mail
13 shall not affect the validity of any sale of tax liens pursuant to this
14 chapter.

15 c. Such notices shall advise the owner of such property of his or her
16 continued obligation to pay the amounts due on such property. No other
17 notices or demands shall be required to be made to the owner of such
18 property to authorize the sale of a tax lien or tax liens on such prop-
19 erty pursuant to section 11-319 of this chapter.

20 c-1. Where a tax lien on property in the city has been noticed for
21 sale pursuant to subdivision b of this section and such lien, prior to
22 the date of sale, has been paid or is otherwise determined by the
23 commissioner of finance not to be eligible to be sold, such commissioner
24 shall promptly provide written notification to the owner of such proper-
25 ty that such lien will not be or was not included in such sale and the
26 reason therefor.

27 d. 1. The commissioner of finance or his or her designee shall, within
28 ninety days after the delivery of the tax lien certificate, notify any
29 person who was required to be notified of such sale pursuant to subdivi-
30 sion (b) of section 11-320 of this chapter, by first class mail, that
31 such sale has occurred. Such notice shall state the date of the sale of
32 the tax lien, the name and address of the purchaser of the tax lien, the
33 amount of such lien, a description of the property by block and lot and
34 such other identifying information as the commissioner of finance or his
35 or her designee shall deem appropriate, and the terms and conditions of
36 the tax lien certificate, including the right to satisfy the lien within
37 the time periods specified in this chapter. Such notice shall also
38 include the telephone number and electronic mail address of the employee
39 or employees designated pursuant to subdivision f of this section.

40 2. Any written communication from the purchaser of the tax lien or
41 liens to an owner of property, on which a tax lien has been sold pursu-
42 ant to the provisions of this chapter, shall include the following
43 information:

44 (i) an explanation of the roles of the purchaser of the tax lien and
45 the employee or employees designated pursuant to subdivision f of this
46 section;

47 (ii) the names and contact information, including the telephone
48 number, electronic mail and mailing addresses of such persons; and

49 (iii) a statement informing such owner that he or she may be eligible
50 to enter into a forbearance agreement with the purchaser of such tax
51 lien.

52 3. The requirement to send such written communication shall be subject
53 to federal, state and local debt collection laws.

54 4. Failure to provide notice pursuant to this subdivision shall not
55 affect the validity of any sale of a tax lien or tax liens pursuant to
56 this chapter.

1 e. The words "date of sale" when used in this section shall mean:

2 (1) for a negotiated sale, the date of signing of the tax lien
3 purchase agreement, and (2) for a competitive sale, the date designated
4 by the commissioner of finance for the submission of bids.

5 f. The commissioner of finance shall designate an employee of the
6 department to respond to inquiries from owners of property for which a
7 tax lien has been sold or noticed for sale pursuant to subdivision a of
8 this section and shall designate an employee of the department to
9 respond to inquiries from owners sixty-five years of age or older of
10 property for which a tax lien has been sold or noticed for sale pursuant
11 to subdivision a of this section. The commissioner of environmental
12 protection shall designate at least one employee of the department of
13 environmental protection to respond to inquiries from owners of property
14 for which a tax lien containing a water rents, sewer rents or sewer
15 surcharges component has been sold or noticed for sale pursuant to
16 subdivision a of this section. The telephone numbers and electronic mail
17 addresses of employees designated pursuant to this subdivision shall be
18 posted online and shall be included on all publications and notices
19 required by subdivisions a and b of this section. Failure to include
20 such numbers and addresses on all such publications and notices shall
21 not affect the validity of any sale of tax liens pursuant to this chap-
22 ter.

23 g. No later than one hundred twenty days after the tax lien sale, the
24 commissioner of finance shall submit to the council a list of all prop-
25 erties, identified by block and lot, noticed for sale pursuant to subdi-
26 vision b of this section. Such list shall also include a description of
27 the disposition of such properties that shall include, but not be limit-
28 ed to, whether an owner entered into a payment plan with the city pursu-
29 ant to section 11-322 or 11-322.1 of this chapter, whether an owner
30 satisfied the tax lien or liens, whether ownership of the property was
31 transferred, provided that such information is available to the city, or
32 whether the property was distressed, as defined in subdivision four of
33 section 11-401 of this title, or removed from the sale pursuant to the
34 discretion of the commissioner of housing preservation and development.

35 h. 1. On a quarterly basis, a purchaser of tax liens shall provide to
36 the council a list of all properties on which tax liens have been sold
37 where, subsequent to such sale, there has been a transfer of ownership
38 of the property, provided that a purchaser of tax liens has knowledge of
39 such transfers, for the following groups:

40 (i) all properties on which liens for emergency repair charges or
41 alternative enforcement expenses and fees have been sold to such
42 purchaser pursuant to subdivision a-4 of section 11-319 of this chapter;
43 and

44 (ii) all class two residential property owned by a company organized
45 pursuant to article eleven of the private housing finance law that is
46 not a residential condominium or a residential cooperative on which any
47 tax lien has been sold pursuant to subdivision a, a-2 or a-4 of section
48 11-319 of this chapter.

49 2. When available, a purchaser of tax liens shall include the names
50 and contact information of the new owners of record of such properties.

51 i. On a quarterly basis, a purchaser of tax liens shall provide to the
52 council a property status report. For each property, such report shall
53 include: (1) information about such property, including property tax
54 class; property type; description of the tax lien or tax liens that have
55 been sold to such purchaser on such property pursuant to this chapter,
56 including the amount of the tax lien or tax liens, the costs of any

1 advertisements and notices given pursuant to this chapter; the amount of
2 the surcharge pursuant to section 11-332 of this chapter; and the amount
3 of interest and penalties thereon; and (2) the status of the tax lien or
4 tax liens, including foreclosure information, if applicable; whether the
5 property owner entered into an installment agreement; whether the prop-
6 erty owner is current on such installment agreement; and whether the tax
7 lien or tax liens on such property have been deemed defective, and, if
8 so, the reason any such lien or liens were deemed defective. Each prop-
9 erty listed in the report shall be identified by block and lot.

10 j. (1) At the request of a council member, the commissioner of
11 finance, in consultation with the commissioner of housing preservation
12 and development and the commissioner of environmental protection, may
13 conduct outreach sessions in the district of such council member,
14 provided, however, that, the commissioner of finance shall conduct such
15 outreach sessions in the ten council districts with the greatest number
16 of properties for which a notice of intention to sell a tax lien has
17 been mailed ninety days prior to the date of sale pursuant to paragraph
18 one of subdivision b of this section, and provided, further, however,
19 that, such commissioner shall conduct additional outreach sessions in
20 the five council districts with the greatest number of properties for
21 which a notice of intention to sell a tax lien has been mailed ninety
22 days prior to the date of sale pursuant to such paragraph. To the extent
23 practicable, the commissioner of finance shall schedule the outreach
24 sessions in the five council districts described in the preceding
25 sentence such that one occurs prior to the mailing of the notice of
26 intention to sell a tax lien that is required to be mailed thirty days
27 prior to the date of sale pursuant to paragraph one of subdivision b of
28 this section and one occurs subsequent to such mailing. The scope of
29 such outreach sessions shall include, but need not be limited to, (i)
30 actions property owners can take if a lien is sold on such property;
31 (ii) the type of tax lien or tax liens that can be sold in a tax lien
32 sale; (iii) installment agreement information, including informing
33 attendees in such outreach sessions of their option to enter into an
34 installment agreement for exclusion from the tax lien sale with no down
35 payment, with options for income-based installment agreements or
36 installment agreements with a term of up to ten years; (iv) credits and
37 property tax exemptions that may exclude a property from a tax lien
38 sale; (v) distribution of a customer survey to property owners who have
39 received notice of the intention to sell a tax lien on their property,
40 in order to determine the circumstances that led to the creation of the
41 lien; and (vi) any other credit or residential real property tax
42 exemption information, which, in the discretion of the commissioner of
43 finance, should be included in such outreach sessions. (2) The commis-
44 sioner of finance shall make a good faith effort to have a financial
45 counselor available at such outreach sessions. No later than ninety days
46 after the tax lien sale, the commissioner of finance shall submit to the
47 council a report on the number of outreach sessions performed in each
48 council district during the ninety-day period preceding the tax lien
49 sale. Such report shall include: (i) the number of installment agree-
50 ments begun by property owners or, as defined in subdivision b of
51 section 11-322 of this chapter, other eligible persons acting on behalf
52 of property owners at each outreach session; (ii) the number of property
53 tax exemption applications begun at each outreach session; (iii) the
54 total number of attendees at each outreach session; (iv) the number of
55 outreach sessions at which a financial counselor was available; (v) the
56 number of property owners, or other eligible persons acting on behalf of

1 property owners, who consulted a financial counselor at each outreach
2 session at which a financial counselor was available; and (vi) the
3 results of such surveys. Such report and the results of each outreach
4 session shall be disaggregated by council district.

5 k. The commissioner of finance shall post online the information
6 reported to the council pursuant to subdivisions h and i of this
7 section, provided that no information shall be posted online that
8 specifically identifies any property or property owner, except by zip
9 code and a randomly generated identifier.

10 § 11-321 Continuation of sale; notice required. A sale of a tax lien
11 or tax liens may be continued from time to time, if necessary, until all
12 the tax liens on the property so advertised and noticed shall be sold
13 unless such sale is canceled or postponed in accordance with section
14 11-322 or 11-322.1 of this chapter. If a sale of a tax lien or tax liens
15 is continued, the commissioner of finance, or his or her designee, shall
16 give such notice as is practicable of such continuation.

17 § 11-322 Postponement or cancellation of sales; installment agree-
18 ments. a. It shall be lawful for the commissioner of finance, or his or
19 her designee, to postpone or cancel any proposed sale of a tax lien or
20 tax liens on property that shall have been advertised and noticed for
21 sale prior to the date of sale. For purposes of this section, the words
22 "date of sale" shall have the same meaning provided in subdivision e of
23 section 11-320 of this chapter. The city shall not be liable for any
24 damages as a result of cancellation or postponement of a proposed sale
25 of a tax lien or tax liens, nor shall any cause of action arise from
26 such cancellation or postponement.

27 b. In accordance with rules promulgated by the commissioners of
28 finance and environmental protection, a property owner, or other eligi-
29 ble person, as defined by rule, acting on behalf of an owner, may enter
30 into agreements with the departments of finance and environmental
31 protection for the payment in installments of any delinquent real prop-
32 erty taxes, assessments, sewer rents, sewer surcharges, water rents, or
33 any other charges that are made a lien subject to the provisions of this
34 chapter. The proposed sale of a tax lien or tax liens on property shall
35 be cancelled when a property owner, or other eligible person acting on
36 behalf of an owner, enters into an agreement with the respective agency
37 for the payment of any such lien. Such rules shall also provide that
38 such property owners or such other eligible persons be given information
39 regarding eligibility for real property tax exemption programs prior to
40 entering into such agreements. As used in this subdivision, the term
41 "other eligible person" shall include a fiduciary, as defined in para-
42 graph three of subdivision (a) of section 11-1.1 of the estates, powers
43 and trusts law, acting with respect to the administration of the proper-
44 ty of an estate of a decedent who owned the real property as to which an
45 agreement under this subdivision is sought, or on behalf of a benefici-
46 ary of such real property from such estate. Any rules promulgated in
47 accordance with this subdivision defining "other eligible person" shall
48 include in such definition the means by which a beneficiary of real
49 property of the estate of a decedent who owned real property as to which
50 an agreement under this subdivision is sought meets the definition of
51 "other eligible person". Such means shall include the furnishing of any
52 death certificates or other relevant documents that substantiate the
53 claim of a beneficiary that they are the legal owner of the property.
54 Notwithstanding any other provision of this section, no more than one
55 such agreement with each respective agency may be in effect for a prop-
56 erty at any one time.

1 1. If payments required from a property owner, or other eligible
2 person acting on behalf of an owner, pursuant to such an agreement are
3 not made for a period of six months, such property owner, or such other
4 eligible person, shall be in default of such agreement, and the tax lien
5 or tax liens on the subject property may be sold, provided, however,
6 that such default may be cured upon such property owner's, or such other
7 eligible person's, bringing all installment payments and all current
8 charges that are outstanding at the time of the default to a current
9 status, which shall include, but not be limited to, any outstanding
10 interest and fees, prior to the date of sale, provided, however, that
11 such property owner, or such other eligible person, may elect to cure
12 such default by entering into a new installment agreement with a down
13 payment of twenty percent or more, of all delinquent real property
14 taxes, assessments, sewer rents, sewer surcharges, water rents and other
15 charges that are made a lien subject to the provisions of this chapter,
16 including any outstanding interest and fees, prior to the date of sale.
17 If such default is not cured prior to the date of sale, such property
18 owner, and any other eligible person acting on behalf of an owner, shall
19 not be eligible to enter into an installment agreement for the subject
20 property for five years, unless there is a finding of extenuating
21 circumstances by the department that entered into the installment agree-
22 ment with the property owner or such other eligible person. Notwith-
23 standing the prohibition against entering into an installment agreement
24 for the subject property for five years, a property owner, or such other
25 eligible person, who has defaulted on an installment agreement and whose
26 lien has been sold and, subsequent to the sale of the lien, whose prop-
27 erty on which the lien was sold is subject to another tax lien that is
28 eligible to be sold, may elect to enter into another installment agree-
29 ment with respect to such other lien before the end of such five-year
30 period, provided that such property owner, or such other eligible
31 person, makes a down payment of twenty percent or more, of all delin-
32 quent real property taxes, assessments, sewer rents, sewer surcharges,
33 water rents and other charges that are made a lien subject to the
34 provisions of this chapter, including any outstanding interest and fees,
35 prior to the date of the sale. No such property owner, or such other
36 eligible person, may make the election that is authorized pursuant to
37 this paragraph to enter into an installment agreement with a down
38 payment more than once for the subject property. The standards relating
39 to defaults and cures of defaults of installment agreements set forth in
40 this paragraph apply to installment agreements entered into pursuant to
41 such election.

42 2. An installment agreement shall provide for payments by the property
43 owner, or other eligible person acting on behalf of an owner, on a quar-
44 terly or monthly basis, for a period not less than eight years and not
45 more than ten years, provided that a property owner, or other eligible
46 person acting on behalf of an owner, may elect a period less than eight
47 years. Except as provided in paragraph one of this subdivision, there
48 shall be no down payment required upon the property owner's, or such
49 other eligible person's, entering into the installment agreement with
50 the respective department, but the property owner, or other eligible
51 person acting on behalf of an owner, may elect to make a down payment.
52 With respect to installment agreements with the commissioner of environ-
53 mental protection, the determination of whether payments shall be on a
54 quarterly or monthly basis shall be in the discretion of such commis-
55 sioner, except as provided in paragraph three of this subdivision. With
56 respect to installment agreements with the commissioner of finance, the

1 determination of whether payments shall be on a quarterly or monthly
2 basis shall be in the discretion of the property owner, or other eligi-
3 ble person acting on behalf of an owner.

4 3. Beginning on January first, two thousand twelve, any property owner
5 who has entered into an installment agreement with the commissioner of
6 environmental protection pursuant to this subdivision and who has auto-
7 mated meter reading shall receive a consolidated monthly bill for
8 current sewer rents, sewer surcharges and water rents and any payment
9 due under such installment agreement.

10 4. No later than September first, two thousand eleven, the commission-
11 ers of finance and environmental protection shall promulgate rules
12 governing installment agreements, including but not limited to, the
13 terms and conditions of such agreements, the payment schedules, and the
14 definition and consequences of default; no later than June first, two
15 thousand fourteen, the commissioners of finance and environmental
16 protection shall promulgate rules governing eligibility of owners or
17 other eligible persons acting on behalf of owners to enter into install-
18 ment agreements.

19 5. All installment agreements executed on or after March first, two
20 thousand fifteen shall include a conspicuous statement that if payments
21 required from a property owner pursuant to such an agreement are not
22 made for a period of six months, such property owner shall be in default
23 of such agreement, and the tax lien or tax liens on the subject property
24 may be sold, provided, however, that such default may be cured upon such
25 property owner's bringing all installment payments and all current
26 charges that are outstanding at the time of the default to a current
27 status, which shall include, but not be limited to, any outstanding
28 interest and fees, prior to the date of sale. Such statement shall also
29 include a notification that if such default is not cured prior to the
30 date of sale, such property owner shall not be eligible to enter into an
31 installment agreement for the subject property for five years, unless
32 there is a finding of extenuating circumstances in accordance with rules
33 promulgated by the department that entered into the installment agree-
34 ment with the property owner. Such statement shall include the defi-
35 nition of extenuating circumstances. All installment agreements shall
36 also include a statement describing the conditions under which the prop-
37 erty owner, or any other eligible person acting on behalf of an owner,
38 may be eligible, after default, to enter into another installment agree-
39 ment after such default, in accordance with paragraph one of this subdivi-
40 sion.

41 6. If a property owner, or other eligible person acting on behalf of
42 an owner, who has entered into an installment agreement with the depart-
43 ment of finance, fails to make a payment pursuant to such agreement,
44 then the department of finance shall, after the first missed payment,
45 mail a letter to the property owner, or other eligible person acting on
46 behalf of an owner, stating that such owner, or other eligible person,
47 is at risk of being in default of such agreement. The letter shall be
48 mailed after the first missed payment if the department has not received
49 payment within two weeks of the due date.

50 c. No later than January thirty-first, two thousand twenty-four, and
51 no later than every January thirty-first thereafter, the department of
52 finance shall submit a report to the mayor and to the speaker of the
53 council on real property with an assessed value of two hundred fifty
54 thousand dollars or less for which: (A) the owner of such real property
55 has entered into an agreement pursuant to this section for the payment
56 in installments of real property taxes, assessments or other charges

1 that are made a lien subject to the provisions of chapter three of this
2 title other than water rents, sewer rents, or sewer surcharges; and (B)
3 such unpaid taxes are subject to the interest rate described in subdivi-
4 sion e of section 11-313 of this chapter for the preceding calendar
5 year, including, but not limited to the following data:

6 1. the number of such agreements executed during the preceding calen-
7 dar year;

8 2. the number of such agreements that were in effect on December thir-
9 ty-first of the preceding calendar year;

10 3. the number of applications for such agreements that were received
11 during the preceding calendar year, and the number of such applications
12 that were not approved;

13 4. the average amount of property taxes and charges subject to such
14 agreements; and

15 5. the number of such agreements that entered into default and the
16 number of defaults that were cured.

17 § 11-322.1 Hardship installment agreements. a. Definitions. For
18 purposes of this section, the following terms have the following mean-
19 ings:

20 1. Applicant. The term "applicant" means a property owner who files an
21 application for an installment agreement under this section. Such term
22 includes a property owner who has entered into an installment agreement
23 after filing such an application.

24 2. Default. The term "default" means that an installment payment
25 required under the installment agreement entered into under this section
26 remains unpaid in whole or in part for six months from the date pay-
27 ment is required to be made, or any other tax or charge that becomes due on
28 the property during the term of such agreement remains unpaid in whole
29 or in part for six months.

30 3. Department. The term "department" means the department of finance.

31 4. Dwelling unit. The term "dwelling unit" means a unit in a condomi-
32 nium used primarily for residential purposes.

33 5. Fair market value. The term "fair market value" means the fair
34 market value of property as determined by the department or the fair
35 market value as determined by an appraisal obtained by the applicant
36 pursuant to paragraph four of subdivision g of this section, provided
37 that such appraisal shall be subject to review, and may be rejected, by
38 the department.

39 6. Income. The term "income" means the adjusted gross income for
40 federal income tax purposes as reported on an applicant's federal or
41 state income tax return for the applicable income tax year, subject to
42 any subsequent amendments or revisions; provided that if no such return
43 was filed for the applicable income tax year, "income" means the
44 adjusted gross income that would have been so reported if such a return
45 had been filed.

46 7. Income tax year. The term "income tax year" means the most recent
47 calendar year or fiscal year for which an applicant filed a federal or
48 state income tax return.

49 8. Net equity. The term "net equity" means the fair market value of
50 property minus any liabilities outstanding against such property, such
51 as mortgages, outstanding property taxes, water and sewer charges, and
52 any other liens on such property.

53 9. Property. The term "property" means real property classified as
54 class one pursuant to section eighteen hundred two of the real property
55 tax law or a dwelling unit in a condominium.

1 10. Property owner. The term "property owner" means an owner of real
2 property classified as class one pursuant to section eighteen hundred
3 two of the real property tax law or of a dwelling unit in a condominium,
4 or other eligible person, as defined in subdivision (i) of section 40-03
5 of title nineteen of the rules of the city of New York, acting on behalf
6 of such owner.

7 b. A property owner who satisfies the requirements described in subdivi-
8 sion c and d, e or f of this section may enter into an agreement with
9 the department pursuant to this section for the payment in installments
10 of real property taxes, assessments or other charges that are made a
11 lien subject to the provisions of this chapter, except for sewer rents,
12 sewer surcharges or water rents. The entry into an installment agreement
13 pursuant to this section shall not suspend the accrual of interest
14 charged against the property pursuant to section 11-301 of this chapter.
15 A property owner may only have one installment agreement with the
16 department in effect at any one time.

17 c. Eligibility requirements for an installment agreement under this
18 section. To be eligible to enter into an installment agreement pursuant
19 to this section, an applicant must demonstrate that the following
20 requirements are met:

21 1. The applicant is a property owner.

22 2. The property shall have been the primary residence of the applicant
23 for an uninterrupted period of not less than one year immediately
24 preceding the date the application for the installment agreement is
25 submitted and continues to be the primary residence of the applicant
26 through the date the installment agreement is entered into. Hospitali-
27 zation or a temporary stay in a nursing home or rehabilitation facility
28 for a period of not more than three years shall not be considered a
29 change in primary residence.

30 3. The combined income of the applicant and of all the additional
31 property owners may not exceed eighty-six thousand four hundred dollars
32 for the income tax year immediately preceding the date of the applica-
33 tion for the installment agreement. The department shall promulgate
34 rules that establish a process for an applicant to seek an exception
35 from the requirement that income information from all additional proper-
36 ty owners be provided in cases of hardship.

37 d. Eligibility requirement for senior low-income installment agree-
38 ment. In addition to the requirements set forth in subdivision c of this
39 section, to be eligible to enter into a senior low-income installment
40 agreement pursuant to subdivision l of this section, an applicant must
41 be sixty-five years of age or older when the application is submitted.

42 e. Eligibility requirement for fixed length income-based installment
43 agreement. To be eligible to enter into a fixed length income-based
44 installment agreement pursuant to subdivision m of this section, an
45 applicant must satisfy the requirements set forth in subdivision c of
46 this section.

47 f. Eligibility requirements for extenuating circumstances income-based
48 installment agreement. In addition to the requirements set forth in
49 subdivision c of this section, for an applicant to be eligible to enter
50 into an extenuating circumstances income-based installment agreement
51 pursuant to subdivision n of this section, the department must make a
52 finding of extenuating circumstances pursuant to the process described
53 in paragraph four of subdivision (e) of section 40-03 of title nineteen
54 of the rules of the city of New York.

55 g. Initial application procedure. 1. An initial application for an
56 installment agreement under this section shall include:

1 (a) for installment agreements that provide for the payment of taxes
2 and charges that will accrue after the date of the installment agree-
3 ment, a title search identifying all mortgages and other liens on the
4 property; and

5 (b) the signature of a primary resident of the property, and if such
6 primary resident does not hold an ownership interest of at least fifty
7 percent in the subject property, the signature of any other owner of the
8 property who, in combination with such primary resident, holds an owner-
9 ship interest of at least fifty percent in such property, consenting to
10 the application for an installment agreement.

11 2. A complete application must be submitted to, and approved by, the
12 department.

13 3. An applicant may select a monthly or quarterly payment schedule and
14 may also select the amount that is required to be paid under the appli-
15 cable installment agreement pursuant to the options available pursuant
16 to subdivision l, m or n of this section.

17 4. An applicant who is the property owner of a dwelling unit in a
18 condominium may submit an appraisal obtained by such applicant of the
19 fair market value of such dwelling unit provided that:

20 (a) the valuation date of such appraisal is a date within, and such
21 appraisal shall have been prepared no more than, twelve months prior to
22 submission of an application;

23 (b) the cost of such appraisal shall be borne by such applicant; and

24 (c) the cost of such appraisal may not be included in the amount
25 subject to the installment agreement.

26 h. Renewal. 1. An installment agreement under this section shall
27 terminate unless an applicant files a renewal application each year. At
28 least sixty days before one year from the date such installment agree-
29 ment was entered into or renewed, the department shall mail each appli-
30 cant a renewal application, provided, however, that upon any such
31 renewal application being made by the applicant, any installment agree-
32 ment then in effect with respect to such applicant shall be deemed
33 renewed until such time as the department shall have found such appli-
34 cant to be either eligible or ineligible for the renewal of the install-
35 ment agreement but in no event for more than six additional months.

36 2. To renew an installment agreement under this section, an applicant
37 must submit a renewal application to the department on or before one
38 year from the date such installment agreement was entered into and each
39 year thereafter for which renewal is sought. To be eligible to renew
40 such agreement, an applicant must demonstrate that:

41 (a) the property continues to be the primary residence of such appli-
42 cant and such residence has been uninterrupted since the date the
43 initial installment agreement was entered into; and

44 (b) the combined income of such applicant and of all the additional
45 property owners does not exceed fifty-eight thousand three hundred nine-
46 ty-nine dollars for the income tax year immediately preceding the date
47 of the renewal of such installment agreement, except that an applicant
48 for the renewal of a fixed length income-based installment agreement
49 pursuant to subdivision m of this section is not required to submit
50 income information.

51 i. Effects of installment agreement on tax lien and tax lien sale. 1.
52 The execution of an installment agreement pursuant to this section shall
53 not suspend the accrual of liens, interest and other charges against the
54 property, which continue to accrue in accordance with applicable law.

55 2. A property for which an application has been submitted that
56 contains proof of income and, for a senior low-income installment agree-

1 ment described in subdivision l of this section, proof of age, and that
2 is signed, but is otherwise incomplete, shall be withdrawn from the next
3 tax lien sale. Such property, however, may be included in the tax lien
4 sale subsequent to the next tax lien sale if a completed application is
5 not submitted within forty-five days from the date of the additional
6 information request notice sent to the applicant by the department or if
7 the completed application is denied.

8 j. Amount subject to installment agreement. 1. Each approved install-
9 ment agreement shall set forth terms of repayment, including (a) the
10 frequency of payments, (b) the percentage of the taxes and charges that
11 forms the basis of the required payment for the senior low-income
12 installment agreement described in subdivision l of this section, or the
13 percentage of the combined income of the property owners for the income
14 tax year immediately preceding the initial application that forms the
15 basis of the required payment for the installment agreement for the
16 fixed length income-based and the extenuating circumstances income-based
17 installment agreements described in subdivisions m and n respectively,
18 (c) the payment schedule, and (d) the payment amount.

19 2. A lien sold in a tax lien sale before the date of an application
20 for an installment agreement is not eligible to be included in an
21 installment agreement under this section.

22 3. The applicant may choose to include the cost of the title search
23 required to be submitted with an application pursuant to subparagraph
24 (a) of paragraph one of subdivision g of this section in the amount
25 subject to the installment agreement. If an applicant chooses to include
26 such cost, the applicant may either select a title company to conduct
27 the required search and present documentation to the department of the
28 cost, or direct the department to use a title company selected by the
29 department. The department shall pay the cost of the title search and be
30 reimbursed by the applicant through the addition of the cost to the
31 amount subject to the installment agreement. The applicant shall make
32 such reimbursement in the first year of the installment agreement, in
33 monthly or quarterly payments, consistent with the payment frequency
34 selected for the installment agreement. The cost of the title search
35 shall bear interest at the same rate as the interest on unpaid real
36 property tax as provided in section 11-224.1 of this title.

37 4. (a) Any time the amount of the liens on a property subject to an
38 installment agreement under this section exceeds twenty-five percent of
39 the net equity in such property, the applicant shall pay all taxes and
40 charges imposed against the property that exceed twenty-five percent of
41 the net equity in the property as such taxes and charges become due, in
42 addition to the payment amount set forth in the installment agreement.

43 (b) Notwithstanding subparagraph (a) of this paragraph and provided
44 that section five hundred eighty-one of the real property tax law is in
45 effect in the same form as such section was in effect as of the effec-
46 tive date of this section, for property that is a dwelling unit in a
47 condominium subject to an installment agreement under this section and
48 for which an appraisal has not been obtained pursuant to paragraph four
49 of subdivision g of this section, any time the amount of the liens
50 subject to such agreement exceeds fifty percent of the net equity in
51 such property, the applicant shall pay all taxes and charges imposed
52 against such property that exceed fifty percent of the net equity in
53 such property as such taxes and charges become due, in addition to the
54 payment amount set forth in the installment agreement. For property that
55 is a dwelling unit in a condominium and for which an appraisal has been
56 obtained pursuant to paragraph four of subdivision g of this section,

1 any time the amount of the liens subject to an installment agreement
2 under this section exceeds the higher of (i) fifty percent of the net
3 equity in such property based on the fair market value determined by the
4 department; or (ii) twenty-five percent of the net equity in such prop-
5 erty based on the fair market value determined by the appraisal obtained
6 by the applicant, the applicant shall pay all taxes and charges imposed
7 against such property that exceed the higher of the amounts described by
8 clauses (i) and (ii) of this subparagraph as such taxes and charges
9 become due, in addition to the payment amount set forth in the install-
10 ment agreement.

11 (c) The department shall provide each applicant with a written projec-
12 tion at the time the installment agreement is entered into as to when
13 the twenty-five or fifty percent threshold, as determined pursuant to
14 subparagraphs (a) and (b) of this paragraph, will be exceeded. The
15 department shall also notify each property owner in writing when the
16 amount of the liens exceeds such threshold. Failure by the department to
17 provide an applicant with such projection or to notify a property owner
18 when the amount of the liens exceeds the applicable threshold, however,
19 shall not affect the validity of the installment agreement that has been
20 entered into, nor shall any claim arise or exist against the commission-
21 er of finance or any officer or agency of the city by reason of such
22 failure to provide such projection or such notification.

23 5. If at any time the department determines that the fair market value
24 of a property subject to an installment agreement under this section has
25 increased, an applicant may request that the net equity in such property
26 be recalculated and the net equity amount included in such installment
27 agreement be adjusted to reflect the recalculated net equity in such
28 property.

29 6. If the combined income of all of the property owners exceeds
30 fifty-eight thousand three hundred ninety-nine dollars for the income
31 tax year immediately preceding the date of making a renewal application
32 pursuant to subdivision h of this section, the applicant shall pay all
33 taxes and charges imposed against the property after the date of such
34 renewal application as such taxes and charges become due, in addition to
35 the payment amount set forth in such installment agreement.

36 k. Termination of installment agreement. 1. An installment agreement
37 shall be terminated when any of the following occurs:

38 (a) The property whose liens are the subject of such installment
39 agreement is no longer the primary residence of the applicant. An appli-
40 cant whose installment agreement has been terminated because of such
41 reason may apply to enter into an installment agreement pursuant to
42 section 11-322 of this chapter.

43 (b) The fixed term of the installment agreement expires. An applicant
44 whose installment agreement has been terminated because of such expira-
45 tion may apply to enter into an installment agreement pursuant to
46 section 11-322 of this chapter or to this section.

47 (c) The applicant is deceased.

48 (d) The applicant opts out of an installment agreement without a fixed
49 term as described in paragraph one of subdivision 1 of this section. An
50 applicant who opts out of such agreement may apply to enter into an
51 installment agreement pursuant to section 11-322 of this chapter or to
52 this section.

53 (e) The applicant does not file a timely renewal application in
54 accordance with the provisions of subdivision h of this section.

1 (f) The applicant is in default and has not cured such default as
2 provided in subparagraph (a) of paragraph three of this subdivision
3 prior to the next tax lien sale.

4 (g) The applicant has defaulted on the installment agreement and has
5 cured such default by entering into a new installment agreement pursuant
6 to clause two or three of subparagraph (a) of paragraph three of this
7 subdivision.

8 2. If an installment agreement is terminated, all taxes and charges
9 that accrued before such termination are required to be paid. If such
10 taxes and charges are not paid within nine months of such termination,
11 the tax lien or tax liens on such property may be sold. Notwithstanding
12 the preceding sentence, if an agreement is terminated pursuant to
13 subparagraph (c) of paragraph one of this subdivision, a surviving
14 spouse has eighteen months from the death of the applicant to pay all
15 taxes and charges on such property before the tax lien or tax liens on
16 such property may be sold. If such surviving spouse is a property owner
17 he or she may enter into a separate installment agreement pursuant to
18 section 11-322 of this chapter or subdivision l, m or n of this section,
19 as long as he or she meets the eligibility requirements for the respec-
20 tive installment agreement.

21 3. (a) An applicant may cure a default by:

22 (i) bringing all installment payments and all current charges, includ-
23 ing but not limited to any interest and fees, that are outstanding at
24 the time of the default to a current status prior to the date of the tax
25 lien sale;

26 (ii) entering into a new installment agreement with a down payment of
27 twenty percent or more, of all delinquent real property taxes, assess-
28 ments, sewer rents, sewer surcharges, water rents and other charges that
29 are made a lien subject to the provisions of this chapter, including any
30 outstanding interest and fees, prior to the date of such sale; or

31 (iii) entering into a new installment agreement under this section if
32 the department has made a finding of extenuating circumstances pursuant
33 to the process described in paragraph four of subdivision (e) of section
34 40-03 of title nineteen of the rules of the city of New York.

35 (b) If a default is not cured prior to the date of the tax lien sale,
36 such applicant shall not be eligible to enter into an installment agree-
37 ment for the subject property for five years, unless the department has
38 made a finding of extenuating circumstances pursuant to the process
39 described in paragraph four of subdivision (e) of section 40-03 of title
40 nineteen of the rules of the city of New York.

41 (c) Notwithstanding the prohibition in subparagraph (b) of this para-
42 graph against entering into an installment agreement for the subject
43 property for five years, an applicant who has defaulted on an install-
44 ment agreement and whose lien has been sold and, after the sale of the
45 lien, whose property on which the lien was sold is subject to another
46 tax lien that is eligible to be sold, may apply to enter into another
47 installment agreement with respect to such other lien before the end of
48 such five-year period, provided that such applicant makes a down payment
49 of twenty percent or more, of all delinquent real property taxes,
50 assessments, sewer rents, sewer surcharges, water rents and other charg-
51 es that are made a lien subject to the provisions of this chapter,
52 including any outstanding interest and fees, prior to the date of the
53 tax lien sale. An applicant shall not be eligible to enter an install-
54 ment agreement with a down payment under this subparagraph more than
55 once for the subject property.

1 (d) If a property owner who has entered into an installment agreement
2 with the department pursuant to this section fails to make a payment
3 pursuant to such agreement, the department shall, after the first missed
4 payment, mail a letter or send an email, when such address is known, to
5 the property owner stating that such owner is at risk of being in
6 default of such agreement. The letter or email shall be sent after the
7 first missed payment if the department has not received payment within
8 two weeks of the due date. Failure by the department to mail such letter
9 or send such email, however, shall not affect the validity of the
10 installment agreement that has been entered into, nor shall any claim
11 arise or exist against the commissioner of finance or any officer or
12 agency of the city by reason of such failure to mail such letter or send
13 such email.

14 1. Senior low-income installment agreement. 1. At the option of the
15 applicant, a senior low-income installment agreement may provide for
16 payments for a fixed period of time or for payments without a fixed
17 period of time. If the applicant selects an installment agreement with a
18 fixed time period, the applicant may select the term of the agreement.
19 The applicant may switch from an installment agreement without a fixed
20 time period to an installment agreement with a fixed time period, or
21 from an installment agreement with a fixed time period to an installment
22 agreement without a fixed time period, at any point.

23 2. A senior low-income installment agreement shall provide for the
24 payment of both a percentage of taxes and charges that have accrued, if
25 any, and a percentage of taxes and charges that will accrue after the
26 date of the installment agreement. The applicant may elect to pay an
27 installment amount based on zero percent, twenty-five percent, fifty
28 percent or seventy-five percent of the annual taxes and charges that
29 have accrued, if any, and that will accrue. If the applicant selects an
30 agreement with a fixed time period, the required payment shall be based
31 on the percentage selected and the term selected. If the applicant
32 selects an agreement without a fixed time period, the required payment
33 shall be based on the percentage selected for prospective taxes and
34 charges and a partial or full payment of the percentage of taxes and
35 charges that have accrued, if any. The applicant may adjust the payment
36 percentage at any point during the installment agreement, but may not
37 make more than one such adjustment during any six-month period.

38 m. Fixed length income-based installment agreement. 1. At the option
39 of the applicant, a fixed length income-based installment agreement
40 pursuant to this subdivision may provide for the payment of (a) only
41 taxes and charges that have accrued or (b) taxes and charges that have
42 accrued and taxes and charges that will accrue over the next fiscal
43 year. If option (a) is selected, the applicant shall pay all taxes and
44 charges that become due on the property after the installment agreement
45 is entered into in addition to the payment schedule provided in the
46 installment agreement. If option (b) is selected, the applicant shall
47 pay all taxes and charges that will accrue on the property after the
48 installment agreement has been in effect for one year in addition to the
49 payment schedule provided in the installment agreement.

50 2. The annual payment amount required pursuant to an installment
51 agreement described by this subdivision shall be based on a percentage
52 of the combined income of all of the property owners for the income tax
53 year immediately preceding the initial application for such installment
54 agreement. The applicant may select a percentage of two percent, four
55 percent, six percent or eight percent of such combined income. The
56 installment payment shall be calculated by dividing the annual payment

1 amount by twelve or four, depending on whether a monthly or quarterly
2 payment schedule is selected. The term of the agreement shall be calcu-
3 lated by dividing the taxes and charges included in the agreement pursu-
4 ant to paragraph one of this subdivision by the installment payment
5 determined by the calculation described in this paragraph.

6 3. An applicant may adjust the payment percentage at any point during
7 the installment agreement, but may not make more than one such adjust-
8 ment during any six-month period.

9 n. Extenuating circumstances income-based installment agreement. 1.
10 An extenuating circumstances income-based installment agreement shall
11 provide for the payment, during the period of such agreement, of a
12 percentage of taxes and charges that have accrued on the property and
13 taxes and charges that accrue after the date of the installment agree-
14 ment.

15 2. The annual payment amount required pursuant to an installment
16 agreement described by this subdivision shall be based on a percentage
17 of the combined income of all of the property owners for the income tax
18 year immediately preceding the initial application for an installment
19 agreement. The applicant may select a percentage of two percent, four
20 percent, six percent, or eight percent of such combined income. Such
21 installment payment shall be calculated by dividing the annual payment
22 amount by twelve or four, depending on whether a monthly or quarterly
23 payment schedule is selected. The installment agreement shall be for a
24 term of one year but may be extended on a yearly basis if the department
25 determines that the extenuating circumstances continue.

26 3. An applicant may adjust the payment percentage at any point during
27 the installment agreement, but may not make more than one such adjust-
28 ment during any six-month period.

29 o. After an applicant has entered into an installment agreement with
30 the department pursuant to this section, the department shall record the
31 entry of such agreement on the automated city register information
32 access system. Failure by the department to record such agreement,
33 however, shall in no manner affect the validity of such agreement, nor
34 shall any claim arise or exist against the commissioner of finance or
35 any officer or agency of the city by reason of such failure to record.

36 p. All installment agreements executed pursuant to this section on or
37 after the effective date of this subdivision shall include:

38 1. a statement that if payments required from an applicant pursuant to
39 such an agreement are not made for a period of six months, such appli-
40 cant shall be in default of such agreement, and the tax lien or tax
41 liens on the subject property may be sold, provided, however, that such
42 default may be cured upon such applicant's bringing all installment
43 payments and all current charges that are outstanding at the time of the
44 default to a current status, which shall include, but not be limited to,
45 any outstanding interest and fees, prior to the date of the tax lien
46 sale;

47 2. a notification that if such default is not cured prior to the date
48 of the tax lien sale, such property owner shall not be eligible to enter
49 into an installment agreement for the subject property for five years,
50 unless a finding of extenuating circumstances has been made by the
51 department pursuant to the process described in paragraph four of subdi-
52 vision (e) of section 40-03 of title nineteen of the rules of the city
53 of New York;

54 3. the definition of extenuating circumstances pursuant to such para-
55 graph;

1 4. a statement describing the conditions under which the property
2 owner may be eligible, after default, to enter into another installment
3 agreement in accordance with paragraph three of subdivision k of this
4 section; and

5 5. the date by which the applicant must submit a renewal application
6 each year.

7 q. Every January thirty-first, the department shall submit to the
8 speaker of the council a report on the usage of the installment agree-
9 ments set forth in this section in the prior calendar year, including,
10 but not limited to the following data, disaggregated by installment
11 agreement type:

12 1. the number of new installment agreements executed;

13 2. the number of installment agreements in effect on December thirty-
14 first of each year;

15 3. the number of applications for installment agreements received, the
16 number of applications not approved, and the reasons for disapproval;

17 4. for the senior low-income installment agreements, the number of new
18 installment agreements executed at zero percent, twenty-five percent,
19 fifty percent and seventy-five percent;

20 5. for the fixed length and extenuating circumstances income-based
21 installment agreements, the number of new installment agreements
22 executed at two percent, four percent, six percent or eight percent;

23 6. the average amount of property taxes and charges addressed by the
24 installment agreement;

25 7. the number of installment agreements that entered into default, the
26 number of defaults that were cured and the method by which they were
27 cured;

28 8. the number of installment agreements that were terminated, by
29 reason of termination;

30 9. the number of installment agreements that were renewed, including
31 whether such renewal occurred before or during the six-month period
32 described in paragraph one of subdivision h of this section; and

33 10. the number of installment agreements where the amount of liens on
34 the subject property exceeded the applicable percent of the net equity
35 in such property.

36 r. The department shall publicize the availability of the installment
37 agreements set forth in this section so as to maximize public awareness
38 of such agreements.

39 § 11-323 Commissioner of finance to conduct sale. The commissioner of
40 finance or his or her designee shall conduct the sales hereinbefore
41 provided to be made, or the commissioner may, in his or her discretion,
42 contract with any other person to conduct competitive sales of tax
43 liens.

44 § 11-324 Deposits and forfeits. The commissioner of finance may
45 require from each purchaser of a tax lien or tax liens, in cash or cash
46 equivalent in immediately available funds in the discretion of such
47 commissioner, a deposit of at least five per cent of the cash portion of
48 the sale price of the tax lien or tax liens purchased by him or her, as
49 liquidated damages, on a date determined by the commissioner of finance.
50 The balance shall be paid to the commissioner of finance in cash or cash
51 equivalent in immediately available funds or such other consideration
52 acceptable to the commissioner of finance or any combination thereof, in
53 his or her discretion. For purposes of this chapter "cash equivalent"
54 shall mean a cashier's check, bank check, certified check, money order,
55 or such other paper instrument as the commissioner of finance shall
56 prescribe. Such deposit and balance may also be paid by electronic funds

1 transfer. For purposes of this chapter, "electronic funds transfer"
2 shall mean any transfer of funds, other than a transaction originated by
3 check, draft or similar paper instrument, which is initiated using a
4 format prescribed by the commissioner of finance. A tax lien certificate
5 shall be made and delivered to the purchaser upon payment of the sale
6 price. In case any purchaser shall default in any obligation under the
7 terms and conditions of the tax lien sale, then the amount deposited by
8 the purchaser shall be forfeited to the city, and the tax lien or tax
9 liens upon the property affected by such purchase may be sold again at
10 the discretion of the commissioner of finance pursuant to section 11-319
11 of this chapter. All deposits forfeited as aforesaid shall be paid into
12 the general fund.

13 § 11-327 Tax lien certificates; operation. A tax lien certificate
14 shall operate to transfer and assign the tax lien upon the property
15 described therein for the taxes, assessments, sewer rents, sewer
16 surcharges, water rents, any other charges that are made a lien subject
17 to the provisions of this chapter, the costs of any notices and adver-
18 tisements given pursuant to this chapter, any other charges that are due
19 and payable, a surcharge pursuant to section 11-332 of this chapter, and
20 interest and penalties thereon.

21 § 11-328 Contents of a tax lien certificate. A tax lien certificate
22 shall contain a transfer and assignment by the city of the tax lien sold
23 to the purchaser, the date of the sale, the aggregate amount of the tax
24 lien so transferred, and the items of taxes, assessments, sewer rents,
25 sewer surcharges, water rents, any other charges that are made a lien
26 subject to the provisions of this chapter, the costs of any advertise-
27 ments and notices given pursuant to this chapter, any other charges that
28 are due and payable, a surcharge pursuant to section 11-332 of this
29 chapter, and interest and penalties thereon comprising the tax lien, the
30 rate of interest which the tax lien certificate will bear, the date when
31 the amounts under such tax lien are due pursuant to section 11-332 of
32 this chapter, and a description of the property affected by the tax
33 lien, which description shall include the designation of such property
34 on the tax map, by its lot number and the number of the block in which
35 it is contained, and such other identifying information as the commis-
36 sioner of finance or his or her designee may deem proper to add. For
37 purposes of this section, the words "date of sale" shall have the same
38 meaning provided in subdivision (e) section 11-320 of this chapter. Each
39 tax lien certificate shall be executed by the commissioner of finance or
40 his or her designee by manual or facsimile signature and shall be
41 acknowledged by the manual or facsimile signature of the officer
42 subscribing the same in the manner in which a deed is required to be
43 acknowledged to be recorded in the county in which the property affected
44 is situated. The commissioner of finance may designate an agent for
45 purposes of authenticating any such signature.

46 § 11-330 Record of tax lien certificates. The commissioner of finance
47 or his or her designee, shall keep in his or her office a public record
48 of sales of tax liens, and a copy of each tax lien certificate issued by
49 such commissioner or his or her designee. Assignments of tax lien
50 certificates duly acknowledged may be filed and recorded in the office
51 of the commissioner of finance or his or her designee. A tax lien
52 certificate and any assignment thereof, duly acknowledged, shall be
53 deemed conveyances under article eight of the real property law, and may
54 be recorded in the office of the recording officer of any county in
55 which the real property which it affects is situated. Tax lien certif-
56 icates and all assignments thereof shall be recorded by recording offi-

1 cers in the same manner as mortgages and assignments thereof, but with-
2 out payment of tax under article eleven of the tax law. Neither the tax
3 lien nor the rights transferred or created by a tax lien certificate
4 shall be impaired by failure of a recording officer to record a tax lien
5 certificate made by the city through the commissioner of finance or his
6 or her designee.

7 § 11-331 Records to be competent evidence. The record in the office of
8 the commissioner of finance or his or her designee of sales of tax
9 liens, of a tax lien certificate, and of a copy of a tax lien certifi-
10 cate, and of an assignment of a tax lien certificate, a record of a tax
11 lien certificate in the office of a recording officer, and of an assign-
12 ment of a tax lien certificate, duly acknowledged, in the office of a
13 recording officer, shall each be evidence in any court in the state
14 without further proof. A transcript of any record enumerated in this
15 section, duly certified, shall be evidence in any court in the state
16 with like effect as the original instrument of record.

17 § 11-332 Rights of purchaser of tax lien. a. Any purchaser of a tax
18 lien or tax liens shall stand in the same position as the city and shall
19 have all the rights and remedies that the city would have had if the tax
20 lien or tax liens had not been sold.

21 b. The aggregate amount of each tax lien transferred pursuant to this
22 chapter shall be due and payable one year from the date of the sale.
23 Until such aggregate amount is fully paid and discharged, the holder of
24 the tax lien certificate shall be entitled to receive interest on such
25 aggregate amount from the date of sale, and semi-annually at the rate of
26 interest applicable in accordance with section 11-319 of this chapter.
27 If such aggregate amount is partially paid, the holder of the tax lien
28 certificate shall be entitled to receive interest only on the amount
29 that remains unpaid. Notwithstanding the foregoing sentence, the holder
30 of the tax lien certificate shall be entitled to receive and retain a
31 surcharge equal to five percent of the lien arising pursuant to the
32 provisions of this chapter as a result of the nonpayment of taxes,
33 assessments, sewer rents, sewer surcharges, water rents, any other
34 charges that are made a lien subject to the provisions of this chapter,
35 the costs of any advertisements and notices given pursuant to this chap-
36 ter, any other charges that are due and payable, and interest and penal-
37 ties thereon. Any amounts due shall be paid directly to the holder of
38 the tax lien certificate. At the option of the holder of any tax lien
39 certificate the aggregate amount thereof shall become subject to fore-
40 closure after default in the payment of interest for thirty days or
41 after default for six months after the date of sale stated in the tax
42 lien certificate in accordance with subdivision (d) of section 11-320
43 and section 11-328 of this chapter in the payment of any taxes, assess-
44 ments, sewer rents, sewer surcharges, water rents, any other charges
45 that are made a lien subject to the provisions of this chapter, or the
46 interest or penalties thereon which become a lien on or after the date
47 of sale of the tax lien transferred by such tax lien certificate. At his
48 or her option, the holder of the tax lien certificate may satisfy any
49 such subsequent tax lien on the same property, and shall, by virtue of
50 such satisfaction, be deemed to be in the same position as if he or she
51 were a purchaser of a tax lien certificate for such subsequent tax lien,
52 provided, however, that such holder shall not be entitled to receive a
53 five percent surcharge on such subsequent tax lien pursuant to this
54 section. The rate of interest on such subsequent lien shall be the rate
55 of interest applicable to tax lien certificates pursuant to section
56 11-319 of this chapter. The commissioner of finance or his or her desig-

1 nee, at the request of the purchaser of such subsequent lien, shall
2 issue a tax lien certificate for such lien pursuant to sections 11-327
3 and 11-328 of this chapter. Upon issuance of such certificate, the
4 commissioner of finance or his or her designee shall provide such notice
5 as is required pursuant to section 11-320(d) of this chapter. Failure to
6 provide notice pursuant to this subdivision shall not affect the validi-
7 ty of any transfer of a subsequent tax lien or tax liens pursuant to
8 this subdivision. Any person having a legal or beneficial interest in
9 property affected by a tax lien certificate may satisfy the same at any
10 time upon payment of the amounts due with interest at the rate applica-
11 ble in accordance with section 11-319 of this chapter. Upon satisfaction
12 of the tax lien, the holder thereof shall issue to the person who satis-
13 fied such tax lien a certificate of discharge, certifying that the tax
14 lien has been paid or has been otherwise satisfied, in such recordable
15 form as has been approved by the commissioner of finance. For purposes
16 of this section, the words "date of sale" shall have the same meaning
17 provided in subdivision (e) of section 11-320 of this chapter.

18 § 11-333 Discharge of tax lien. A tax lien sold pursuant to the
19 provisions of this chapter may be discharged by presenting the certif-
20 icate of discharge issued by the holder of the tax lien pursuant to
21 section 11-332 of this chapter to the recording officer of the county in
22 which the real property that it affects is situated, and any recording
23 officer to whom such certificate of discharge is presented shall record
24 the same.

25 § 11-334 Exemption from taxation. Tax liens and tax lien certificates
26 shall be exempt from taxation by the state or any local subdivisions
27 thereof, except from the taxes imposed by article ten of the tax law.
28 The real property affected by any tax lien shall not be exempt from
29 taxation by reason of this section.

30 § 11-335 Foreclosure of tax liens. If the amount of any tax lien which
31 shall have been transferred by a tax lien certificate shall not be paid
32 when under its terms and the provisions of section 11-332 of this chap-
33 ter such amount shall be due, the holder of such tax lien certificate
34 may maintain an action in the supreme court to foreclose such tax lien.
35 The holder of such tax lien certificate shall notify the commissioner of
36 finance or his or her designee in writing whenever he or she commences
37 such action at the time of filing of such action, and shall notify the
38 commissioner of finance in writing of the resolution of such action,
39 including any settlement of such action, within thirty days of such
40 resolution. In an action to foreclose a tax lien any person shall be a
41 proper party of whom the plaintiff alleges that such person has or may
42 have or that the plaintiff has reason to believe that such person has or
43 may have an interest in or claim upon the property affected by the tax
44 lien. A plaintiff in an action to foreclose a tax lien shall recover
45 reasonable attorney's fees for maintaining such action. Except as other-
46 wise provided in this chapter an action to foreclose a tax lien shall be
47 regulated by the provisions of the civil practice law and rules and by
48 all other provisions of law, and rules of practice applicable to actions
49 to foreclose mortgages on real property. The people of the state of New
50 York or the city of Staten Island may be made party to an action to
51 foreclose a tax lien in the same manner as a natural person. Where the
52 people of the state of New York or the city of Staten Island are made a
53 party defendant the complaint shall set forth, in addition to the other
54 matters required to be set forth by law, detailed facts showing the
55 particular nature of the interest in or the lien on such property of the
56 people of the state of New York or the city of Staten Island, and

1 detailed facts showing the particular nature of the interest in or the
2 lien on such property which plaintiff has reason to believe that the
3 people of the state of New York or the city of Staten Island have or may
4 have in such property, and the reason for making the people of the state
5 of New York or the city of Staten Island a party defendant. Upon failure
6 to state such facts the complaint shall be dismissed as to the people of
7 the state or the city of Staten Island.

8 § 11-336 Pleading tax lien certificate. Whenever a cause of action,
9 defense or counterclaim, is for the foreclosure of a tax lien, or is in
10 any manner founded upon a tax lien or a tax lien certificate, the
11 production in evidence of an instrument executed by the commissioner of
12 finance or his or her designee in the form prescribed in section 11-328
13 of this chapter for a tax lien certificate subscribed by or in behalf of
14 the commissioner of finance or his or her designee shall be presumptive
15 evidence that the lien purported to be transferred by such an instrument
16 was a valid and enforceable lien, and that it has been duly assigned to
17 the purchaser, and it shall not be necessary to plead or prove any act,
18 proceeding, notice or action, preceding the delivery of such tax lien
19 certificate nor to establish the validity of the tax lien transferred by
20 such tax lien certificate. If a party or person in interest in any such
21 action or proceeding claims that a tax lien is irregular or invalid, or
22 that there is any defect therein or that a tax lien certificate is
23 irregular, invalid or defective, such invalidity, irregularity or defect
24 must be specifically pleaded or set forth, and must be established
25 affirmatively by the party or person pleading or setting forth the same.

26 § 11-337 Judgment upon tax lien. In every action for the foreclosure
27 of a tax lien, and in every action or proceeding in which a cause of
28 action, defense or counterclaim is in any manner founded upon a tax lien
29 or a tax lien certificate, such tax lien certificate and the tax lien
30 which it transfers shall be presumed to be regular and valid and effec-
31 tual to transfer to the purchaser named therein a valid and enforceable
32 tax lien. Unless in such an action or proceeding such tax lien or tax
33 lien certificate be found to be invalid, they shall be adjudged to be
34 enforceable and valid, for the amount thereof and the interest to which
35 the holder may be entitled and a tax lien transferred by a tax lien
36 certificate effectual to transfer such tax lien to the purchaser named
37 therein.

38 § 11-338 Judgment of foreclosure of tax lien; sale. In an action to
39 foreclose a tax lien, unless the defendants obtain judgment, the plain-
40 tiff shall be entitled to a judgment establishing the validity of the
41 tax lien so far as the same shall not be adjudged invalid and of the tax
42 lien certificate and directing the sale of the real, personal or mixed
43 property affected thereby, or such part thereof as shall be sufficient
44 to discharge the tax lien, or such items thereof as shall not be
45 adjudged invalid together with the expense of the sale, and the costs of
46 the action.

47 § 11-339 City may purchase at sale. At a sale pursuant to judgment in
48 an action to foreclose a tax lien or at any sale free of tax liens, the
49 city, without authorization other than hereby given, may purchase any
50 property that is the subject of the sale.

51 § 11-340 Effect of judgment foreclosing tax lien. Every final judg-
52 ment in an action to foreclose a tax lien shall be binding upon, and
53 every conveyance upon a sale pursuant thereto, shall transfer to and
54 vest in the purchaser all the right, title, interest and estate in and
55 claim upon the real property affected by such judgment, of the plain-
56 tiff, each defendant upon whom the summons is served, each person claim-

1 ing from, through or under such a defendant by title accruing after the
2 filing of notice of pendency of the action or after the entry of judg-
3 ment and filing of the judgment roll in the proper county clerk's
4 office, and each person not in being when the judgment is rendered, who
5 afterwards may become entitled to a beneficial interest attaching to, or
6 an estate or interest in such real property or any portion thereof,
7 provided that the person presumptively entitled to such beneficial
8 interest, estate or interest is a party to such action or bound by such
9 judgment. So much of section three hundred seventeen of the civil prac-
10 tice law and rules as requires the court to allow a defendant to defend
11 an action after final judgment shall not apply to an action to foreclose
12 a tax lien. Delivery of the possession of real property affected by a
13 judgment to foreclose a tax lien may be compelled in the manner
14 prescribed in section two hundred twenty-one of the real property
15 actions and proceedings law.

16 § 11-341 Surplus. Any surplus of the proceeds of the sale, after
17 paying the expenses of the sale, and all taxes, assessments, sewer
18 rents, sewer surcharges, water rents, any other charges made a lien
19 subject to the provisions of this chapter, the costs of any advertise-
20 ments and notices given pursuant to this chapter, any other charges that
21 are due and payable, any surcharge pursuant to section 11-332 of this
22 chapter and interest and penalties thereon, including such amounts which
23 accrued or became a lien on and after the date of sale of the tax lien
24 or tax liens and up to and including the date of the sale of the proper-
25 ty in foreclosure, and satisfying the amount of such tax lien or tax
26 liens and interest and the costs of the action, must be paid into court,
27 for the use of the person or persons entitled thereto. If any part of
28 the surplus remains in court for the period of three months, and no
29 application has been made therefor, the court must, and, if an applica-
30 tion therefor is pending, the court may direct such surplus to be
31 invested at interest, for the benefit of the person or persons entitled
32 thereto, to be paid upon the direction of the court.

33 § 11-342 Foreclosed tax lien not arrears. Any party to an action to
34 foreclose a tax lien or any purchaser or any party in interest may give
35 notice of such foreclosure to the city collector and after such notice
36 the items which constituted the tax lien thus foreclosed shall not be
37 entered by the city collector in any yearly assessment-roll, so long as
38 the judgment of foreclosure of such lien remains in force.

39 § 11-347 Corporation counsel to protect city in all proceedings relat-
40 ing to tax liens. It shall be the duty of the corporation counsel to
41 protect the interest of the city in all matters, actions and proceedings
42 relating to tax liens and tax lien certificates; to intervene on behalf
43 of the city or to make the city a party to any action in which the
44 corporation counsel believes it to be to the interest of the city so to
45 do, by reason of any matter arising under or relating to any tax lien or
46 tax lien certificate, or advertisement of sale of tax liens. The corpo-
47 ration counsel in his or her discretion may represent the purchaser of a
48 tax lien or the holder of a tax lien certificate in any action in which
49 the corporation counsel believes it to be in the interest of the city so
50 to do, by reason of any matter arising under or relating to any tax lien
51 or tax lien certificate, or advertisement of sale of tax liens. All
52 costs recovered in any action or proceeding conducted or defended by the
53 corporation counsel pursuant to this section shall belong to the city
54 and shall be collected, applied and disposed of in the same manner as
55 are other costs recovered by the city.

1 § 11-349 Lost tax lien certificate; delivery of duplicate in case of.
2 Whenever any tax lien certificate given by the commissioner of finance
3 or his or her designee, as in this chapter provided, shall be lost, the
4 commissioner of finance or his or her designee may receive evidence of
5 such loss, and on satisfactory proof of the fact may direct the
6 execution and delivery of a duplicate to such person or persons who
7 shall appear entitled thereto, and may also, in the commissioner's
8 discretion, require a bond of indemnity to the city.

9 § 11-350 Affidavits of publication and mailing of necessary notices to
10 be preserved. It shall be the duty of the commissioner of finance or his
11 or her designee to procure, preserve and register at the department of
12 finance, affidavits of the publication and mailing of all the advertise-
13 ments and notices by this chapter required to be published and mailed,
14 and such affidavits shall be presumptive proof of such publication and
15 mailing in all the courts of this state.

16 § 11-353 Cancellation of taxes, assessments, water rents, sewer rents,
17 sewer surcharges, any charges that are made a lien subject to the
18 provisions of this chapter, the costs of any advertisements and notices
19 given pursuant to this chapter, any other charges that are due and paya-
20 ble, a surcharge pursuant to section 11-332 of this chapter, and inter-
21 est and penalties thereon. Whenever the city has heretofore or shall
22 hereafter become vested with title to property acquired by virtue of tax
23 enforcement foreclosure proceedings, or by deed in lieu thereof, the
24 commissioner of finance, or his or her designee, shall cancel all unpaid
25 real estate taxes, tax lien certificates, assessments, water rents,
26 sewer rents, sewer surcharges, any charges that are made a lien subject
27 to the provisions of this chapter, the costs of any advertisements and
28 notices given pursuant to this chapter, any other charges that are due
29 and payable, a surcharge pursuant to section 11-332 of this chapter, and
30 interest and penalties thereon upon which the foreclosure action was
31 predicated. Upon the sale of such property and the conveyance of the
32 title thereof by the city, the commissioner of finance, or his or her
33 designee, shall cancel all unpaid real estate taxes, assessments, water
34 rents, sewer rents, sewer surcharges, any charges that are made a lien
35 subject to the provisions of this chapter, the costs of any advertise-
36 ments and notices given pursuant to this chapter, any other charges that
37 are due and payable, a surcharge pursuant to section 11-332 of this
38 chapter, and interest and penalties thereon that shall have accrued
39 during the period between the date of the last unpaid item upon which
40 the foreclosure action was predicated and the date of conveyance of
41 title. The commissioner of finance, or his or her designee, shall enter
42 notations of such cancellations in the appropriate records for each such
43 parcel of property.

44 § 11-354 Additional method to enforce payment of tax liens held by the
45 city. (a) Notwithstanding any other provision of law and notwithstanding
46 any omission to hold a tax lien sale, whenever any tax, assessment,
47 sewer rent, sewer surcharge, water rent, any charge that is made a lien
48 subject to the provisions of this chapter or chapter four of this title,
49 or interest and penalties thereon, has been due and unpaid for a period
50 of at least one year from the date on which the tax, assessment or other
51 legal charge represented thereby became a lien, or in the case of any
52 class one property or any class two property that is a residential
53 condominium or residential cooperative, as such classes of property are
54 defined in subdivision one of section eighteen hundred two of the real
55 property tax law, or in the case of a multiple dwelling owned by a
56 company organized pursuant to article eleven of the private housing

1 finance law with the consent and approval of the department of housing
2 preservation and development, for a period of at least three years from
3 the date on which the tax, assessment or other legal charge became a
4 lien, the city, as owner of a tax lien, may maintain an action in the
5 supreme court to foreclose such lien. Such action shall be governed by
6 the procedures set forth in section 11-335 of this chapter; provided,
7 however, that such parcel shall only be sold to the highest responsible
8 bidder. Such purchaser shall be deemed qualified as a responsible bidder
9 pursuant to such criteria as are established in rules promulgated by the
10 commissioner of finance after consultation with the commissioner of
11 housing preservation and development.

12 (b) At a sale pursuant to a judgment in an action brought pursuant to
13 subdivision (a) of this section to foreclose a tax lien, the city may
14 purchase property subject to such lien in accordance with the provisions
15 of section 11-339 of this chapter.

16 (c) The provisions of this section shall not affect any existing reme-
17 dy or procedure for the enforcement or foreclosure of tax liens provided
18 for in this code or any other law, but the remedy provided herein for
19 foreclosure of tax liens shall be in addition to any other remedies or
20 procedures provided by any general, special or local law. Notwithstand-
21 ing any other provision of this code, the commissioner of finance shall
22 be authorized to agree to forebear to commence an in rem action against
23 property which has an outstanding and unredeemed tax lien certificate
24 previously sold by the city and held by a third party pursuant to this
25 chapter.

26 § 11-355 Reporting. The commissioner of finance shall submit an annual
27 report to the council concerning the sale or sales of tax liens during
28 the preceding year pursuant to this chapter. Such report shall include
29 the following information regarding such sale or sales: a list of prop-
30 erties for which a tax lien or tax liens has or have been sold, includ-
31 ing identification of the particular tax lien or tax liens sold; the
32 proceeds received from the sale or sales of tax liens; identification of
33 the purchaser of and servicer for the tax lien or tax liens sold; a
34 report of servicer activities during the immediately preceding year; the
35 redemption rate for tax liens that have been sold; the delinquency rate
36 for real property taxes for the immediately preceding year; and any
37 other information pertinent to the sale of tax liens that may be
38 requested by the council and which is not made confidential pursuant to
39 section 11-208.1 of this code. Upon request by the council, information
40 provided in such report shall be arranged by community board. In addi-
41 tion to such report, the commissioner of finance shall from time to time
42 provide any other information pertinent to the sale of tax liens that
43 may be requested by the council and which is not made confidential
44 pursuant to section 11-208.1 of the code, including updated information
45 regarding the sale or sales of tax liens pursuant to this chapter. In
46 addition to such report, no later than August thirty-first, two thousand
47 twenty, the commissioner shall provide to the council a report listing
48 all properties on which liens have been sold during the period from
49 January first, two thousand fifteen through December thirty-first, two
50 thousand nineteen. The report shall indicate, based on records in the
51 office of the register, whether a transfer of or mortgage recorded on
52 any of such properties has occurred during such period after the sale of
53 any tax lien sold during such period.

54
55

1 § 11-401 Definitions. Whenever used in this chapter, the following
2 terms shall mean:

3 1. "Tax lien." The lien arising as a result of the nonpayment of
4 taxes, assessments, sewer rents, sewer surcharges, water rents, any
5 other charges that are made a lien subject to the provisions of this
6 chapter or chapter three of this title, interest and penalties thereon,
7 and the right of the city to receive such amounts.

8 2. "Court." The supreme court.

9 3. "Class." Any class of real property defined in subdivision one of
10 section eighteen hundred two of the real property tax law, and any
11 subclassification of class two real property where such subclassifica-
12 tion is established by rule of the commissioner of finance promulgated
13 pursuant to this subdivision.

14 4. "Distressed property." Any parcel of class one or class two real
15 property that is subject to a tax lien or liens that result from an
16 environmental control board judgment against the owner of such parcel
17 for a building code violation with a lien or liens to value ratio, as
18 determined by the commissioner of finance, equal to or greater than
19 twenty-five percent or any parcel of class one or class two real proper-
20 ty that is subject to a tax lien or liens with a lien or liens to value
21 ratio, as determined by the commissioner of finance, equal to or greater
22 than fifteen percent and that meets one of the following two criteria:

23 i. such parcel has an average of five or more hazardous or immediately
24 hazardous violations of record of the housing maintenance code per
25 dwelling unit; or

26 ii. such parcel is subject to a lien or liens for any expenses
27 incurred by the department of housing preservation and development for
28 the repair or the elimination of any dangerous or unlawful conditions
29 therein, pursuant to section 27-2144 of this code, in an amount equal to
30 or greater than one thousand dollars.

31 § 11-401.1 Procedures for distressed property. a. The commissioner of
32 finance shall, not less than sixty days preceding the date of the sale
33 of a tax lien or tax liens, submit to the commissioner of housing pres-
34 ervation and development a description by block and lot, or by such
35 other identification as the commissioner of finance may deem appropri-
36 ate, of any parcel of class one or class two real property on which
37 there is a tax lien that may be foreclosed by the city. The commissioner
38 of housing preservation and development shall determine, and direct the
39 commissioner of finance, not less than ten days preceding the date of
40 the sale of a tax lien or tax liens, whether any such parcel is a
41 distressed property as defined in subdivision four of section 11-401 of
42 this chapter. Any tax lien on a parcel so determined to be a distressed
43 property shall not be included in such sale. In connection with a subse-
44 quent sale of a tax lien or tax liens, the commissioner of finance may,
45 not less than sixty days preceding the date of the sale, resubmit to the
46 commissioner of housing preservation and development a description by
47 block and lot, or by such other identification as the commissioner of
48 finance may deem appropriate, of any parcel of class one or class two
49 real property that was previously determined to be a distressed property
50 pursuant to this paragraph and on which there is a tax lien that may be
51 included in such sale. The commissioner of housing preservation and
52 development shall determine, and direct the commissioner of finance, not
53 less than ten days preceding the date of the sale, whether such parcel
54 remains a distressed property. If the commissioner of housing preserva-
55 tion and development determines that the parcel is not a distressed
56 property, then the tax lien on the parcel may be included in the sale.

1 b. The commissioner of housing preservation and development may peri-
2 odically review whether a parcel of class one or class two real property
3 that is subject to subdivision c of this section or subdivision j of
4 section 11-412.1 of this chapter remains a distressed property. If the
5 commissioner determines that the parcel is not a distressed property as
6 defined in subdivision four of section 11-401 of this chapter, then the
7 parcel shall not be subject to such subdivisions.

8 c. Any parcel so determined to be a distressed property shall be
9 subject to an in rem foreclosure action, or in the case where the
10 commissioner of finance does not commence such action the commissioner
11 of housing preservation and development shall evaluate such parcel and
12 take such action as he or she deems appropriate under the programs,
13 existing at the time of such evaluation, that are designed to encourage
14 the rehabilitation and preservation of existing housing, and shall moni-
15 tor or cause to be monitored the status of the property. The commission-
16 er of housing preservation and development, in his or her discretion,
17 shall cause an inspection to be conducted on any parcel so determined to
18 be a distressed property. In addition, the commissioner of housing pres-
19 ervation and development shall submit to the council a list of all
20 parcels so determined to be a distressed property within thirty days
21 from the date such parcels are identified as a distressed property.

22 § 11-402 Applicability of procedure of foreclosure in rem. a. The
23 provisions of this chapter shall be applicable only to tax liens owned
24 by the city.

25 b. The provisions of this chapter shall not affect any existing remedy
26 or procedure for the enforcement or foreclosure of tax liens provided
27 for in this code or any other law, but the remedy provided herein for
28 foreclosure by action in rem shall be in addition to any other remedies
29 or procedures provided by any general, special or local law.

30 c. The provisions of this chapter shall not affect pending actions or
31 proceedings, provided, however, that any pending action or proceeding
32 for the enforcement or foreclosure of tax liens may be discontinued, and
33 a new action may be instituted pursuant to the provisions of this chap-
34 ter, in respect to any such tax lien.

35 § 11-402.1 Inapplicability of article eleven of the real property tax
36 law to the enforcement of the collection of delinquent taxes. In accord-
37 ance with section six of chapter six hundred two of the laws of nineteen
38 hundred ninety-three and subdivision two of section eleven hundred four
39 of the real property tax law, it is hereby provided that the collection
40 of delinquent taxes shall continue to be enforced pursuant to chapters
41 three and four of title eleven of this code and other related provisions
42 of the charter and this code as such chapters three and four and such
43 related provisions may from time to time be amended and that article
44 eleven of the real property tax law shall not be applicable to the city.

45 § 11-403 Jurisdiction. The supreme court shall have jurisdiction of
46 actions authorized by this chapter.

47 § 11-404 Foreclosure by action in rem. a. Whenever it shall appear
48 that a tax lien or tax liens has or have been due and unpaid for a peri-
49 od of at least one year from the date on which the tax, assessment or
50 other legal charge represented thereby became a lien, such tax lien or
51 tax liens, except as provided in subdivision b of this section or other-
52 wise provided by this chapter, may be summarily foreclosed in the manner
53 provided in this chapter, notwithstanding the provisions of any general,
54 special or local law and notwithstanding any omission to hold a sale of
55 a tax lien or tax liens prior to such foreclosure. A bill of arrears or
56 any other instrument evidencing such tax lien or tax liens shall be

1 evidence of the fact that the tax lien or tax liens represented thereby
2 has not or have not been paid to the city or sold by it.

3 b. A tax lien on any class one property or any class two property that
4 is a residential condominium or residential cooperative, as such classes
5 of property are defined in subdivision one of section eighteen hundred
6 two of the real property tax law, and on any multiple dwelling owned by
7 a company organized pursuant to article eleven of the private housing
8 finance law with the consent and approval of the department of housing
9 preservation and development, shall not be foreclosed in the manner
10 provided in this chapter until such tax lien has been due and unpaid for
11 a period of at least three years from the date on which the tax, assess-
12 ment or other legal charge represented thereby became a lien.

13 § 11-405 Preparation and filing of lists of delinquent taxes. a. The
14 commissioner of finance from time to time shall prepare a list, to be
15 known as a "list of delinquent taxes", of all parcels, or all parcels
16 within a particular class or classes, that are within a particular
17 section of a tax map or portion of a section of a tax map of the city
18 and on which there are tax liens subject to foreclosure pursuant to this
19 chapter, provided, however, that no such portion shall be smaller than a
20 block, as defined in subdivision d of section 11-204 of subchapter one
21 of chapter two of this title. Every such list shall bear a caption
22 containing the in rem action number of the city's tax foreclosure
23 proceeding, the section of a tax map or portion of a section of a tax
24 map, and where the action covers less than all parcels in a section of a
25 tax map or portion of a section of a tax map, the particular class or
26 classes, and shall contain a statement of the rate or rates at which
27 interest and penalties will be computed for the various liens it
28 includes.

29 b. Every such list shall set forth the parcels it includes separately
30 and number them serially. For each parcel it shall contain (1) a brief
31 description sufficient to identify the parcel, including section, block
32 and lot numbers, and the street and street number, if any, or in the
33 absence of such information the parcel or tract identification number
34 shown on a tax map or on a map filed in the county clerk's or register's
35 office and (2) a statement of the amounts and dates of all unpaid tax
36 liens which are subject to foreclosure under this chapter and of those
37 which have accrued thereafter.

38 c. (1) The commissioner of finance may exclude or thereafter remove
39 from such list any parcels (i) as to which questions the commissioner
40 deems meritorious have been raised regarding the validity of the liens,
41 (ii) as to which all the taxes and other charges which rendered said
42 parcels eligible for inclusion in said list have been paid, or (iii)
43 which are owned by an entity other than a company organized pursuant to
44 article eleven of the private housing finance law with the consent and
45 approval of the department of housing preservation and development and
46 which are not owner-occupied residential buildings of not more than five
47 residential units and as to which an agreement has been duly made,
48 executed and filed with such commissioner for the payment of the delin-
49 quent taxes, assessments or other legal charges, interest and penalties
50 in installments. The first installment shall be paid upon the filing of
51 the installment agreement with the commissioner and shall be in an
52 amount of not less than fifteen percent of such delinquent taxes,
53 assessments or other legal charges, interest and penalties. The remain-
54 ing installments, which shall be twice the number of unpaid quarters of
55 real estate taxes or the equivalent thereof but which shall in no event
56 exceed thirty-two in number, shall be payable quarterly on the first day

1 of July, October, January and April. For the purposes of calculating the
2 number of such remaining installments unpaid real estate taxes which
3 are, on and after July first, nineteen hundred eighty-two, due and paya-
4 ble on an other than quarterly basis shall be deemed to be payable on a
5 quarterly basis.

6 (2) The commissioner of finance may also exclude or thereafter remove
7 from such list any parcels which are owned by a company organized pursu-
8 ant to article eleven of the private housing finance law with the
9 consent and approval of the department of housing preservation and
10 development, and (i) as to which an agreement has been duly made,
11 executed and filed with said commissioner for the payment of the delin-
12 quent taxes, assessments or other legal charges incurred prior to the
13 ownership of said parcel by said article eleven company, and the inter-
14 est and penalties thereon, in installments. The first installment there-
15 of shall be paid upon the filing of the installment agreement with the
16 commissioner and shall be in an amount of not less than ten percent of
17 such delinquent taxes, assessments or other legal charges and the inter-
18 est and penalty thereon. The remaining installments, which shall be
19 three times the number of unpaid quarters of real estate taxes or the
20 equivalent thereof but which shall in no event exceed forty-eight in
21 number shall be payable quarterly on the first days of July, October,
22 January and April. For the purposes of calculating the number of such
23 remaining installments unpaid real estate taxes which are, on and after
24 July first, nineteen hundred eighty-two due and payable on an other than
25 quarterly basis shall be deemed to be payable on a quarterly basis; and

26 (ii) as to which an agreement has been duly made, executed and filed
27 with said commissioner, for the payment of the delinquent taxes, assess-
28 ments or other legal charges incurred after the ownership of said parcel
29 by said article eleven company on the same terms as are provided in
30 paragraph one of this subdivision.

31 (3) The commissioner of finance may also exclude or thereafter remove
32 from such list any parcels which are owner-occupied residential build-
33 ings of not more than five residential units as to which an agreement
34 has been duly made, executed and filed with said commissioner for the
35 payment of the delinquent taxes, assessments, or other legal charges and
36 the interest and penalties thereon, in installments. The first install-
37 ment thereof shall be paid upon the filing of the installment agreement
38 with the commissioner and shall be in an amount not less than ten
39 percent of such delinquent taxes, assessment or other legal charges and
40 the interest and penalty thereon. The remaining installments, which
41 shall be three times the number of unpaid quarters of real estate taxes
42 or the equivalent thereof but which shall in no event exceed forty-eight
43 in number, shall be payable quarterly on the first days of July, Octo-
44 ber, January and April. For purposes of calculating the number of such
45 remaining installments unpaid real estate taxes which are, on and after
46 July first, nineteen hundred eighty-two, due and payable on an other
47 than quarterly basis shall be deemed to be payable on a quarterly basis.

48 (4) Notwithstanding paragraph one, two or three of this subdivision,
49 with respect to installment agreements duly made, executed and filed on
50 or after the date on which this paragraph takes effect, the commissioner
51 of finance may also exclude or thereafter remove from such list any
52 parcel that is (i) (A) a residential building containing not more than
53 five residential units, (B) a residential condominium unit, (C) a resi-
54 dential building held in a cooperative form of ownership, or (D) owned
55 by a company organized pursuant to article eleven of the state private
56 housing finance law with the consent and approval of the department of

1 housing preservation and development, and (ii) as to which an agreement
2 has been duly made, executed and filed with such commissioner for the
3 payment of the delinquent taxes, assessments or other legal charges, and
4 the interest and penalties thereon, in installments. The first install-
5 ment thereof shall be paid upon the filing of the installment agreement
6 with the commissioner and shall be in an amount equal to not less than
7 ten percent of the total amount of such delinquent taxes, assessments or
8 other legal charges and the interest and penalties thereon. The remain-
9 ing installments, which shall be three times the number of unpaid quar-
10 ters of real estate taxes or the equivalent thereof, but which shall in
11 no event exceed thirty-two in number, shall be payable quarterly on the
12 first days of July, October, January and April. For the purposes of
13 calculating the number of such remaining installments, unpaid real
14 estate taxes that are due and payable on other than a quarterly basis
15 shall be deemed to be payable on a quarterly basis.

16 (5) Notwithstanding paragraph one, two or three of this subdivision,
17 with respect to installment agreements duly made, executed and filed on
18 or after the date on which this paragraph takes effect, the commissioner
19 of finance may also exclude or thereafter remove from such list any
20 parcel of class one or class two real property, other than a parcel
21 described in paragraph four of this subdivision, as to which an agree-
22 ment has been duly made, executed and filed with such commissioner for
23 the payment of the delinquent taxes, assessments or other legal charges,
24 and the interest and penalties thereon, in installments. The first
25 installment thereof shall be paid upon the filing of the installment
26 agreement with the commissioner and shall be in an amount equal to not
27 less than fifteen percent of the total amount of such delinquent taxes,
28 assessments or other legal charges and the interest and penalties there-
29 on. The remaining installments, which shall be twice the number of
30 unpaid quarters of real estate taxes or the equivalent thereof, but
31 which shall in no event exceed thirty-two in number, shall be payable
32 quarterly on the first days of July, October, January and April. For the
33 purposes of calculating the number of such remaining installments,
34 unpaid real estate taxes that are due and payable on other than a quar-
35 terly basis shall be deemed to be payable on a quarterly basis.

36 (6) Notwithstanding paragraph one, two or three of this subdivision,
37 with respect to installment agreements duly made, executed and filed on
38 or after the date on which this paragraph takes effect, the commissioner
39 of finance may also exclude or thereafter remove from such list any
40 parcel of class three or class four real property as to which an agree-
41 ment has been duly made, executed and filed with such commissioner for
42 the payment of the delinquent taxes, assessments or other legal charges,
43 and the interest and penalties thereon, in installments. The first
44 installment thereof shall be paid upon the filing of the installment
45 agreement with the commissioner and shall be in an amount equal to not
46 less than fifteen percent of the total amount of such delinquent taxes,
47 assessments or other legal charges and the interest and penalties there-
48 on. The remaining installments, which shall be twice the number of
49 unpaid quarters of real estate taxes or the equivalent thereof, but
50 which shall in no event exceed twenty in number, shall be payable quar-
51 terly on the first days of July, October, January and April. For the
52 purposes of calculating the number of such remaining installments,
53 unpaid real estate taxes that are due and payable on other than a quar-
54 terly basis shall be deemed to be payable on a quarterly basis.

55 (7) A parcel for which any such installment agreement or agreements
56 have been filed with the commissioner shall be excluded or removed from

1 the list of delinquent taxes before the commencement of the in rem
2 action based upon such list only if the amounts paid pursuant to such
3 agreement exceed the amount required to pay all taxes and charges which
4 render said parcel eligible for inclusion in the in rem action and there
5 has been no default in such agreement prior to the commencement of said
6 action as to either quarterly installments or current taxes, assessments
7 or other legal charges.

8 (8) As a condition to entering into any agreement under this section
9 or section 11-409 of this chapter, the commissioner shall have received
10 from the applicant, an affidavit stating that each tenant located on the
11 parcel has been notified by certified mail that an application for an
12 installment agreement will be made and that a copy of a standard agree-
13 ment form has been included with such notification. Any false statement
14 in such affidavit shall not be grounds to cancel the agreement or affect
15 its validity in any way.

16 d. Two duplicate originals thereof, verified by the commissioner of
17 finance or a subordinate designated by the commissioner, shall be filed
18 in the office of the clerk of the county in which the parcels listed
19 therein are situated. Such filing shall constitute and have the same
20 force and effect as the filing and recording in such office of an indi-
21 vidual and separate notice of pendency of action and as the filing in
22 the supreme court in such county of an individual and separate complaint
23 by the city as to each parcel described in said list, to enforce the
24 payment of the delinquent taxes, assessments or other lawful charges
25 which have accumulated and become liens against such parcels.

26 e. Each county clerk with whom such a list of delinquent taxes is
27 filed shall, on the date of said filing, place and thereafter maintain
28 one duplicate original copy thereof, as separately and permanently bound
29 by the commissioner of finance, adjacent to and together with the block
30 index of notices of pendency of action and each county clerk shall, on
31 the date of said filing or as soon thereafter as with due diligence is
32 practicable, docket the parcels contained in the list of delinquent
33 taxes in said block index of notices of pendency of action, which shall
34 constitute due filing, recording and indexing of the separate notices
35 constituting said list of delinquent taxes in lieu of any other require-
36 ment under rule sixty-five hundred eleven of the civil practice law and
37 rules or otherwise.

38 f. The commissioner of finance shall file a copy of each list of
39 delinquent taxes, certified as such copy by him or her or a subordinate
40 designated by the commissioner, in the office of the corporation coun-
41 sel.

42 g. The validity of any proceeding hereunder shall not be affected by
43 any omission or error of the commissioner of finance in including or
44 excluding parcels from any such list or in the designation of a street
45 or street number or by any other similar omission or error.

46 § 11-406 Public notice of foreclosure. a. Upon the filing of a list of
47 delinquent taxes in the office of the county clerk, the commissioner of
48 finance forthwith shall cause a notice of foreclosure to be published at
49 least once a week for six successive weeks in the City Record and,
50 subject to section ninety-one of the judiciary law, in two newspapers,
51 one of which may be a law journal, to be designated by the commissioner
52 of finance, which are published in and are circulated throughout the
53 county in which the affected property is located. If there are no news-
54 papers published in such county, the commissioner of finance may desig-
55 nate newspapers published in the city of Staten Island which are circu-
56 lated throughout the affected county.

1 b. Such notice shall clearly indicate that it is a notice of foreclo-
2 sure of tax liens; the section of a tax map or portion of a section of a
3 tax map in which the properties subject to foreclosure are located and
4 where the area affected by the action includes less than all parcels in
5 a section of a tax map or portion of a section of a tax map, the partic-
6 ular class or classes contained therein, and by a general description
7 which need not contain measurements and direction; where and when the
8 list of delinquent taxes was filed; the general nature of the informa-
9 tion contained in the list; that the filing of the list constitutes
10 commencement of a foreclosure action by the city in the supreme court
11 for the particular county and a notice of pendency of action against
12 each parcel listed; that such action is against the property only and no
13 personal judgment will be entered; that the list will be available for
14 inspection at the city collector's central office and at the borough
15 office of the city collector in which said property is located until a
16 specified date at least ten weeks after the date of first publication;
17 that until such date a parcel may be redeemed by paying all taxes and
18 charges contained in said list of delinquent taxes together with inter-
19 est and penalties thereon; that during said period of redemption and for
20 an additional period of twenty days after said last date for redemption
21 any person having any interest in or lien upon a parcel on the list may
22 file with the appropriate county clerk and serve upon the corporation
23 counsel a verified answer setting forth in detail the full name of said
24 answering party, the nature and amount of his or her interest or lien
25 and any legal defense against foreclosure; and that in the absence of
26 redemption or answer a judgment of foreclosure may be taken by default.

27 c. On or before the date of the first publication of such notice, the
28 commissioner of finance shall cause a copy of the notice to be mailed to
29 all owners, mortgagees, lienors or encumbrancers, who may be entitled to
30 receive such notice by virtue of any owner's registration or in rem card
31 filed in the office of the city collector pursuant to section 11-416 or
32 11-417 of this chapter. If such owner's registration or in rem cards
33 have not been filed in the office of the city collector then said notice
34 shall be mailed to the name and address, if any, appearing in the latest
35 annual record of assessed valuations. The commissioner of finance shall
36 cause to be inserted with such notice a statement substantially in the
37 following form:

38 "To the party to whom the enclosed notice is addressed: You are the
39 presumptive owner or lienor of one or more of the parcels mentioned and
40 described in the list referred to in the attached notice. Unless the
41 taxes and assessments and all other legal charges are paid, or an answer
42 is interposed; or an arrangement is made for payment of such taxes and
43 assessments and all other legal charges in installments, as provided by
44 statute, the ownership of said property will in due course pass to the
45 city of Staten Island as provided by the administrative code of the city
46 of Staten Island."

47 The failure of the commissioner of finance to mail such notice shall
48 not affect the validity of any proceeding brought pursuant to this chap-
49 ter as to any parcel other than the parcel with respect to which notice
50 was not mailed.

51 d. The commissioner of finance shall cause a copy of such notice to be
52 posted in the office of the commissioner of finance, in the county
53 courthouse of the county in which the property subject to such tax lien
54 is situated and at three other conspicuous places in the city in which
55 the affected properties are located.

1 § 11-407 Redemption. a. After the filing of a list of delinquent taxes
2 and until a date at least ten weeks after the first publication of the
3 public notice of foreclosure, as determined by the commissioner of
4 finance and specified in the said notice, a person claiming to have an
5 interest in any parcel in said list may redeem it by paying all taxes
6 and charges contained in said list of delinquent taxes together with
7 interest and penalties thereon.

8 b. Upon such redemption the commissioner of finance shall deliver to
9 the corporation counsel a certificate of redemption. The corporation
10 counsel shall file such certificate with the clerk of the county in
11 which said list was filed. The filing of such certificate shall consti-
12 tute and be deemed a discontinuance of the in rem action as to the
13 affected parcel, and the county clerk shall thereupon note such redemp-
14 tion and discontinuance in the copy of the list of delinquent taxes
15 maintained by him or her adjacent to the county clerk's block index of
16 notices of pendency of action and shall cancel and discharge any
17 notations of the filing of said list of delinquent taxes as to said
18 parcel that may appear in any other books, records, indices and dockets
19 maintained in said clerk's office. The commissioner of finance shall
20 also deliver a duplicate original certificate of redemption to the
21 person who has redeemed.

22 c. When the time to redeem in an in rem tax foreclosure action has
23 expired, any person claiming to have an interest in a parcel included in
24 said action shall have the right to make a late redemption payment to
25 the commissioner of finance. Such late redemption payment shall consist
26 of all taxes and charges owing on said parcel, the lawful interest ther-
27 eon to the date of payment and a penalty of five percent of said payment
28 of taxes, charges and interest, which penalty may not exceed one thou-
29 sand dollars as to each parcel on which a late redemption payment is
30 being made. Such late redemption payment shall be made in cash or by
31 certified or bank check and shall be accepted by the commissioner of
32 finance at any time after the last day to redeem up to the date on which
33 the commissioner is advised by the corporation counsel that the prepara-
34 tion of the judgment of foreclosure in the in rem action has been
35 commenced. Upon receipt of such late redemption payment, the commission-
36 er of finance shall issue a certificate of withdrawal pursuant to the
37 provisions of section 11-413 of this chapter.

38 § 11-408 Filing of affidavits. All affidavits of filing, publication,
39 posting, mailing or other acts required by this chapter shall be made by
40 the person or persons performing such acts and shall be filed in the
41 office of the county clerk of the county in which the property subject
42 to such tax lien is situated and shall together with all other documents
43 required by this chapter to be filed in the office of such county clerk,
44 constitute and become a part of the judgment roll in such foreclosure
45 action.

46 § 11-409 Severance and trial of issues where answer is interposed;
47 installment agreements authorized after action commenced. a. If a duly
48 verified answer is served upon the corporation counsel not later than
49 twenty days after the last date for redemption, the answering defendant
50 shall have the right to a severance of the action, as to any parcel in
51 which the defendant has pleaded an interest, upon written demand there-
52 for filed with or made a part of his or her answer.

53 b. When such answer is interposed, the court shall summarily hear and
54 determine the issues raised by the complaint and answer in the same
55 manner as it hears and determines other actions, except as herein other-
56 wise provided. Proof that the taxes which made said property subject to

1 foreclosure hereunder together with interest and penalties thereon, were
2 paid before filing of the list of delinquent taxes or that the property
3 was not subject to tax shall constitute a complete defense.

4 c. No counterclaim may be asserted in an answer interposed in an
5 action brought pursuant to this chapter. Where a counterclaim is
6 asserted in an in rem answer the city may disregard that portion of the
7 answer and shall suffer no legal penalty or impediment in the prose-
8 cution of its in rem action for its failure to reply or respond thereto.
9 Where an answer contains only a counterclaim and no other defenses the
10 city may proceed to judgment of foreclosure against the property
11 affected without the need for moving against the answer.

12 d. When a verified answer alleges a substantial equity over the city's
13 lien for taxes, the defendant may demand additional time in which to pay
14 the taxes and interest or to have the property sold with all taxes and
15 interest to be paid out of the proceeds of such sale. Upon such demand a
16 defendant shall have the right to an extension of time for such purpose
17 not in excess of six months from the last day to interpose an answer.
18 Where a mortgagee or lienor who has interposed such answer commences a
19 proceeding to foreclose his or her mortgage or lien and it appears that
20 with due diligence such proceeding cannot be concluded in time to allow
21 the payment of taxes within the aforesaid six month period, the court
22 may, on application before the end of said six month period, authorize
23 an additional period during which such proceeding may be concluded and
24 the taxes, together with interest and penalties, paid.

25 e. Where an answer of the type described in subdivision d of this
26 section is interposed and taxes are paid within the period set forth in
27 such subdivision, the commissioner of finance shall issue a certificate
28 of withdrawal as to the property on which such payment has been made
29 pursuant to the provisions of section 11-413 of this chapter. When taxes
30 are not paid within the period set forth in subdivision d of this
31 section, it shall be deemed that there was no equity over the city's tax
32 liens and the answer shall be deemed to be without merit. The city in
33 that event may proceed to judgment of foreclosure against such property
34 without moving against the answer.

35 f. All answers interposed in an action hereunder and all affidavits
36 and other papers pertaining to any litigation involving such answers or
37 to any proceeding brought pursuant to this chapter involving less than
38 an entire action shall bear a caption containing the in rem action
39 number of the city's tax foreclosure proceeding, the section of a tax
40 map or portion of a section of a tax map affected, and if the action
41 covers less than all parcels in the section of a tax map or portion of a
42 section of a tax map, the particular class or classes, and the serial,
43 section, block and lot numbers of the parcel or parcels in issue.

44 g. The corporation counsel, when submitting an in rem judgment roll
45 pursuant to the provisions of this chapter, may request a severance as
46 to any parcel on which an in rem answer or litigation is pending, or as
47 to which, before the preparation of said in rem judgment roll is
48 commenced, an agreement was duly made, executed and filed with the
49 commissioner of finance for the payment of the delinquent taxes, assess-
50 ments or other legal charges and interest and penalties in installments
51 as provided in subdivision c of section 11-405 of this chapter and there
52 has been no default in such agreement as to either quarterly install-
53 ments or current taxes, assessments or other legal charges. Where such
54 an agreement is entered into subsequent to the last date for redemption
55 specified in subdivision a of section 11-407 of this chapter, there
56 shall be paid to the commissioner of finance at the time the aforesaid

1 agreement is executed an amount equal to the penalty which would have
2 been payable under subdivision c of section 11-407 of this chapter had
3 the person executing the agreement made a late redemption payment. Such
4 amount shall be in addition to any installment payments required to be
5 made under the agreement and shall not be credited against any such
6 installment payments. Where a default occurs in such agreement as to
7 either quarterly installments or current taxes, assessments or other
8 legal charges, all payments made under the agreement shall be forfeited
9 and the city shall be entitled to acquire the parcel as to which the
10 default occurred. Where such default occurs before the submission of the
11 judgment roll, the parcels as to which such default occurs shall be
12 included in said judgment roll among the parcels to be acquired by the
13 city. Where such default has occurred as to a parcel severed pursuant to
14 this subdivision, the corporation counsel shall cause to be entered a
15 supplemental judgment of foreclosure as to such parcel immediately on
16 notification by the commissioner of finance of such default. Where such
17 installment agreement is paid in full the commissioner of finance shall
18 discontinue the in rem action from which said parcel was severed by
19 issuing a certificate of withdrawal as to said parcel pursuant to the
20 provisions of section 11-413 of this chapter.

21 h. A party who has interposed an answer as to any parcel included in
22 an in rem tax foreclosure action, or any other party interested in such
23 parcel, shall have the right, at any time prior to the final disposition
24 of a motion to strike said answer, to pay all taxes, assessments and
25 other legal charges and interest owing on said parcel. An answering
26 party who makes such payment shall not be required to pay any penalty.
27 Where such payment is made by other than an answering party after the
28 expiration of the period of redemption, there shall be paid to the
29 commissioner of finance an additional amount equal to the penalty paya-
30 ble under subdivision c of section 11-407 of this chapter. Where all
31 delinquent taxes, assessments and other legal charges together with
32 lawful interest thereon and penalties, where required, are paid, the
33 commissioner of finance shall issue a certificate of withdrawal as to
34 said parcel pursuant to the provisions of section 11-413 of this chap-
35 ter. Said parties may also pay such taxes, assessments and other legal
36 charges and interest by an installment agreement. Where such agreement
37 is requested before the preparation of the aforesaid in rem judgment
38 roll is commenced, the terms of said agreement shall be consistent with
39 the provisions of subdivision g or i of this section, whichever is
40 applicable. Where such agreement is requested after judgment of foreclo-
41 sure has been entered in the in rem action in which the aforesaid answer
42 was interposed, said agreement shall require a first installment of
43 fifty percent of all taxes, assessments and other legal charges and
44 interest owing on said parcel, a penalty of five percent of all such
45 taxes, assessments and other legal charges and interest, which penalty
46 may not exceed one thousand dollars, and the payment of the balance of
47 such taxes, assessments and other legal charges and interest in four
48 equal quarterly installments together with all current taxes, assess-
49 ments and other legal charges that accrue during such period. The
50 request of an answering party for an installment agreement shall consti-
51 tute a withdrawal of such party's answer. An installment agreement
52 requested by an interested party other than the answering party shall
53 require the consent of said answering party which shall also constitute
54 a withdrawal of such party's answer. The severance provided for in this
55 section shall be continued during the term of all installment agreements
56 entered into pursuant to the provisions of this subdivision. Where a

1 default has occurred as to a parcel severed pursuant to this subdivi-
2 sion, the corporation counsel shall cause to be entered a supplemental
3 judgment of foreclosure as to such parcel immediately on notification by
4 the commissioner of finance of such default. Where such installment
5 agreement is paid in full, the commissioner of finance shall discontinue
6 the in rem action from which said parcel was severed by issuing a
7 certificate of withdrawal as to said parcel pursuant to the provisions
8 of section 11-413 of this chapter.

9 i. (1) Notwithstanding subdivision g of this section, this subdivision
10 shall apply with respect to installment agreements made, executed and
11 filed with the commissioner of finance on or after the date on which
12 this subdivision takes effect. An installment agreement pursuant to this
13 subdivision may be made, executed and filed with such commissioner
14 during the period beginning on the date on which an action is commenced
15 as provided in subdivision d of section 11-405 of this chapter with
16 respect to the parcel that is the subject of such agreement and ending
17 on the date on which such commissioner is advised by the corporation
18 counsel that the preparation of the judgment of foreclosure in such in
19 rem action has been commenced. Notwithstanding anything to the contrary,
20 and except to the extent provided in paragraph two of this subdivision,
21 the provisions of paragraphs one through six of subdivision c of section
22 11-405 of this chapter shall not apply to any installment agreement
23 requested on or after the date on which this subdivision takes effect
24 and on or after the date on which an action is commenced as provided in
25 subdivision d of such section 11-405 with respect to the parcel that is
26 the subject of such requested agreement.

27 (2) An agreement entered into pursuant to this subdivision shall
28 provide for the payment in installments of the delinquent taxes, assess-
29 ments and other legal charges, and the interest and penalties thereon,
30 due and owing as of the date on which such agreement is requested.
31 Unless an eligible owner or other interested person requests an agree-
32 ment pursuant to the provisions of paragraph three of this subdivision,
33 the terms of such agreement with respect to a parcel shall be the same
34 as the terms that would be applicable to such parcel under paragraph
35 four, five or six, as the case may be, of subdivision c of section
36 11-405 of this chapter, except that, for purposes of the agreement
37 pursuant to this paragraph, the amount of the first installment shall be
38 equal to: (i) fifteen percent of the total amount due in the case of a
39 parcel described in paragraph four of subdivision c of section 11-405 of
40 this chapter; (ii) twenty percent of the total amount due in the case of
41 a parcel described in paragraph five of subdivision c of section 11-405
42 of this chapter; and (iii) twenty-five percent of the total amount due
43 in the case of a parcel described in paragraph six of subdivision c of
44 section 11-405 of this chapter.

45 (3) Instead of an agreement pursuant to paragraph two of this subdivi-
46 sion, an eligible owner or other interested party may request an agree-
47 ment pursuant to the following provisions:

48 (i) With respect to a parcel that is owned by a company organized
49 pursuant to article eleven of the state private housing finance law with
50 the consent and approval of the department of housing preservation and
51 development, such agreement shall provide for the payment in install-
52 ments of the delinquent taxes, assessments and other legal charges, and
53 the interest and penalties thereon, due and owing as of the date on
54 which such agreement is requested. The first installment thereof shall
55 be paid upon the filing of the installment agreement with the commis-
56 sioner of finance and shall be in an amount at least equal to, at the

1 applicant's election, either thirty-five percent or fifty percent of the
2 total amount of such delinquent taxes, assessments or other legal charg-
3 es and the interest and penalties thereon. The remaining installments,
4 which shall be three times the number of unpaid quarters of real estate
5 taxes or the equivalent thereof, but which shall in no event exceed
6 thirty-two in number, shall be payable quarterly on the first days of
7 July, October, January and April, together with interest at the rate or
8 rates determined as provided in subparagraph (iv) of this paragraph. For
9 the purposes of calculating the number of such remaining installments,
10 unpaid real estate taxes that are due and payable on other than a quar-
11 terly basis shall be deemed to be payable on a quarterly basis.

12 (ii) With respect to a parcel, other than a parcel described in
13 subparagraph (i) of this paragraph, that is a residential building
14 containing not more than five residential units, a residential condomin-
15 ium unit or a residential building held in a cooperative form of owner-
16 ship, such agreement shall provide for the payment in installments of
17 the delinquent taxes, assessments and other legal charges, and the
18 interest and penalties thereon, due and owing as of the date on which
19 such agreement is requested. The first installment thereof shall be paid
20 upon the filing of the installment agreement with the commissioner of
21 finance and shall be in an amount at least equal to, at the applicant's
22 election, either twenty-five percent or fifty percent of the total
23 amount of such delinquent taxes, assessments or other legal charges and
24 the interest and penalties thereon. The remaining installments, which
25 shall be three times the number of unpaid quarters of real estate taxes
26 or the equivalent thereof, but which shall in no event exceed twenty in
27 number, shall be payable quarterly on the first days of July, October,
28 January and April together with interest at the rate or rates determined
29 as provided in subparagraph (iv) of this paragraph. For the purposes of
30 calculating the number of such remaining installments, unpaid real
31 estate taxes that are due and payable on other than a quarterly basis
32 shall be deemed to be payable on a quarterly basis.

33 (iii) With respect to any parcel of class one or class two real prop-
34 erty, other than a parcel described in subparagraph (i) or (ii) of this
35 paragraph, such agreement shall provide for the payment in installments
36 of the delinquent taxes, assessments and other legal charges, and the
37 interest and penalties thereon, due and owing as of the date on which
38 such agreement is requested. The first installment thereof shall be paid
39 upon the filing of the installment agreement with the commissioner of
40 finance and shall be in an amount at least equal to, at the applicant's
41 election, either thirty-five percent or fifty percent of the total
42 amount of such delinquent taxes, assessments or other legal charges and
43 the interest and penalties thereon. The remaining installments, which
44 shall be twice the number of unpaid quarters of real estate taxes or the
45 equivalent thereof, but which shall in no event exceed twenty in number,
46 shall be payable quarterly on the first days of July, October, January
47 and April, together with interest at the rate or rates determined as
48 provided in subparagraph (iv) of this paragraph. For the purposes of
49 calculating the number of such remaining installments, unpaid real
50 estate taxes that are due and payable on other than a quarterly basis
51 shall be deemed to be payable on a quarterly basis.

52 (iv) (A) Notwithstanding any higher rate of interest prescribed pursu-
53 ant to applicable law, and unless a lower rate of interest is applicable
54 to a delinquent amount owing on a parcel that is the subject of an
55 agreement pursuant to this paragraph, the interest payable together with
56 the remaining installments due under such agreement shall be:

1 (I) with respect to an agreement for which a twenty-five percent or
2 thirty-five percent down payment was made, calculated at a rate equal to
3 the sum of (a) the rate prescribed for the applicable period pursuant to
4 paragraph (i) of subdivision e of section 11-224.1 of this title and (b)
5 one-half of the difference between such rate and the rate prescribed for
6 such period pursuant to paragraph (ii) of subdivision e of section
7 11-224.1 of this title; or

8 (II) with respect to an agreement for which a fifty percent down
9 payment was made, calculated at a rate equal to the rate prescribed for
10 the applicable period pursuant to paragraph (i) of subdivision e of
11 section 11-224.1 of this title.

12 (B) If a default occurs in any agreement executed pursuant to this
13 paragraph as to either quarterly installments or current taxes, assess-
14 ments or other legal charges, the rates of interest determined under
15 this subparagraph shall thereupon cease to be applicable and the commis-
16 sioner of finance shall thereafter charge, collect and receive interest
17 in the manner and at the rates otherwise prescribed pursuant to law.

18 (4) The corporation counsel, when submitting an in rem judgment roll
19 pursuant to the provisions of this chapter, may request a severance as
20 to any parcel as to which, before the preparation of said in rem judg-
21 ment roll is commenced, an agreement was duly made, executed and filed
22 with the commissioner of finance for the payment of all delinquent
23 taxes, assessments and other legal charges and interest and penalties in
24 installments as provided in this subdivision, and there has been no
25 default in such agreement as to either quarterly installments or current
26 taxes, assessments or other legal charges. Where such an agreement is
27 entered into subsequent to the last date for redemption specified in
28 subdivision a of section 11-407 of this chapter, there shall be paid to
29 the commissioner of finance at the time such agreements are executed an
30 amount equal to the penalty that would have been payable under subdivi-
31 sion c of section 11-407 of this chapter had the person executing the
32 agreement made a late redemption payment. Such amount shall be in addi-
33 tion to any installment payments required to be made under the agreement
34 and shall not be credited against any such installment payments. Where a
35 default occurs in such agreement as to either quarterly installments or
36 current taxes, assessments or other legal charges, all payments made
37 under the agreement shall be forfeited and the city shall be entitled to
38 obtain a judgment hereunder as to the parcel as to which the default
39 occurred. Where such default occurred before the submission of the judg-
40 ment roll, the parcels as to which such default occurs shall be included
41 in said judgment roll amount the parcels to be acquired by the city or
42 by a third party. Where such default has occurred as to a parcel severed
43 pursuant to this subdivision, the corporation counsel shall cause to be
44 entered a supplemental judgment of foreclosure as to such parcel imme-
45 diately on notification by the commissioner of finance of such default.
46 Where such installment agreement is paid in full, the commissioner of
47 finance shall discontinue the in rem action from which such parcel was
48 severed by issuing a certificate of withdrawal as to such parcel pursu-
49 ant to the provisions of section 11-413 of this chapter.

50 § 11-410 Preference over other actions. a. Any action brought pursuant
51 to this chapter shall be given preference over all other causes and
52 actions.

53 b. Actions brought pursuant to this chapter shall take precedence over
54 any proceeding brought to foreclose a mortgage or other lien involving
55 the same property. A parcel included in a list of delinquent taxes
56 which is sold in a mortgage foreclosure sale held after said list is

1 filed may not be sold subject to taxes even if judgment has not yet been
2 entered in the tax foreclosure action. All unpaid taxes and interest and
3 penalties thereon must be paid, in full or by installment agreement
4 pursuant to the provisions of this chapter, out of the proceeds of such
5 sale regardless of whether the mortgage foreclosure lis pendens was
6 filed before or after the filing of the tax foreclosure action, regard-
7 less of whether any party to the mortgage foreclosure proceeding has
8 interposed an answer in the tax foreclosure action and regardless of any
9 terms to the contrary in the judgment in the mortgage foreclosure
10 proceeding.

11 § 11-411 Presumption of validity. It shall not be necessary for the
12 city to plead or prove the various steps, procedures and notices for the
13 assessment and levy of the taxes, assessments or other lawful charges
14 against the parcels set forth in the list of delinquent taxes and all
15 such taxes, assessments or other lawful charges and the lien thereof
16 shall be presumed to be valid. A defendant alleging any jurisdictional
17 defect or invalidity in such taxes, assessments or other lawful charges
18 or in the foreclosure thereof must particularly specify in his or her
19 answer such jurisdictional defect or invalidity and must affirmatively
20 establish such defense. A judgment of foreclosure granted in any
21 proceeding brought pursuant to this chapter, which contains recitals
22 that any acts were done or proceedings had which were necessary to give
23 the court jurisdiction or power to grant such judgment of foreclosure,
24 shall be presumptive evidence that such acts were duly performed or
25 proceedings duly had, if such judgment of foreclosure shall have been
26 duly entered or filed in the office of the clerk of the county in which
27 the proceeding was pending and wherein such judgment was granted. The
28 provisions of this chapter shall apply to and be valid and effective
29 with respect to all defendants even though one or more of them be
30 infants, incompetents, absentees or non-residents of the state of New
31 York.

32 § 11-412 Final judgment. a. The court shall determine upon proof and
33 shall make finding upon such proof whether there has been due compliance
34 by the city with the provisions of this chapter.

35 b. The court shall make a final judgment awarding to the city the
36 possession of any parcel described in the list of delinquent taxes not
37 redeemed or withdrawn as provided in this chapter and as to which no
38 answer is interposed as provided herein. In addition thereto, such judg-
39 ment shall contain a direction to the commissioner of finance to
40 prepare, execute and cause to be recorded a deed conveying to the city
41 full and complete title to such lands. Upon the execution of such deed,
42 the city shall be seized of an estate in fee simple absolute in such
43 land and all persons, including the state of New York, infants, incompe-
44 tents, absentees and non-residents who may have had any right, title,
45 interest, claim, lien or equity of redemption in or upon such lands
46 shall be barred and forever foreclosed of all such right, title, inter-
47 est, claim, lien or equity of redemption, except as otherwise provided
48 in section 11-424 of this chapter. The appointment and tenure of receiv-
49 ers, trustees or any other persons, including administrators under arti-
50 cle seven-A of the real property actions and proceedings law, appointed
51 by an order of a court to manage real property, shall terminate when
52 title to such property vests in the city pursuant to the provisions of
53 this chapter. After such termination, said receivers, trustees or admin-
54 istrators shall be accountable to the courts that appointed them for the
55 faithful performance of their fiduciary obligations during the term of
56 their appointment and to the city for any rents and income received by

1 them for any period subsequent to the date of the vesting of title in
2 the city.

3 If the city serves a tenant in possession of a dwelling unit with
4 notice of termination of tenancy on grounds other than non-payment of
5 rent, the acceptance of rent for the first forty-five days after termi-
6 nation of tenancy by anyone other than an employee of the department
7 designated by the department to receive such rent shall not be deemed or
8 construed as a waiver of the city's right to initiate and prosecute a
9 proceeding to terminate the tenancy for good cause.

10 c. Every deed given pursuant to the provisions of this section shall
11 be presumptive evidence that the action and all proceedings therein and
12 all proceedings prior thereto from and including the assessment of the
13 lands affected and all notices required by law were regular and in
14 accordance with all provisions of law relating thereto. After two years
15 from the date of the recording of such deed, the presumption shall be
16 conclusive, unless at the time that this subdivision takes effect the
17 two year period since the recording of the deed has expired or less than
18 six months of such period of two years remains unexpired, in which case
19 the presumption shall become conclusive six months after this subdivi-
20 sion takes effect. No action to set aside such deed may be maintained
21 unless the action is commenced and a notice of pendency of the action is
22 filed in the office of the proper county clerk prior to the time that
23 the presumption becomes conclusive as aforesaid.

24 § 11-412.1 Special procedures relating to final judgment and release
25 of class one and class two real property. Notwithstanding any other
26 provision of law to the contrary:

27 a. The court shall determine upon proof and shall make a finding upon
28 such proof whether there has been due compliance by the city with the
29 applicable provisions of this chapter.

30 b. (1) The court shall make a final judgment authorizing the award of
31 possession of any parcel of class one or class two real property
32 described in the list of delinquent taxes not redeemed or withdrawn as
33 provided in this chapter and as to which no answer is interposed as
34 provided herein, and authorizing the commissioner of finance to prepare,
35 execute and cause to be recorded a deed conveying either to the city or
36 to a third party deemed qualified and designated by the commissioner of
37 housing preservation and development full and complete title to such
38 lands. Any such conveyance to a third party shall be for an existing
39 use.

40 (2) Such third party shall be deemed qualified and shall be designated
41 pursuant to such criteria as are established in rules promulgated by the
42 commissioner of housing preservation and development, provided, however,
43 that such criteria shall include but not be limited to: residential
44 management experience; financial ability; rehabilitation experience;
45 ability to work with government and community organizations; neighbor-
46 hood ties; and that the commissioner shall consider whether the third
47 party is a responsible legal tenant, not-for-profit organization or
48 neighborhood-based-for-profit individual or organization. The commis-
49 sioner shall not deem qualified any third party who has been finally
50 adjudicated by a court of competent jurisdiction, within seven years of
51 the date on which such third party would otherwise be deemed qualified,
52 to have violated any section of article one hundred fifty, one hundred
53 seventy-five, one hundred seventy-six, one hundred eighty, one hundred
54 eighty-five or two hundred of the penal law or any similar laws of
55 another jurisdiction, or who has been suspended or debarred from
56 contracting with the city or any agency of the city pursuant to section

1 335 of the charter during the period of such suspension or debarment.
2 The rules promulgated by the commissioner pursuant to this paragraph may
3 establish other bases for disqualification of a third party.

4 c. Following the expiration of the four-month period prescribed in
5 subdivision d of this section, but not more than eight months after the
6 date on which, pursuant to subdivision b of this section, the final
7 judgment authorizing the award of possession of a parcel of class one or
8 class two real property was entered, the commissioner of finance may
9 execute a deed, pursuant to subdivision b of this section, with respect
10 to such parcel. The owner of said parcel shall continue to have all of
11 the rights, liabilities, responsibilities, duties and obligations of an
12 owner of such parcel, including, but not limited to, maintaining such
13 parcel in compliance with the housing maintenance, building and fire
14 codes, and all other applicable laws, unless and until the commissioner
15 of finance has prepared and executed a deed conveying to the city or to
16 a third party full and complete title to such parcel. Upon the execution
17 of such deed, the city or the third party shall be seized of an estate
18 in fee simple absolute in such land and all persons, including the state
19 of New York, infants, incompetents, absentees and non-residents who may
20 have had any right, title, interest, claim, lien or equity of redemption
21 in or upon such lands shall be barred and forever foreclosed of all such
22 right, title, interest, claim, lien or equity of redemption, except as
23 otherwise provided in subdivisions e and f of this section. The appoint-
24 ment and tenure of receivers, trustees or any other persons, including
25 administrators under article seven-A of the real property actions and
26 proceedings law, appointed by an order of a court to manage real proper-
27 ty, shall terminate when title to such property vests in the city or a
28 third party pursuant to the provisions of this chapter. After such
29 termination, said receivers, trustees or administrators shall be
30 accountable to the courts that appointed them for the faithful perform-
31 ance of their fiduciary obligations during the term of their appointment
32 and to the city or such third party for any rents and income received by
33 them for any period subsequent to the date of the vesting of title in
34 the city or such third party.

35 If the city serves a tenant in possession of a dwelling unit with
36 notice of termination of tenancy on grounds other than nonpayment of
37 rent, the acceptance of rent for the first forty-five days after termi-
38 nation of tenancy by anyone other than an employee of the department
39 designated by the department to receive such rent shall not be deemed or
40 construed as a waiver of the city's right to initiate and prosecute a
41 proceeding to terminate the tenancy for good cause.

42 d. Within four months after the date on which, pursuant to subdivision
43 b of this section, the final judgment authorizing the award of
44 possession of a parcel of class one or class two real property was
45 entered, any person claiming to have an interest in such parcel shall
46 have the right to make a payment to the commissioner of finance consist-
47 ing of all taxes, assessments and other legal charges owing on said
48 parcel, the lawful interest thereon to the date of payment and a penalty
49 of five percent of said payment of taxes, assessments and other legal
50 charges and interest, which penalty may not exceed one thousand dollars.
51 Such payment shall be made in cash or by certified or bank check. Within
52 such four-month period, such interested person may also request an
53 installment agreement from the commissioner of finance. Such agreement
54 shall require, in addition to full payment of the penalty specified in
55 this subdivision at the time such agreement is entered into, the payment
56 at such time of a first installment equal to fifty percent of all taxes,

1 assessments and other legal charges, and the lawful interest thereon,
2 then owing on such parcel, and the payment of the balance of such taxes,
3 assessments and other legal charges and interest in four equal quarterly
4 installments together with all current taxes, assessments and other
5 legal charges that accrue during such period. Upon receipt of payment in
6 full of the amount specified in this subdivision, the commissioner of
7 finance shall direct the corporation counsel to prepare and cause to be
8 entered an order discontinuing the in rem tax foreclosure action as to
9 said property, cancelling the notice of pendency of such action as to
10 said property and vacating and setting aside the final judgment. Upon
11 the execution of an installment agreement and payment of the amounts due
12 at the time such agreement is executed as provided in this subdivision,
13 the commissioner of finance shall direct the corporation counsel to
14 prepare and cause to be entered an order vacating and setting aside the
15 final judgment. The entry of either such order shall restore all
16 parties, including owners, mortgagees and any and all lienors, receivers
17 and administrators and encumbrancers, to the status they held immediate-
18 ly before such final judgment was entered. Where the commissioner of
19 finance approves an application requesting an installment agreement
20 pursuant to this subdivision, the order vacating and setting aside the
21 final judgment shall provide that in the event of any default as to the
22 payment of either quarterly installments or current taxes, assessments
23 or other legal charges during the term of such agreement, all payments
24 under said agreement shall be forfeited and the corporation counsel,
25 immediately upon notification by the commissioner of finance of such
26 default, shall cause to be entered as to such property a supplemental
27 judgment of foreclosure in the in rem action which authorizes the
28 commissioner of finance to prepare, execute and cause to be recorded a
29 deed conveying either to the city or to a third party full and complete
30 title to such lands. Upon the entry of such supplemental judgment, the
31 provisions of subdivisions c through i of this section shall apply in
32 the same manner as such subdivisions would have applied had no payment
33 been made nor installment agreement executed during the four-month peri-
34 od specified in this subdivision.

35 e. 1. If the commissioner of finance has prepared, executed and caused
36 to be recorded a deed conveying to the city full and complete title to a
37 parcel of class one or class two real property acquired by in rem tax
38 foreclosure, the city's interest in such parcel may be released pursuant
39 to this subdivision on the application of any party who has an interest
40 in said parcel as either owner, mortgagee, lienor, or encumbrancer at
41 the time of the city's acquisition thereof where such application is
42 made at any time up to sixteen months from the date on which the deed by
43 which the city acquired title to said parcel was recorded.

44 2. Any such application shall be made in writing to the commissioner
45 of general services and shall be verified. It shall contain the informa-
46 tion required pursuant to paragraph one of subdivision b of section
47 11-424 of this chapter, the documents required by subdivision c of such
48 section, and shall be accompanied by the fees required by paragraphs
49 three and six of subdivision b of such section. The fee required by
50 paragraph three of subdivision b of section 11-424 of this chapter shall
51 not be refundable.

52 3. The city's interest in any such parcel shall be released only after
53 payment of the sums of money specified in subdivision d of section
54 11-424 of this chapter.

55 4. The provisions contained in subdivision g of section 11-424 of this
56 chapter shall govern such an application, except as follows:

1 (a) where such provisions are inconsistent with the provisions
2 contained in this subdivision, the provisions contained in this subdivi-
3 sion shall govern such application; and

4 (b) where the in rem foreclosure release board denies a written
5 request for an installment agreement that was filed in connection with
6 an application for release of the city's interest in a parcel of class
7 one or class two real property and such application was filed within
8 thirty days of the date of the city's acquisition of the property sought
9 to be released, the board may, in its discretion, authorize a release of
10 the city's interest, provided that the applicant thereafter pays all the
11 amounts required to be paid pursuant to subdivision d of section 11-424
12 of this chapter within thirty days of the date on which a letter
13 requesting such payment is mailed or delivered to such applicant.

14 5. Upon receipt of all the amounts required to be paid pursuant to
15 this subdivision, the commissioner of finance shall direct the corpo-
16 ration counsel to prepare and cause to be entered an order discontinuing
17 the in rem tax foreclosure action as to said property, cancelling the
18 notice of pendency of such action as to said property and vacating and
19 setting aside the final judgment entered pursuant to subdivision b of
20 this section and the deed executed and recorded pursuant to such final
21 judgment as to said property. The entry of such order shall restore all
22 parties, including owners, mortgagees and any and all lienors, receivers
23 and administrators and encumbrancers, to the status they held immedi-
24 ately before the final judgment was entered, as if the in rem tax foreclo-
25 sure had never taken place, and shall render said property liable for
26 all taxes, deficiencies, management fees and liens which shall accrue
27 subsequent to those paid in order to obtain the release provided for in
28 this subdivision, or which were, for whatever reason, omitted from the
29 payment made to obtain said release.

30 f. If the commissioner of finance has prepared, executed and caused to
31 be recorded a deed conveying to the city full and complete title to a
32 parcel of class one or class two real property acquired by in rem tax
33 foreclosure and such parcel is entitled to an exemption under any of the
34 provisions of article four of the real property tax law during all or
35 part of the period covered by the tax items appearing on a list of
36 delinquent taxes, the owner of such parcel may apply for a release of
37 the city's interest in such exempt property under the provisions of
38 subdivision e of this section during the period of time set forth in
39 paragraph one of such subdivision and for an additional period up to ten
40 years from the date on which the deed by which the city acquired title
41 to said property was recorded. The application of such owner shall be
42 accompanied by the nonrefundable fee required by paragraph four of
43 subdivision b of section 11-424 of this chapter and shall contain, in
44 addition to the statements, searches and proofs required by subdivision
45 e of this section, a statement that an exemption under the real property
46 tax law is being claimed. Such application shall also state either that
47 it is accompanied by the written certificate of the comptroller setting
48 forth the precise period during which said property, while owned by such
49 application, and during the period after the city's acquisition up to
50 the date of the certificate if said property was still being used for an
51 exempt purpose after said acquisition, was entitled to an exemption and
52 the exact nature and extent of such exemption or that an application for
53 such written certificate has been filed with the comptroller. On issuing
54 such written certificate, the comptroller shall cancel those tax items
55 which have accrued during the period covered by the certificate to the
56 extent the applicant is entitled to an exemption as set forth in the

1 certificate. A release of the city's interest may be authorized only at
2 the discretion of the in rem foreclosure release board and, except as
3 otherwise provided in paragraph four of subdivision e of this section,
4 subject to all the restrictions set forth in subdivision g of section
5 11-424 of this chapter. A release to an exempt applicant shall be
6 effected only after said applicant has paid all of the amounts required
7 to be paid by subdivision d of section 11-424 of this chapter, except
8 for those tax items which have been canceled, in whole or in part,
9 pursuant to the comptroller's certificate, within thirty days of the
10 date on which the letter requesting payment is mailed or delivered to
11 the applicant.

12 g. If the commissioner of finance has prepared, executed and caused to
13 be recorded a deed conveying to the city or to a third party full and
14 complete title to a parcel of class one or class two real property
15 acquired by in rem tax foreclosure, the provisions contained in subdivi-
16 sions f and i of section 11-424 of this chapter for the release of prop-
17 erty so acquired shall not be available. If the commissioner of finance
18 has prepared, executed and caused to be recorded a deed conveying to a
19 third party full and complete title to a parcel of class one or class
20 two real property acquired by in rem tax foreclosure, the provisions
21 contained in subdivisions e and f of this section for the release of
22 property so acquired shall not be available.

23 h. Every deed given pursuant to the provisions of this section shall
24 be presumptive evidence that the action and all proceedings therein and
25 all proceedings prior thereto from and including the assessment of the
26 lands affected and all notices required by law were regular and in
27 accordance with all provisions of law relating thereto. After four
28 months from the date of entry of the final judgment authorizing the
29 award of possession of any parcel of class one or class two real prop-
30 erty pursuant to the provisions of this section, the presumption shall be
31 conclusive. No action to set aside such deed may be maintained unless
32 the action is commenced and a notice of pendency of the action is filed
33 in the office of the property county clerk prior to the time that the
34 presumption becomes conclusive as aforesaid. Should any lawsuit or
35 proceeding be commenced to set aside a deed conveying to a third party a
36 parcel of class one or class two real property pursuant to the
37 provisions of this section, such third party shall send to the corpo-
38 ration counsel within ten days of their receipt a copy of any papers
39 served on such third party in such lawsuit or proceeding.

40 i. If the commissioner of finance does not execute a deed conveying to
41 the city or to a third party a parcel of class one or class two real
42 property within eight months after the entry of final judgment authoriz-
43 ing the award of possession of such parcel pursuant to subdivision b of
44 this section, the commissioner of finance shall direct the corporation
45 counsel to prepare and cause to be entered an order discontinuing the in
46 rem foreclosure action as to said property, canceling the notice of
47 pendency of such action as to said property and vacating and setting
48 aside said final judgment. The entry of such order shall restore all
49 parties, including owners, mortgagees and any and all lienors, receivers
50 and administrators and encumbrancers, to the status they held immedi-
51 ately before such final judgment was entered.

52 j. If the commissioner of finance directs the corporation counsel,
53 pursuant to subdivision i of this section, to prepare and cause to be
54 entered an order discontinuing the in rem foreclosure action with
55 respect to a parcel of class one or class two real property determined
56 to be distressed pursuant to section 11-401.1 of this chapter, the

1 commissioner of housing preservation and development shall evaluate the
2 parcel determined to be distressed and take such action as he or she
3 deems appropriate under the programs, existing at the time of such eval-
4 uation, that are designed to encourage the rehabilitation and preserva-
5 tion of existing housing, and shall monitor or cause to be monitored the
6 status of the property. The commissioner of housing preservation and
7 development shall maintain a register of properties determined to be
8 distressed.

9 § 11-412.2 Council review of conveyance to a third party. The commis-
10 sioner of finance shall, prior to the execution of a deed conveying full
11 and complete title of any parcel of class one or class two real property
12 to a third party pursuant to subdivision c of section 11-412.1 of this
13 chapter, notify the council of the proposed conveyance. Within forty-
14 five days of such notification, the council may act by local law disap-
15 proving the proposed conveyance. In the event the council does not act
16 by local law within such forty-five day period, the council shall be
17 deemed to have approved the proposed conveyance. During such forty-five
18 day period or, if the city council acts by local law pursuant to this
19 section, during the period of time from the notification of the council
20 to the presentation to the mayor of such local law and during any addi-
21 tional period of time prescribed in section 37 of the charter, the
22 eight-month period provided in subdivisions c and i of section 11-412.1
23 of this chapter shall be tolled.

24 § 11-413 Withdrawal of parcels from foreclosure. a. The commissioner
25 of finance may, prior to final judgment, withdraw a parcel from a
26 proceeding under this chapter for any of the following reasons, (1) a
27 question which the commissioner deems meritorious has been raised as to
28 the validity of the tax liens affecting the parcel, (2) the city collec-
29 tor has accepted a payment of all taxes and interest which rendered the
30 parcel subject to foreclosure hereunder because the records in the
31 commissioner's office indicated that the principal amount of such taxes
32 was exceeded by the principal amount of subsequent taxes which would not
33 have rendered the parcel subject to foreclosure hereunder and which had
34 been paid prior to the commencement of said proceeding or (3) in cases
35 where the tax foreclosure action cannot be maintained such as, but not
36 limited thereto, where the charges which rendered a parcel subject to
37 foreclosure hereunder have been cancelled or were paid before the
38 commencement of the foreclosure proceeding but such payment was not
39 reported or did not clear for payment until after the commencement of
40 said proceeding, or where a name and address appearing on an owner's
41 registration card or an in rem card filed pursuant to section 11-416 or
42 11-417 of this chapter and contained in the files of the city collector
43 did not appear in the mailing list used by the commissioner of finance
44 for mailing notices of foreclosure in such proceeding.

45 b. To effectuate such withdrawal the commissioner of finance shall
46 deliver a certificate of withdrawal to the corporation counsel who shall
47 file it in the office of the county clerk in which the list of delin-
48 quent taxes was filed. The filing of such certificate with such county
49 clerk shall effect a discontinuance of the tax foreclosure action as to
50 the affected parcel, and the county clerk shall thereupon note such
51 withdrawal and discontinuance in the copy of the list of delinquent
52 taxes maintained by him or her adjacent to the county clerk's block
53 index of notices of pendency of action and shall cancel and discharge
54 any and all notations of the filing of said list of delinquent taxes as
55 to said parcel that may appear in any other books, records, indices and
56 dockets maintained in said clerk's office.

1 c. The commissioner of finance shall also deliver a duplicate original
2 certificate of withdrawal to the person entitled to such withdrawal.

3 d. The commissioner of finance shall recite the parcels so withdrawn
4 and the reasons for withdrawal in an affidavit of regularity to be
5 submitted by the commissioner in each action brought pursuant to this
6 chapter.

7 e. The commissioner of finance shall issue a certificate of withdrawal
8 whenever taxes and interest are paid, cancelled, liquidated or otherwise
9 lawfully disposed of as to any parcel which was previously severed
10 pursuant to section 11-409 of this chapter because an answer or liti-
11 gation was pending.

12 § 11-414 Right of redemption not diminished. The period of time in
13 which any owner of, or other person having an interest in a parcel of
14 property may redeem from a sale of a transfer of tax lien is not hereby
15 diminished nor shall such period of time be diminished by the commence-
16 ment of any action brought pursuant to this chapter.

17 § 11-415 Priority of liens. Tax liens shall rank in priority as may
18 now, or as may hereafter, be provided by law.

19 § 11-416 Owner's registration cards; mailing tax bills and notices to
20 registered owners or their designees. a. The commissioner of finance
21 shall maintain a file of owner's registration cards submitted by owners
22 of real property. Each such owner's registration card shall be signed by
23 the owner or a duly authorized representative and shall state the date
24 on which it was filed, the owner's full name and post office address and
25 a description of the premises by reference to the section, block, and
26 lot numbers on the tax map.

27 b. The commissioner of finance shall mail bills for taxes, charges and
28 assessments to all owners who have filed owner's registration cards as
29 herein provided, but the failure of the commissioner of finance so to
30 mail such bill shall not invalidate or otherwise affect the tax, charge
31 or assessment represented thereby nor prevent the accruing of any inter-
32 est or penalty imposed for the non-payment thereof, nor prevent or stay
33 proceedings under this chapter, nor effect the title of the plaintiff or
34 any purchaser under such proceedings.

35 c. The commissioner of finance shall also mail notice of foreclosure
36 and any other process required by this chapter to all owners who have
37 filed owner's registration cards whenever the parcels as to which such
38 cards were filed are included in a list of delinquent taxes filed pursu-
39 ant to this chapter. The failure to receive such notice or process as
40 herein provided shall not affect the validity of any action or proceed-
41 ing brought pursuant to this chapter.

42 d. An owner who files an owner's registration card may also designate
43 thereon the full name and post office address of a mortgagee, lienor or
44 other person to receive bills and notices. Where such designation is
45 made, the commissioner of finance shall not mail any bills and notices
46 to the owner but shall mail all bills and notices to the owner's desig-
47 nee.

48 § 11-417 In rem cards; mailing notices to other interested persons.

49 a. The commissioner of finance shall, in addition to the file maintained
50 by him or her pursuant to section 11-416 of this chapter, maintain a
51 file of in rem cards submitted by any person having an interest in real
52 property who is not entitled to have tax bills mailed to him or her by
53 the commissioner of finance, including mortgagees, lienors, encumbranc-
54 ers and owners who have filed owner's registration cards designating
55 someone else to receive bills and notices. Each such in rem card shall
56 be signed by the person filing such card or a duly authorized represen-

1 tative, shall contain a description of the premises by reference to the
2 section, block and lot numbers on the tax map and shall state the date
3 on which said card was filed, the full name and post office address of
4 the person filing said card and the nature of the interest said person
5 has in said premises.

6 b. The commissioner of finance shall mail a notice of foreclosure and
7 any other process required by this chapter to each person who has filed
8 an in rem card whenever the parcels to which such cards refer are
9 included in a list of delinquent taxes filed pursuant to this chapter.
10 However, failure to receive such notice or process shall not affect the
11 validity of any proceeding brought pursuant to this chapter.

12 § 11-418 Writ of assistance. The city, after acquiring title to prem-
13 ises under and pursuant to the terms and provisions of this chapter,
14 shall be entitled to a writ of assistance, with the same force and
15 effect as if the city had acquired the property by virtue of a mortgage
16 foreclosure.

17 § 11-419 Consolidation of actions. Actions or proceedings pending in
18 the courts, or otherwise, to cancel a sale of a tax lien on lands a lien
19 upon which is being foreclosed by action under this chapter, shall be
20 terminated upon the institution of a foreclosure action pursuant to this
21 chapter, and the rights and remedies of the parties in interest to such
22 pending actions or proceedings shall be determined by the court in such
23 foreclosure action.

24 § 11-420 Lands held for public use; right of sale. Whenever the city
25 shall become vested with the title to lands by virtue of a foreclosure
26 proceeding brought pursuant to the provisions of this chapter, such
27 lands shall, unless actually used for other than municipal purposes, be
28 deemed to be held by the city for a public use but for a period of not
29 more than three years from the date of the final judgment. The city is
30 hereby authorized to sell and convey such lands in the manner provided
31 by law for the sale and conveyance of other real property held and owned
32 by the city and not otherwise.

33 § 11-421 Certificate of sale as evidence. The transfer of tax lien or
34 any other written instrument representing a tax lien shall be presump-
35 tive evidence in all courts in all proceedings under this chapter by and
36 against the purchaser and his or her representatives, heirs and assigns,
37 of the truth of the statements therein, of the title of the purchaser to
38 the property therein described, and of the regularity and validity of
39 all proceedings had in reference to the taxes, assessments or other
40 legal charges for the nonpayment of which the tax lien was sold and the
41 sale thereof. After two years from the issuance of such certificate or
42 other written instrument, no evidence shall be admissible in any court
43 in a proceeding under this chapter to rebut such presumption unless the
44 holder thereof shall have procured such transfer of tax lien or such
45 other written instrument by fraud or had previous knowledge that it was
46 fraudulently made or procured.

47 § 11-422 Deed in lieu of foreclosure. The city may when authorized by
48 resolution of the successor agency, officer or employee of the former
49 board of estimate and in lieu of prosecuting an action to foreclose a
50 tax lien on any parcel pursuant to this chapter accept a conveyance of
51 the interest of any person having any right, title, interest, claim,
52 lien or equity of redemption in or to such parcel.

53 § 11-423 Sales and foreclosures of tax liens. Notwithstanding any of
54 the provisions of this chapter the city may continue to sell tax liens,
55 transfer the same to purchasers and become the purchaser at such sales
56 of tax liens in the manner provided by this title.

1 § 11-424 Application to the city for release of property acquired by
2 in rem tax foreclosure. a. (1) The city's interest in property acquired
3 by in rem tax foreclosure may be released pursuant to this section on
4 the application of any party who had an interest in said property as
5 either owner, mortgagee, lienor or encumbrancer at the time of the
6 city's acquisition thereof where such application is made at any time up
7 to two years from the date on which the deed by which the city acquired
8 title to said property was recorded.

9 (2) Notwithstanding any inconsistent provision of paragraph one of
10 this subdivision to the contrary, the city's interest in property
11 acquired by in rem tax foreclosure may be released pursuant to this
12 section upon application of any party who had an interest in said prop-
13 erty as either owner, mortgagee, lienor or encumbrancer at the time of
14 the city's acquisition thereof where such application is made more than
15 two years after the date on which the deed by which the city acquired
16 title to said property was recorded provided such application is author-
17 ized by the council as hereinafter provided. An application for such
18 release and the documents required by subdivision c of this section in
19 support thereof shall be filed with the department of citywide adminis-
20 trative services in the manner provided in subdivision b of this
21 section. The department of citywide administrative services shall give
22 the council written notice of the receipt of each such filing. After
23 review and approval of the application by the corporation counsel as to
24 form and eligibility of the applicant, the department of citywide admin-
25 istrative services shall send a copy of such application to the in rem
26 foreclosure release board and to the council. Upon receipt of such
27 application, the in rem foreclosure release board shall take no further
28 action on such application unless the council adopts a resolution within
29 one hundred twenty days following the first stated meeting of the coun-
30 cil after receipt of such application authorizing the board to consider
31 such application. If the council fails to adopt a resolution within such
32 one hundred twenty-day period, the council shall be deemed to have
33 denied its authorization for the board to consider such application. A
34 resolution of the council pursuant to this paragraph shall describe the
35 property for which release is sought by borough, tax map, block and lot
36 number and shall specify that release of the city's interest in such
37 property is subject to the approval of the in rem foreclosure release
38 board and to all the conditions and restrictions set forth in this
39 section.

40 b. 1. Any such application shall be made in writing to the commission-
41 er of citywide administrative services and shall be verified. It shall
42 contain the name and address of the applicant and shall state the date
43 on which and the in rem action by which the city acquired title to the
44 property sought to be released. It shall also contain a statement speci-
45 fying the nature of the applicant's interest in the property and a full
46 description of the instrument from which the applicant's interest
47 derives including the date of execution, the date and place of the
48 recording or entry of said instrument and the parties thereto. In the
49 event the applicant's interest arises by reason of the death of a prior
50 owner, mortgagee, lienor or encumbrancer, then the application shall
51 also state the applicant's relationship to said decedent and shall
52 include whatever additional information may be necessary to prove the
53 applicant's right to make such application.

54 2. A fee of two hundred seventy-five dollars shall be paid on the
55 submission of any such application which is subject to the provisions of
56 subdivision f of this section, except that the fee for any such applica-

1 tion for the release of property improved by a one or two-family dwell-
2 ing shall be one hundred dollars.

3 3. A fee of five hundred fifty dollars shall be paid on the submission
4 of any such application which is subject to the provisions of subdivi-
5 sion g of this section, except that the fee for any such application for
6 the release of property improved by a one or two-family dwelling shall
7 be one hundred dollars.

8 4. A fee of two hundred seventy-five dollars shall be paid on the
9 submission of any such application which is subject to the provisions of
10 subdivision h of this section within four months from the date on which
11 the deed by which the city acquired title to the subject property was
12 recorded, and a fee of five hundred and fifty dollars shall be paid on
13 the submission of any such application which is subject to the
14 provisions of such subdivision not within four months from such date;
15 except that the fee for any such application which is subject to the
16 provisions of such subdivision for the release of property improved by a
17 one or two-family dwelling shall be one hundred dollars.

18 5. The fees payable pursuant to paragraphs two, three and four of this
19 subdivision shall not be refundable.

20 6. In addition to the fees specified in paragraphs two, three and four
21 of this subdivision, there shall be paid on the submission of any appli-
22 cation which is subject to this section an amount at least equal to the
23 lesser of nine hundred dollars or the sum specified in paragraph one of
24 subdivision d of this section, which amount shall not be refundable, but
25 shall be applied in reduction of the sum specified in paragraph one of
26 subdivision d of this section; provided, however, that if a release
27 requires the authorization of the in rem foreclosure release board, and
28 such authorization is not given, such additional amount shall be
29 refunded to the applicant.

30 c. Each application shall be supported by the certified search of the
31 city register or by an official letter, certificate or certified search
32 of any title insurance or abstract company, organized and doing business
33 under the laws of this state. Such supporting instruments shall recite
34 the recording data both as to the deed by which the city acquired title
35 to the parcel sought to be released and the instrument from which the
36 applicant's interest derives. In the event the applicant's interest does
37 not appear of record but is derived by the death of an owner, mortgagee,
38 lienor or encumbrancer of record, then the application shall also be
39 supported by the affidavit of the applicant or other person having
40 information thereof, or by the duly written certificate or certification
41 of the county clerk or the clerk of any surrogate's or other court of
42 record, or by any other instrument or document required by the corpo-
43 ration counsel to substantiate the applicant's right to file such appli-
44 cation in compliance with the provisions of this section.

45 d. The city's interest shall be released only after payment, as to
46 each parcel to be released, of the following sums of money:

47 1. The principal amount due on all unpaid taxes, assessments, water
48 charges and sewer rents appearing on the list of delinquent taxes and
49 accruing thereafter together with interest at the rate or rates provided
50 by law.

51 2. Five percent of the amount paid pursuant to the preceding paragraph
52 but not exceeding one thousand dollars for each parcel.

53 3. Any deficiency which may result to the city after all payments made
54 by it for the repair, maintenance, and operation of the lands, real
55 estate or real property shall have been charged or debited in the appro-
56 priate accounts of the city and all rents, license fees and other moneys

1 collected by the city as a result of its operation of the said lands,
2 real estate or real property shall have been credited in such accounts.
3 Any contract for repair, maintenance, management or operation made by
4 the city on which it shall be liable, although payment thereon shall not
5 have been made, shall be deemed a charge or debit to such accounts as
6 though payment had been made. The amounts paid and collected by the city
7 as shown in its accounts and the necessity for making the several
8 payments and contracts to be charged as herein provided shall be conclu-
9 sive upon the applicant. Where a deficiency under this subdivision shall
10 be created or increased by the failure of the city to collect rents,
11 license fees or other moneys to which the city may have been entitled,
12 the right to collect or to bring action for the same shall be assigned,
13 transferred and set over to the applicant by an instrument in writing.

14 4. Any and all costs and disbursements which shall have been awarded
15 to the city or to which it may have become entitled by operation of law
16 or which it may have paid or become liable for payment in connection
17 with any litigation between it and the applicant or any person having an
18 estate or interest in the lands, real estate or real property to be
19 released resulting directly or indirectly from the foreclosure by action
20 in rem of the delinquent taxes affecting said lands, real estate or real
21 property.

22 5. A reasonable monthly fee to be determined by the city, through the
23 department of citywide administrative services, for management services
24 and operations of the lands, real estate or real property by the city
25 prior to the release of said lands, real estate or property.

26 6. The city, through the department of citywide administrative
27 services, shall also require as additional consideration for such
28 release, the payment of all arrears on mortgages held by the city and
29 all liens accruing to it by operation of law including but not limited
30 to relocation and emergency repair liens.

31 e. The corporation counsel shall effect the release of the city's
32 interest in property acquired by in rem tax foreclosure, as provided for
33 in this section, by preparing and causing to be entered an order discon-
34 tinuing the in rem tax foreclosure action as to said property, cancel-
35 ling the notice of pendency of such action as to said property and
36 vacating and setting aside the in rem judgment of foreclosure and the
37 deed executed and recorded pursuant to such judgment of foreclosure as
38 to said property. The entry of such order shall restore all parties,
39 including owners, mortgagees and any and all lienors, receivers and
40 administrators and encumbrancers, to the status they held at the time
41 the city acquired title to said property, as if the in rem tax foreclo-
42 sure had never taken place, and shall render said property liable for
43 all taxes, deficiencies, management fees and liens which shall accrue
44 subsequent to those paid in order to obtain the release provided for in
45 this section, or which were, for whatever reason, omitted from the
46 payment made to obtain said release.

47 f. If an application pursuant to this section, and the documents
48 required by subdivision c of this section in support thereof, are filed
49 within four months after the date of the city's acquisition of the
50 subject property, said application shall be granted providing the corpo-
51 ration counsel approves the application as to form, timeliness and
52 eligibility of the applicant and providing the applicant has paid all
53 amounts required to be paid by subdivision d of this section within
54 thirty days of the date on which a letter requesting applicant to make
55 such payment is mailed or delivered to the applicant. The city shall not
56 sell or assign any property acquired by in rem tax foreclosure within

1 four months of said acquisition but this provision shall not prevent the
2 city from authorizing condemnation of such property or vesting title
3 thereto in a condemnation proceeding during said four month period. In
4 the event an application pursuant to this section is filed within four
5 months of the city's acquisition by in rem tax foreclosure and title to
6 the subject property vests in condemnation before the city's interest
7 therein has been released by the vacate order provided for herein, the
8 applicant shall be entitled to the condemnation award for such property
9 without the entry of such vacate order, providing the corporation coun-
10 sel has approved the application as aforesaid and providing that the
11 amounts specified in subdivision d of this section, if not previously
12 paid, are deducted from said condemnation award, with taxes apportioned
13 to the date of the condemnation title vesting.

14 g. If an application for a release of the city's interest in property
15 acquired by in rem tax foreclosure, and the documents required by subdivi-
16 sion c of this section in support thereof, have been filed within the
17 time allowed in paragraph one of subdivision a of this section, but more
18 than four months after the date of the city's acquisition or if an
19 application for such release has been authorized by a resolution of the
20 council pursuant to paragraph two of subdivision a of this section and
21 such application and the documents required by subdivision c of this
22 section in support thereof have been filed, the in rem foreclosure
23 release board may, in its discretion, authorize the release of the
24 city's interest in said property pursuant to this section, provided that
25 the application has been approved by the corporation counsel as to form,
26 timeliness and eligibility of the applicant and provided that the city
27 has not sold or otherwise disposed of said property and provided,
28 further, that said property has not been condemned or assigned to any
29 agency of the city and is not the subject of contemplated use for any
30 capital or urban renewal project of the city. The corporation counsel
31 shall effect such discretionary release only where the applicant, after
32 the board's authorization of the release, has paid all the amounts
33 required to be paid by subdivision d of this section within thirty days
34 of the date on which a letter requesting the applicant to make such
35 payment is mailed or delivered to the applicant. The in rem foreclosure
36 release board may also, in its discretion, authorize a release of the
37 city's interest in such property, pursuant to the above provisions,
38 whenever an application for such release, approved as to form, timeli-
39 ness and eligibility by the corporation counsel, has been filed at any
40 time during the period allowed in subdivision a of this section in which
41 the applicant has requested an installment agreement of the commissioner
42 of citywide administrative services for the payment of the amounts
43 required to be paid by subdivision d of this section provided that said
44 commissioner has approved such request. The commissioner of citywide
45 administrative services shall not approve any such request unless the
46 applicant shall have given notice by certified mail to each tenant
47 located on the parcel, of the request and shall have given such commis-
48 sioner an affidavit stating that such notice has been provided, within
49 thirty days after the request. Any false statement in such affidavit
50 shall not in any way affect the validity of the agreement, be grounds
51 for its cancellation or in any way affect the release of the city's
52 interest in the parcel. Such agreement shall require, in addition to
53 full payment of the amounts due under paragraphs two, three, four, five
54 and six of subdivision d of this section, a first installment of fifty
55 percent of the amount due under paragraph one of said subdivision d with
56 the balance of said amount to be paid in four equal quarterly install-

1 ments together with all current taxes, assessments or other legal charg-
2 es that accrue during such period; provided, however, that: (i) whenever
3 a request for an installment agreement is made of the commissioner of
4 citywide administrative services by a company organized pursuant to
5 article eleven of the private housing finance law with the consent and
6 approval of the department of housing preservation and development or
7 for a parcel which is an owner-occupied residential building of not more
8 than five residential units, the commissioner of citywide administrative
9 services may, as to that portion of the amounts due under paragraph one
10 of subdivision d of this section which became due prior to the acquisi-
11 tion by the article eleven company of its interest in the property and
12 as to the amount due under paragraph one of subdivision d of this
13 section in the case of such an owner-occupied building, approve a
14 reduction of such first installment to an amount not less than ten
15 percent of the amount due under paragraph one of subdivision d of this
16 section and an increase in the number of the following equal quarterly
17 installments to a number which shall be equal to three times the number
18 of unpaid quarters of real estate taxes or the equivalent thereof but
19 which shall in no event exceed forty-eight, and (ii) notwithstanding
20 clause (i) of this paragraph, whenever an installment agreement is
21 requested on or after the date on which this clause takes effect with
22 respect to a parcel that, immediately prior to the city's acquisition
23 thereof by in rem tax foreclosure, was owned by a company organized
24 pursuant to article eleven of the state private housing finance law with
25 the consent and approval of the department of housing preservation and
26 development, or with respect to a parcel that is a residential building
27 containing not more than five residential units, a residential condomin-
28 ium unit or a residential building held in a cooperative form of owner-
29 ship, the commissioner of general services may, as to the amount due
30 under paragraph one of subdivision d of this section, approve an
31 installment agreement containing the terms relating to the required
32 percentage payment for the first installment and the required number of
33 subsequent quarterly installments, that would be applicable to such
34 parcel under paragraph two (but without regard to any reference therein
35 to paragraph three) of subdivision i of section 11-409 of this chapter.
36 For purposes of calculating the number of such following equal quarterly
37 installments, unpaid real estate taxes or the equivalent which are, on
38 and after July first, nineteen hundred eighty-two, due and payable on an
39 other than quarterly basis shall be deemed to be payable on a quarterly
40 basis. Where the in rem foreclosure release board denies an application
41 requesting an installment agreement the board shall authorize a release
42 of the city's interest, provided that the applicant thereafter pays all
43 the amounts required to be paid by subdivision d of this section within
44 thirty days of the date on which a letter requesting such payment is
45 mailed or delivered to the applicant only when said application and the
46 documents required by subdivision c of this section in support thereof
47 were filed within thirty days of the date of the city's acquisition of
48 the property sought to be released. Where the in rem foreclosure
49 release board denies an application requesting an installment agreement
50 which was filed more than thirty days after the date of the city's
51 acquisition, the board may, in its discretion, authorize a release of
52 the city's interest, provided that the applicant thereafter pays all the
53 amounts required to be paid by subdivision d of this section within
54 thirty days of the date on which a letter requesting such payment is
55 mailed or delivered to the applicant. Where the in rem foreclosure
56 release board approves an application requesting an installment agree-

1 ment, the order releasing the city's interest shall provide that in the
2 event of any default as to the payment of either quarterly installments
3 or current taxes, assessments or other legal charges during the term of
4 such agreement, as set forth in the board's resolution, all payments
5 made under said agreement shall be forfeited and the city shall be enti-
6 tled to reacquire the property so released. The corporation counsel
7 shall effect such reacquisition by causing to be entered as to such
8 property a supplemental judgment of foreclosure in the in rem action by
9 which said property was originally acquired immediately on notification
10 by the commissioner of finance of such default.

11 h. An owner of property entitled to an exemption under any of the
12 provisions of article four of the real property tax law during all or
13 part of the period covered by the tax items appearing on a list of
14 delinquent taxes may apply for a release of the city's interest in such
15 exempt property under the provisions of this section during the periods
16 of time set forth herein and for an additional period up to ten years
17 from the date of the city's acquisition of said property by in rem fore-
18 closure. The application of such owner shall contain, in addition to the
19 statements, searches and proofs required by this section, a statement
20 that an exemption under the real property tax law is being claimed. Such
21 application shall also state either that it is accompanied by the writ-
22 ten certificate of the comptroller setting forth the precise period
23 during which said property, while owned by such applicant, and during
24 the period after the city's acquisition up to the date of the certif-
25 icate if said property was still being used for an exempt purpose after
26 said acquisition, was entitled to an exemption and the exact nature and
27 extent of such exemption or that an application for such written certif-
28 icate has been filed with the comptroller. On issuing such written
29 certificate, the comptroller shall cancel those tax items which have
30 accrued during the period covered by the certificate to the extent the
31 applicant is entitled to an exemption as set forth in the certificate.
32 Where an application by an exempt owner is filed more than four months
33 after the date of the city's acquisition of the subject property, a
34 release of the city's interest may be issued only at the discretion of
35 the in rem foreclosure release board and subject to all the restrictions
36 set forth in subdivision g of this section. A release to an exempt
37 applicant shall be effected only after said applicant has paid all the
38 amounts required to be paid by subdivision d of this section, except for
39 those tax items which have been cancelled, in whole or in part, pursuant
40 to the comptroller's certificate, within thirty days of the date on
41 which a letter requesting payment is mailed or delivered to the appli-
42 cant.

43 i. The corporation counsel shall also effect the release of the city's
44 interest in property acquired by in rem foreclosure, as provided for in
45 this action, whenever the commissioner of finance shall accept as to any
46 parcel so acquired, the payment provided for in paragraph two of subdivi-
47 sion a of section 11-413 of this chapter. Said commissioner may accept
48 such payment at any time within four months of the date of the city's
49 acquisition and may further, subject to the approval of the in rem fore-
50 closure release board, accept such payment at any time more than four
51 months after the date of the city's acquisition but less than two years
52 from the date on which the city's deed was recorded providing said prop-
53 erty has not been sold or otherwise disposed of nor condemned or
54 assigned to any agency of the city and is not the subject of contem-
55 plated use of any capital or urban renewal project of the city.

1 § 11-424.1 In rem foreclosure release board. There shall be an in rem
2 foreclosure release board consisting of the mayor, the speaker of the
3 city council, the borough president, the corporation counsel and the
4 commissioner of finance. Members of the board may, by written authority
5 filed with the board and with the city clerk, appoint delegates to act
6 on their behalf as members of the board. The board shall have the power,
7 acting by resolution, to authorize the release of the city's interest in
8 property acquired by in rem tax foreclosure in accordance with sections
9 11-412.1 and 11-424 of the code based upon a determination, in its
10 discretion, that such release would be in the best interests of the
11 city. The board shall act after a meeting at which the public has been
12 provided an opportunity to comment on the proposed action. A resolution
13 of the board authorizing a release of the city's interest in any proper-
14 ty shall be adopted only upon the affirmative vote of not less than a
15 majority of all the members of the board. The board may consider any
16 information it deems relevant to a determination. The board shall not be
17 required to state the reasons for its determination.

18 § 11-425 Agreements for payment of delinquent taxes and charges in
19 installments. a. During the period beginning on May ninth, nineteen
20 hundred seventy-seven and ending on June thirtieth, nineteen hundred
21 seventy-seven, the commissioner of finance or, when so specified herein-
22 after, the commissioner of general services, shall be authorized and
23 empowered to make and execute agreements in the circumstances and
24 subject to the terms, conditions and limitations set forth in this
25 section; provided, however, that if the commissioner of finance or,
26 where applicable, the commissioner of general services determines in his
27 or her sole discretion that good cause exists, he or she may make and
28 execute such agreements during an additional period ending not later
29 than July thirty-first, nineteen hundred seventy-seven.

30 b. (1) Whenever it shall appear that a tax lien on a parcel has been
31 due and unpaid for a period of at least six months from the date on
32 which the tax, assessment or other legal charge represented thereby
33 became a lien, the commissioner of finance may enter into an agreement
34 with the owner of such parcel or other person claiming to have an inter-
35 est therein providing for the payment of such delinquent taxes, assess-
36 ments or other legal charges and interest and penalties in installments,
37 the first of which shall be equal to at least fifteen percent of such
38 arrears and shall be payable upon the execution of such agreement. Each
39 remaining installment shall be equal to at least an amount produced by
40 dividing the balance of such arrears by a factor determined by multiply-
41 ing the number of quarters of such arrears by two hundred percent;
42 provided, however, in no event shall such factor be in excess of thir-
43 ty-two. Each such remaining installment shall be payable quarterly on
44 the first of July, October, January and April.

45 (2) If an agreement authorized by paragraph one of this subdivision is
46 executed prior to the time the commissioner of finance files in the
47 office of the county clerk a list of delinquent taxes covering the city
48 or portion of the city in which the subject parcel is located, such
49 parcel shall be excluded from such list of delinquent taxes, provided,
50 at the time such list is filed, there is no default in the agreement and
51 all current taxes, assessments or other legal charges have been paid as
52 they became due or within the period of grace provided by law. In the
53 event of any default in the agreement or any failure to make timely
54 payment of any current item, the parcel shall, if then delinquent for
55 the applicable period specified in section 11-404 of this chapter, be
56 eligible for inclusion in any list of delinquent taxes thereafter filed.

1 (3) If an in rem foreclosure action has been commenced against any
2 parcel prior to May ninth, nineteen hundred seventy-seven, the commis-
3 sioner of finance may, notwithstanding the provisions of paragraph three
4 of subdivision a of section 11-413 of this chapter, enter into an agree-
5 ment authorized and described in the foregoing provisions of this
6 section with respect to such parcel. However, if such an agreement is
7 entered into subsequent to the last date for redemption specified in
8 subdivision a of section 11-407 of this chapter, there shall be paid to
9 the commissioner of finance at the time said agreement is executed an
10 amount equal to the penalty which would have been payable under subdivi-
11 sion c of section 11-407 of this chapter had the person executing the
12 agreement made a late redemption payment. Such amount shall be in addi-
13 tion to any installment payments required to be made under the agreement
14 and shall not be credited against any such installment payments. Any
15 parcel which is the subject of an agreement made pursuant to this para-
16 graph may, prior to final judgment, be withdrawn from the action,
17 provided there has been no default in the agreement, and provided
18 further that all current taxes, assessments or other legal charges are
19 paid when they become due or within the period of grace provided by law.
20 Such withdrawal shall be effected by the commissioner of finance in the
21 manner provided in section 11-413 of this chapter.

22 (4) Any person who, prior to May ninth, nineteen hundred seventy-sev-
23 en, has made, executed and filed with the commissioner of finance an
24 agreement pursuant to the provisions of paragraph three of subdivision a
25 of section 11-413 of this chapter, shall be permitted to make applica-
26 tion to the commissioner of finance for the purpose of having such
27 agreement cancelled and a new agreement executed as hereinabove
28 provided.

29 If an agreement executed prior to May ninth, nineteen hundred seven-
30 ty-seven is not cancelled as herein provided, any installments due and
31 payable under such agreement on or after July first, nineteen hundred
32 seventy-seven shall be subject to interest at the rate specified in
33 paragraph five of this subdivision, but only if, as of July first, nine-
34 teen hundred seventy-seven, there is no default in the agreement and all
35 current taxes, assessments or other legal charges have been paid within
36 the time allowed by law. Such rate of interest shall be calculated in
37 the manner and shall be subject to all the conditions provided in said
38 paragraph five.

39 (5) When an agreement has been entered into pursuant to this subdivi-
40 sion, the commissioner of finance shall, notwithstanding the rates of
41 interest prescribed in section 11-224, 11-312 or 11-313 of this title,
42 charge, collect and receive interest on the arrears due and payable
43 under such agreement, to be calculated at the rate of seven percent per
44 annum from July first, nineteen hundred seventy-seven to the date of
45 payment of each installment. Any interest accrued or accruing prior to
46 July first, nineteen hundred seventy-seven shall not be affected by the
47 provisions of this paragraph, but shall be charged, collected and
48 received in the manner and at the rates specified in section 11-224,
49 11-312 or 11-313 of this title. The seven percent rate of interest spec-
50 ified in this paragraph shall be applicable only if (i) there is no
51 default in the agreement entered into as provided in this section, and
52 (ii) all current taxes, assessments or other legal charges are paid as
53 they become due or within the period of grace provided by law. In the
54 event of any default or failure to make timely payment of any current
55 item, the seven percent rate of interest specified in this paragraph
56 shall thereupon cease to be applicable and the commissioner of finance

1 shall thereafter charge, collect and receive interest in the manner and
2 at the rates otherwise specified in this title.

3 (6) In addition to the terms and conditions required by the preceding
4 paragraphs of this subdivision to be included in agreements authorized
5 by this section, the commissioner of finance may in his or her
6 discretion include in such agreements such additional terms and condi-
7 tions, not inconsistent with this section, as he or she determines to be
8 necessary in order to properly carry out the provisions of this section.
9 The commissioner may also adopt such rules and regulations as may be
10 necessary to carry out the provisions of this section.

11 c. (1) If, pursuant to the provisions of section 11-424 of this chap-
12 ter, an application for the release of property acquired by the city
13 through in rem tax foreclosure is made within the four-month period
14 specified in subdivision f of section 11-424 of this chapter, and
15 provided such application is made during the period specified in subdivi-
16 sion a of this section, the provisions of this subdivision shall, at
17 the election of the applicant, apply with respect to such application
18 and the release sought thereby.

19 (2) At the time of filing the application for release, an applicant
20 who elects to have the provisions of this subdivision apply to him or
21 her, shall pay to the city the amounts specified in paragraphs two,
22 three and four of subdivision d of section 11-424 of this chapter, for
23 this purpose, the amount specified in paragraph two thereof shall be
24 deemed to be the amount which would have been required to be paid there-
25 under had this section not been in effect. Concurrent with the making of
26 such payment, the applicant shall enter into an agreement with the
27 commissioner of general services providing for the payment of all
28 current taxes, assessments or other legal charges on the property as
29 they become due or within the grace period provided by law, and, in
30 addition, providing for the payment of the amount specified in paragraph
31 one of subdivision d of section 11-424 of this chapter in installments,
32 the first of which shall be equal to at least twenty-five percent of
33 such amount and shall be payable upon the execution of such agreement.
34 The balance of such amount shall be payable in twelve equal quarterly
35 installments, each of which shall be paid quarterly on the first of
36 July, October, January and April.

37 (3) Pending approval by the corporation counsel of an application for
38 release as to form, timeliness and eligibility of the applicant, all
39 payments made pursuant to the preceding paragraph shall be held in
40 escrow; in the event the corporation counsel disapproves the applica-
41 tion, such payments shall be returned to the applicant, and the agree-
42 ment executed by the applicant shall thereupon be cancelled.

43 (4) In the case of any agreement made and executed pursuant to para-
44 graph two hereof, interest on any installment due and payable thereunder
45 shall, notwithstanding the rates of interest prescribed in section
46 11-224, 11-312 or 11-313 of this title, be charged, collected and
47 received at the rate of seven percent per annum from July first, nine-
48 teen hundred seventy-seven to the date of payment of each installment.
49 Any interest accrued or accruing prior to July first, nineteen hundred
50 seventy-seven shall not be affected by the provisions of this paragraph,
51 but shall be charged, collected and received in the manner and at the
52 rates specified in section 11-224, 11-312 or 11-313 of this title. The
53 seven percent rate of interest specified in this paragraph shall be
54 applicable only if (i) there is no default in the agreement entered into
55 as provided in this subdivision, and (ii) all current taxes, assessments

1 or other legal charges are paid as they become due or within the period
2 of grace provided by law.

3 (5) No release for which application has been made pursuant to this
4 subdivision shall be granted until the final payment under the agreement
5 herein provided is received by the city. Upon receipt of such final
6 payment by the city the corporation counsel shall effect the release in
7 the manner provided in section 11-424 of this chapter. In the event of
8 any default in an agreement executed as provided in this subdivision or
9 any failure to pay current taxes, assessments or other legal charges as
10 they become due or within the grace period provided by law, such agree-
11 ment shall thereupon become void, the release process shall be termi-
12 nated, and all payments theretofore made shall be forfeited to the city.

13 (6) In addition to the terms and conditions required by the preceding
14 paragraphs of this subdivision to be included in agreements authorized
15 thereby, the commissioner of general services may in his or her
16 discretion include in such agreements such additional terms and condi-
17 tions, not inconsistent with this subdivision, as the commissioner
18 determines to be necessary in order to properly carry out the provisions
19 hereof. The commissioner of general services may also adopt such rules
20 and regulations as may be necessary to carry out the provisions of this
21 subdivision.

22 § 11-426 Agreements for payment of delinquent taxes and charges in
23 installments. a. During the period beginning on December second, nine-
24 teen hundred seventy-seven and ending on March thirty-first, nineteen
25 hundred seventy-eight, the commissioner of finance, or, when so speci-
26 fied hereinafter, the commissioner of general services, shall be author-
27 ized and empowered to make and execute agreements in the circumstances
28 and subject to the terms, conditions and limitations set forth in this
29 section.

30 b. (1) Whenever it shall appear that a tax lien on a parcel has been
31 due and unpaid for a period of at least six months from the date on
32 which the tax, assessment or other legal charge represented thereby
33 became a lien, the commissioner of finance may enter into an agreement
34 with the owner of such parcel or other person claiming to have an inter-
35 est therein providing for the payment of such delinquent taxes, assess-
36 ments or other legal charges and interest and penalties in installments,
37 the first of which shall be equal to at least fifteen percent of such
38 arrears and shall be payable upon the execution of such agreement. Each
39 remaining installment shall be equal to at least an amount produced by
40 dividing the balance of such arrears by a factor determined by multiply-
41 ing the number of quarters of such arrears by two hundred percent. In no
42 event, however, shall the factor referred to in the preceding sentence
43 be in excess of thirty-two. Each such remaining installment shall be
44 payable quarterly on the first of July, October, January and April.

45 (2) If an agreement authorized by paragraph one of this subdivision is
46 executed prior to the time the commissioner of finance files in the
47 office of the county clerk a list of delinquent taxes covering the city
48 or portion of the city in which the subject parcel is located, such
49 parcel shall be excluded from such list of delinquent taxes, provided,
50 at the time such list is filed, there is no default in the agreement and
51 all current taxes, assessments or other legal charges have been paid as
52 they became due or within the period of grace provided by law. In the
53 event of any default in the agreement or any failure to make timely
54 payment of any current item, the parcel shall, if then delinquent for
55 the applicable period specified in section 11-404 of this chapter, be
56 eligible for inclusion in any list of delinquent taxes thereafter filed.

1 (3) If an in rem foreclosure action has been commenced against any
2 parcel prior to December second, nineteen hundred seventy-seven, the
3 commissioner of finance may, notwithstanding the provisions of paragraph
4 three of subdivision a of section 11-413 of this chapter, enter into an
5 agreement authorized and described in the foregoing provisions of this
6 section with respect to such parcel. However, if such an agreement is
7 entered into subsequent to the last date for redemption specified in
8 subdivision a of section 11-407 of this chapter, there shall be paid to
9 the commissioner of finance at the time said agreement is executed an
10 amount equal to the penalty which would have been payable under subdivi-
11 sion c of section 11-407 of this chapter had the person executing the
12 agreement made a late redemption payment. Such amount shall be in addi-
13 tion to any installment payments required to be made under the agreement
14 and shall not be credited against any such installment payments. Any
15 parcel which is the subject of an agreement made pursuant to this para-
16 graph may, prior to final judgment, be withdrawn from the action,
17 provided there has been no default in the agreement, and provided
18 further that all current taxes, assessments or other legal charges are
19 paid when they become due or within the period of grace provided by law.
20 Such withdrawal shall be effected by the commissioner of finance in the
21 manner provided in section 11-413 of this chapter.

22 (4) Any person who, prior to December second, nineteen hundred seven-
23 ty-seven, has made, executed and filed with the commissioner of finance
24 an agreement pursuant to the provisions of paragraph three of subdivi-
25 sion a of section 11-413 of this chapter, shall be permitted to make
26 application to the commissioner of finance for the purpose of having
27 such agreement cancelled and a new agreement executed as hereinabove
28 provided.

29 If an agreement executed prior to December second, nineteen hundred
30 seventy-seven is not cancelled as herein provided, any installments due
31 and payable under such agreement on or after April first, nineteen
32 hundred seventy-eight shall be subject to interest at the rate specified
33 in paragraph five of this subdivision, but only if, as of April first,
34 nineteen hundred seventy-eight, there is no default in the agreement and
35 all current taxes, assessments or other legal charges have been paid
36 within the time allowed by law. Such rate of interest shall be calcu-
37 lated in the manner and shall be subject to all the conditions provided
38 in said paragraph five.

39 (5) When an agreement has been entered into pursuant to this subdivi-
40 sion, the commissioner of finance shall, notwithstanding the rates of
41 interest prescribed in section 11-224, 11-312 or 11-313 of this title,
42 charge, collect and receive interest on the arrears due and payable
43 under such agreement to be calculated at the rate of seven percent per
44 annum from April first, nineteen hundred seventy-eight to the date of
45 payment of each installment. Any interest accrued or accruing prior to
46 April first, nineteen hundred seventy-eight shall not be affected by the
47 provisions of this paragraph, but shall be charged, collected and
48 received in the manner and at the rates specified in section 11-224,
49 11-312 or 11-313 of this title. The seven percent rate of interest spec-
50 ified in this paragraph shall be applicable only if (i) there is no
51 default in the agreement entered into as provided in this section, and
52 (ii) all current taxes, assessments or other legal charges are paid as
53 they become due or within the period of grace provided by law. In the
54 event of any default or failure to make timely payment of any current
55 item, the seven percent rate of interest specified in this paragraph
56 shall thereupon cease to be applicable and the commissioner of finance

1 shall thereafter charge, collect and receive interest in the manner and
2 at the rates otherwise specified in this title.

3 (6) In addition to the terms and conditions required by this subdivi-
4 sion to be included in agreements authorized by this section, the
5 commissioner of finance may, in his or her discretion, include in such
6 agreements such additional terms and conditions, not inconsistent with
7 this section, as such commissioner determines to be necessary in order
8 to properly carry out the provisions of this section. The commissioner
9 of finance may also adopt such rules and regulations as may be necessary
10 to carry out the provisions of this section.

11 c. (1) If, pursuant to the provisions of section 11-424 of this chap-
12 ter, an application for the release of property acquired by the city
13 through in rem tax foreclosure is made within the four-month period
14 specified in subdivision f of section 11-424 of this chapter, and
15 provided such application is made during the period specified in subdivi-
16 sion a of this section, the following provisions of this subdivision
17 shall, at the election of the applicant, apply with respect to such
18 application and the release sought thereby.

19 (2) At the time of filing the application for release, an applicant
20 who elects to have the provisions of this subdivision apply to him or
21 her, shall pay to the city the amounts specified in paragraphs two,
22 three and four of subdivision d of section 11-424 of this chapter, for
23 this purpose, the amount specified in such paragraph two shall be deemed
24 to be the amount which would have been required to be paid thereunder
25 had this section not been in effect. Concurrent with the making of such
26 payment, the applicant shall enter into an agreement with the commis-
27 sioner of general services providing for the payment of all current
28 taxes, assessments or other legal charges on the property as they become
29 due or within the grace period provided by law, and, in addition,
30 providing for the payment of the amount specified in paragraph one of
31 subdivision d of section 11-424 of this chapter in installments, the
32 first of which shall be equal to at least twenty-five percent of such
33 amount and shall be payable upon the execution of such agreement. The
34 balance of such amount shall be payable in twelve equal quarterly
35 installments, each of which shall be paid quarterly on the first of
36 July, October, January and April.

37 (3) Pending approval by the corporation counsel of an application for
38 release as to form, timeliness and eligibility of the applicant, all
39 payments made pursuant to the preceding paragraph shall be held in
40 escrow; in the event the corporation counsel disapproves the applica-
41 tion, such payments shall be returned to the applicant, and the agree-
42 ment executed by him or her shall thereupon be cancelled.

43 (4) In the case of any agreement made and executed pursuant to such
44 paragraph two, interest on any installment due and payable thereunder
45 shall, notwithstanding the rates of interest prescribed in section
46 11-224, 11-312 or 11-313 of this title, be charged, collected and
47 received at the rate of seven percent per annum from April first, nine-
48 teen hundred seventy-eight to the date of payment of each installment.
49 Any interest accrued or accruing prior to April first, nineteen hundred
50 seventy-eight shall not be affected by the provisions of this paragraph,
51 but shall be charged, collected and received in the manner and at the
52 rates specified in section 11-224, 11-312 or 11-313 of this title. The
53 seven percent rate of interest specified in this paragraph shall be
54 applicable only if (i) there is no default in the agreement entered into
55 as provided in this subdivision, and (ii) all current taxes, assessments

1 or other legal charges are paid as they become due or within the period
2 of grace provided by law.

3 (5) No release for which application has been made pursuant to this
4 subdivision shall be granted until the final payment under the agreement
5 herein provided is received by the city. Upon receipt of such final
6 payment by the city the corporation counsel shall effect the release in
7 the manner provided in section 11-424 of this chapter. In the event of
8 any default in an agreement executed as provided in this subdivision or
9 any failure to pay current taxes, assessments or other legal charges as
10 they become due or within the grace period provided by law, such agree-
11 ment shall thereupon become void, the release process shall be termi-
12 nated, and all payments theretofore made shall be forfeited to the city.

13 (6) In addition to the terms and conditions required by this subdivi-
14 sion to be included in agreements authorized thereby, the commissioner
15 of general services may, in his or her discretion, include in such
16 agreements such additional terms and conditions, not inconsistent with
17 this subdivision, as the commissioner determines to be necessary in
18 order to properly carry out the provisions hereof. The commissioner of
19 general services may also adopt such rules and regulations as may be
20 necessary to carry out the provisions of this subdivision.

21 § 11-427 Agreements for payment of delinquent taxes and charges in
22 installments. a. During the period beginning September first, nineteen
23 hundred seventy-eight and ending December thirty-first, nineteen hundred
24 seventy-eight, the commissioner of finance, or, when so specified here-
25 inafter, the commissioner of general services, shall be authorized and
26 empowered to make and execute agreements in the circumstances and
27 subject to the terms, conditions and limitations set forth in this
28 section; provided, however, that if the commissioner of finance or,
29 where applicable, the commissioner of general services, determines in
30 his or her sole discretion that good cause exists, he or she may make
31 and execute such agreements during an additional period ending not later
32 than January thirty-first, nineteen hundred seventy-nine.

33 b. (1) (i) Whenever it shall appear that a tax lien on a parcel has
34 been due and unpaid for a period of at least six months from the date on
35 which the tax, assessment or other legal charge represented thereby
36 became a lien, the commissioner of finance may enter into an agreement
37 with the owner of such parcel or other person claiming to have an inter-
38 est therein providing for the payment of such delinquent taxes, assess-
39 ments or other legal charges and interest and penalties in installments,
40 the first of which shall be equal to at least fifteen percent of such
41 arrears and shall be payable upon the execution of such agreement. Each
42 remaining installment shall be equal to at least an amount produced by
43 dividing the balance of such arrears by a factor determined by multiply-
44 ing the number of quarters of such arrears by two.

45 (ii) In no event, however, shall the factor referred to in subpara-
46 graph (i) of this paragraph be in excess of thirty-two. Each such
47 remaining installment shall be payable quarterly on the first of July,
48 October, January and April.

49 (2) If an agreement authorized by paragraph one of this subdivision is
50 executed prior to the time the commissioner of finance files in the
51 office of the county clerk a list of delinquent taxes covering the city
52 or portion of the city in which the subject parcel is located, such
53 parcel shall be excluded from such list of delinquent taxes, provided,
54 at the time such list is filed, there is no default in the agreement and
55 all current taxes, assessments or other legal charges were paid as they
56 became due or within the period of grace provided by law. In the event

1 of any default in the agreement or any failure to make timely payment of
2 any current item, the parcel shall, if then delinquent for the applica-
3 ble period specified in section 11-404 of this chapter, be eligible for
4 inclusion in any list of delinquent taxes thereafter filed.

5 (3) If an in rem foreclosure action has been commenced against any
6 parcel prior to September first, nineteen hundred seventy-eight, the
7 commissioner of finance may, notwithstanding the provisions of paragraph
8 three of subdivision a of section 11-413 of this chapter, enter into an
9 agreement authorized and described in the foregoing provisions of this
10 section with respect to such parcel. However, if such an agreement is
11 entered into subsequent to the last date for redemption specified in
12 subdivision a of section 11-407 of this chapter, there shall be paid to
13 the commissioner of finance at the time said agreement is executed an
14 amount equal to the penalty which would have been payable under subdivi-
15 sion c of section 11-407 of this chapter had the person executing the
16 agreement made a late redemption payment. Such amount shall be in addi-
17 tion to any installment payments required to be made under the agreement
18 and shall not be credited against any such installment payments. Any
19 parcel which is the subject of an agreement made pursuant to this para-
20 graph may, prior to final judgment, be withdrawn from the action,
21 provided there has been no default in the agreement, and provided
22 further that all current taxes, assessments or other legal charges are
23 paid when they become due or within the period of grace provided by law.
24 Such withdrawal shall be effected by the commissioner of finance in the
25 manner provided in section 11-413 of this chapter.

26 (4) Any person who, prior to September first, nineteen hundred seven-
27 ty-eight, has made, executed and filed with the commissioner of finance
28 an agreement pursuant to the provisions of paragraph three of subdivi-
29 sion a of section 11-413 of this chapter, shall be permitted to make
30 application to the commissioner of finance for the purpose of having
31 such agreement cancelled and a new agreement executed as hereinabove
32 provided.

33 If an agreement executed prior to September first, nineteen hundred
34 seventy-eight is not cancelled as herein provided, any installments due
35 and payable under such agreement on or after February first, nineteen
36 hundred seventy-nine shall be subject to interest at the rate specified
37 in paragraph six of this subdivision, but only if, as of February first,
38 nineteen hundred seventy-nine, there is no default in the agreement and
39 all current taxes, assessments or other legal charges have been paid
40 within the time allowed by law. Such rate of interest shall be calcu-
41 lated in the manner and shall be subject to all the conditions provided
42 in paragraph six of this subdivision.

43 (5) Notwithstanding the preceding paragraphs of this subdivision, no
44 owner of, or other person claiming to have an interest in, any parcel
45 shall be eligible to enter into an agreement authorized by such para-
46 graphs where such parcel was included in an in rem foreclosure action
47 but was severed therefrom pursuant to the judgment of foreclosure in
48 such action because an answer was still pending as to such parcel. The
49 commissioner of finance may, however, on notice to the corporation coun-
50 sel, enter into an agreement with such owner or other interested person
51 providing for the payment of all current taxes, assessments or other
52 legal charges on the parcel as they become due or within the grace peri-
53 od provided by law, and, in addition, providing for payment of the
54 amount of all delinquent taxes, assessments or other legal charges and
55 interest due as of the date the agreement is executed in installments,
56 the first of which shall be equal to at least twenty-five percent of

1 such amount and shall be payable upon the execution of such agreement,
2 and the balance of which shall be payable in twelve equal quarterly
3 installments, each of which shall be paid on the first of July, October,
4 January and April. In addition, there shall be paid to the commissioner
5 of finance at the time such agreement is executed a penalty equal to
6 five percent of the amount of the delinquent taxes, assessments or other
7 legal charges and interest due as of the date of the agreement, which
8 penalty shall not exceed five hundred dollars. Any installments due and
9 payable on or after February first, nineteen hundred seventy-nine under
10 an agreement described in this paragraph shall be subject to interest at
11 the rate specified in paragraph six of this subdivision, but only if, as
12 of February first, nineteen hundred seventy-nine, there is no default in
13 the agreement and all current taxes, assessments or other legal charges
14 have been paid within the time allowed by law. Such rate of interest
15 shall be calculated in the manner and shall be subject to all the condi-
16 tions provided in paragraph six of this subdivision.

17 Upon receipt of the final payment due under an agreement executed
18 pursuant to this paragraph, the commissioner of finance shall discontin-
19 ue the in rem action pending with respect to the parcel which is the
20 subject of such agreement, and shall cancel the lis pendens pertaining
21 thereto by issuing a certificate of withdrawal pursuant to section
22 11-413 of this chapter. In the event of any default in such agreement or
23 any failure to pay current taxes, assessments or other legal charges as
24 they become due or within the grace period provided by law, such agree-
25 ment and the answer which was the basis for the severance of the subject
26 parcel from the in rem action shall both be deemed null and void and the
27 city shall be entitled to acquire title to such parcel by entry of an
28 appropriate supplemental judgment of foreclosure in such in rem action
29 without further notice to the answering party.

30 (6) When an agreement has been entered into pursuant to this subdivi-
31 sion, the commissioner of finance shall, notwithstanding the rates of
32 interest prescribed in section 11-224, 11-312 or 11-313 of this title,
33 charge, collect and receive interest on the arrears due and payable
34 under such agreement, to be calculated at the rate of seven percent per
35 annum from February first, nineteen hundred seventy-nine to the date of
36 payment of each installment. Any interest accrued or accruing prior to
37 February first, nineteen hundred seventy-nine shall not be affected by
38 the provisions of this paragraph, but shall be charged, collected and
39 received in the manner and at the rates specified in section 11-224,
40 11-312 or 11-313 of this title. The seven percent rate of interest spec-
41 ified in this paragraph shall be applicable only if (i) there is no
42 default in the agreement entered into as provided in this section, and
43 (ii) all current taxes, assessments or other legal charges are paid as
44 they become due or within the period of grace provided by law. In the
45 event of any default or failure to make timely payment of any current
46 item, the seven percent rate of interest specified in this paragraph
47 shall thereupon cease to be applicable and the commissioner of finance
48 shall thereafter charge, collect and receive interest in the manner and
49 at the rates otherwise specified in this chapter.

50 (7) In addition to the terms and conditions required by this subdivi-
51 sion to be included in agreements authorized by this section, the
52 commissioner of finance may, in his or her discretion, include in such
53 agreements such additional terms and conditions, not inconsistent with
54 this section, as the commissioner determines to be necessary in order to
55 properly carry out the provisions of this section. The commissioner may

1 also adopt such rules and regulations as may be necessary to carry out
2 the provisions of this section.

3 c. (1) If, pursuant to the provisions of section 11-424 of this chap-
4 ter, an application for the release of property acquired by the city
5 through in rem tax foreclosure has been filed within the four-month
6 period specified in subdivision f of such section, and the sixty-day
7 period for payment referred to in such subdivision has not expired prior
8 to the commencement of the period specified in subdivision a of this
9 section, the provisions of this subdivision shall, at the election of
10 the applicant, apply with respect to such application and the release
11 sought thereby, provided notice of such election is given to the commis-
12 sioner of general services during the period specified in subdivision a
13 of this section, but in no event later than the last day of the sixty-
14 day period referred to in subdivision f of section 11-424 of this chap-
15 ter.

16 (2) An applicant who elects to have the provisions of this subdivision
17 apply to him or her, shall, at the time such applicant notifies the
18 commissioner of general services of his or her election, pay to the city
19 the amounts specified in paragraphs two, three and four of subdivision d
20 of section 11-424 of this chapter; for this purpose, the amount speci-
21 fied in paragraph two thereof shall be deemed to be the amount which
22 would have been required to be paid thereunder had this section not been
23 in effect. Concurrent with the making of such payment, the applicant
24 shall enter into an agreement with the commissioner of general services
25 providing for the payment of all current taxes, assessments or other
26 legal charges on the property as they become due or within the grace
27 period provided by law, and, in addition, providing for the payment of
28 the amount specified in paragraph one of subdivision d of section 11-424
29 of this chapter in installments, the first of which shall be equal to at
30 least twenty-five percent of such amount and shall be payable upon the
31 execution of such agreement. The balance of such amount shall be payable
32 in twelve equal quarterly installments, each of which shall be paid
33 quarterly on the first of July, October, January and April.

34 (3) Pending approval by the corporation counsel of an application for
35 release as to form, timeliness and eligibility of the applicant, all
36 payments made pursuant to paragraph three of this subdivision shall be
37 held in escrow; in the event the corporation counsel disapproves the
38 application, such payments shall be returned to the applicant, and the
39 agreement executed by him or her shall thereupon be cancelled.

40 (4) In the case of any agreement made and executed pursuant to para-
41 graph two of this subdivision, interest on any installment due and paya-
42 ble thereunder shall, notwithstanding the rates of interest prescribed
43 in section 11-224, 11-312 or 11-313 of this title, be charged, collected
44 and received at the rate of seven percent per annum from February first,
45 nineteen hundred seventy-nine to the date of payment of each install-
46 ment. Any interest accrued or accruing prior to February first, nineteen
47 hundred seventy-nine shall not be affected by the provisions of this
48 paragraph, but shall be charged, collected and received in the manner
49 and at the rates specified in section 11-224, 11-312 or 11-313 of this
50 title. The seven percent rate of interest specified in this paragraph
51 shall be applicable only if (i) there is no default in the agreement
52 entered into as provided in this subdivision, and (ii) all current
53 taxes, assessments or other legal charges are paid as they become due or
54 within the period of grace provided by law.

55 (5) No release for which application has been made pursuant to subdi-
56 vision f of section 11-424 of this chapter shall be granted until the

1 final payment under the agreement herein provided is received by the
2 city. Upon receipt of such final payment by the city the corporation
3 counsel shall effect the release in the manner provided in section
4 11-424 of this chapter. In the event of any default in an agreement
5 executed as provided in this subdivision or any failure to pay current
6 taxes, assessments or other legal charges as they become due or within
7 the grace period provided by law, such agreement shall thereupon become
8 void, the release process shall be terminated and all payments thereto-
9 fore made shall be forfeited to the city.

10 (6) In addition to the terms and conditions required by this subdivi-
11 sion to be included in agreements authorized thereby, the commissioner
12 of general services may, in his or her discretion, include in such
13 agreements such additional terms and conditions, not inconsistent with
14 this subdivision, as the commissioner determines to be necessary in
15 order to properly carry out the provisions hereof. The commissioner of
16 general services may also adopt such rules and regulations as may be
17 necessary to carry out the provisions of this subdivision.

18 § 11-428 Disposition of proceeds of sales of properties acquired by
19 city through tax enforcement foreclosure proceedings. The proceeds of
20 the sale of real property acquired through tax enforcement foreclosure
21 proceedings, or by deed in lieu thereof, including subsequent receipts
22 in diminution of purchase money mortgages accepted at the time of sale,
23 shall be applied as follows:

24 a. The amount of the unpaid real estate taxes accrued against such
25 property from the first of January or the first of July, whichever first
26 immediately precedes the date on which title vested in the city to the
27 date of conveyance of title by the city, without interest or penalties
28 thereon, shall be credited to the tax deficiency account.

29 b. The balance, if any, remaining after deduction of the amount speci-
30 fied in paragraph a hereof, shall be paid into the funds hereinafter
31 specified in the following order:

32 1. A sum equal to the amount of the unpaid assessments for local
33 improvements accrued against such property at the date of commencement
34 of the foreclosure proceeding and up to the date of conveyance of title
35 by the city, without interest or penalties thereon, shall be paid into
36 the appropriate assessment funds.

37 2. A sum equal to the amount of unpaid sewer rents, including interest
38 and penalties thereon, accrued against such property at the date of
39 commencement of the foreclosure proceedings and up to the date of
40 conveyance of title by the city shall be paid into the sewer fund.

41 3. The amount of the brokerage fee and other expenses expended by the
42 city in connection with such sale shall be paid into the fund or code to
43 which such fee was charged.

44 4. The balance of such proceeds, if any, and the interest on any
45 purchase money mortgage accepted by the city at the time of such sale
46 shall be paid into the general fund. In the event that any part of such
47 balance is represented by bonds and mortgages, such bonds and mortgages
48 may be deposited in the tax appropriation and general fund stabilization
49 reserve fund and a sum equal to the amount of the cash represented by
50 such bonds and mortgages shall in such event be transferred from the tax
51 appropriation and general fund stabilization reserve fund to the general
52 fund.

53 CHAPTER 5

54 CITY UNINCORPORATED BUSINESS INCOME TAX

1 § 11-501 Meaning of terms. (a) General. Unless a different meaning is
2 clearly required, any term used in this chapter shall have the same
3 meaning as when used in a comparable context in the laws of the United
4 States relating to federal income taxes, and any reference in this chap-
5 ter to the laws of the United States shall mean the provisions of the
6 internal revenue code of nineteen hundred fifty-four, and amendments
7 thereto, and other provisions of the laws of the United States relating
8 to federal income taxes, as the same are included in this chapter as an
9 appendix or as included by reference to an appendix of another chapter
10 enacted by the same law as enacts this chapter. (The quotation of the
11 aforesaid laws of the United States is intended to make them a part of
12 this chapter and to avoid constitutional uncertainties which might
13 result if such laws were merely incorporated by reference. The quotation
14 of a provision of the federal internal revenue code or of any other law
15 of the United States shall not necessarily mean that it is applicable to
16 or has relevance to this chapter.)

17 (b) "State", "this state" or "the state" when used in this chapter
18 shall mean the state of New York.

19 (c) "Local income taxes", when used in this chapter shall mean an
20 income tax imposed by a political subdivision of a state.

21 (d) "Commissioner of finance" when used in this chapter shall mean the
22 commissioner of finance of the city.

23 (e) "Department of finance" when used in this chapter shall mean the
24 department of finance of the city.

25 (f) "Tax appeals tribunal" when used in this chapter shall mean the
26 tax appeals tribunal established by section one hundred sixty-eight of
27 the charter of the preceding municipality as it existed January first,
28 two thousand nine.

29 (g) "Unincorporated business entire net income" when used in this
30 chapter shall mean the excess of the unincorporated business gross
31 income of an unincorporated business over its unincorporated business
32 deductions.

33 (h) "Investment capital" when used in this chapter shall mean invest-
34 ments of the unincorporated business in stocks, bonds and other securi-
35 ties, corporate and governmental (excluding governmental stocks, bonds
36 and other securities the interest or dividends from which are fully
37 exempt from tax under this chapter, other than any such governmental
38 stock, bond or other security which is sold or otherwise disposed of
39 during the taxable year in a transaction which results in a gain or loss
40 which is included in computing unincorporated business entire net income
41 for the taxable year), not held for sale to customers in the regular
42 course of business, provided, however, that in the discretion of the
43 commissioner of finance, there shall be deducted from investment capital
44 any liabilities of the unincorporated business which are directly or
45 indirectly attributable to investment capital.

46 (i) "Investment income" when used in this chapter shall mean income,
47 gains and losses from investment capital, to the extent included in
48 computing unincorporated business entire net income, less, in the
49 discretion of the commissioner of finance, any deductions allowable in
50 computing unincorporated business entire net income which are directly
51 or indirectly attributable to investment capital or investment income,
52 provided, however, that in no case shall investment income exceed unin-
53 corporated business entire net income.

54 (j) "Business capital" when used in this chapter shall mean all assets
55 of the unincorporated business other than investment capital, less
56 liabilities of the unincorporated business not deducted from investment

1 capital, except that cash on hand and on deposit shall be treated as
2 investment capital or as business capital as the taxpayer may elect.

3 (k) "Business income" when used in this chapter shall mean unincorpo-
4 rated business entire net income minus investment income.

5 (l) "Dealer" when used in this chapter shall mean an individual or
6 unincorporated entity that (A) holds or disposes of property that is
7 stock in trade of the taxpayer, inventory or is otherwise held for sale
8 to customers in the ordinary course of the taxpayer's trade or business,
9 or (B) regularly offers to enter into, assume, offset, assign or other-
10 wise terminate positions in property with customers in the ordinary
11 course of the taxpayer's trade or business, provided, however, an indi-
12 vidual or unincorporated entity shall not be treated as a dealer based
13 solely on such individual's or entity's ownership of an interest in an
14 entity that is a dealer, and provided, further, that an unincorporated
15 entity shall not be treated as a dealer based solely on the ownership by
16 a dealer of an interest in that unincorporated entity.

17 (m) "Unincorporated entity" when used in this chapter shall include an
18 entity classified as a partnership for federal income tax purposes
19 regardless of whether the entity is formed as a corporation, joint-stock
20 company, joint-stock association, body corporate or body politic or
21 whether the entity is organized under a federal or state statute, or
22 under a statute of a federally recognized Indian tribe, or under a stat-
23 ute of a country other than the United States that describes or refers
24 to the entity as incorporated.

25 § 11-502 Unincorporated business defined. (a) General. An unincorpo-
26 rated business means any trade, business, profession or occupation
27 conducted, engaged in or being liquidated by an individual or unincorpo-
28 rated entity, including a partnership, a fiduciary, a corporation in
29 liquidation or an unincorporated entity that has made the election
30 permitted under paragraph (b) of subdivision one of section 11-602 of
31 this title (but only for the period during which such election is in
32 effect), but not including any entity subject to tax under chapter six
33 of this title and not including any entity doing an insurance business
34 as a member of the New York insurance exchange described in paragraph
35 one of subsection (b) of section six thousand two hundred one of the
36 insurance law. Unincorporated businesses subject to tax under a local
37 law of the city imposing a tax on utilities shall not be subject to tax
38 under this chapter; provided, however, that unincorporated businesses,
39 other than (1) utility businesses subject to the supervision of the
40 state department of public service and (2) for taxable years beginning
41 on or after August first, two thousand two, utilities as defined in
42 subdivision six of section 11-1101 of this title, which are subject to
43 tax under a local law of the city imposing a tax on vendors of utility
44 services shall be subject to tax under this chapter on that percentage
45 of their entire net income allocable to the city under section 11-508 of
46 this chapter which their receipts other than those taxable under such
47 local law taxing vendors of utility services is of their total receipts.
48 If an individual or an unincorporated entity carries on wholly or partly
49 in the city two or more unincorporated businesses, all such businesses
50 shall be treated as one unincorporated business for the purposes of this
51 chapter. For purposes of this chapter, an unincorporated entity shall be
52 treated as carrying on any trade, business, profession or occupation
53 carried on in whole or in part in the city by any other unincorporated
54 entity in which the first unincorporated entity owns an interest, and
55 the ownership by an unincorporated entity of an interest in another
56 unincorporated entity that is not carrying on any trade, business,

1 profession, or occupation in whole or in part in the city shall not be
2 deemed the conduct of an unincorporated business by the first unincorpo-
3 rated entity. Notwithstanding anything to the contrary in the preceding
4 sentence, for taxable years beginning on or after August first, two
5 thousand two, an unincorporated business that is a partner in a partner-
6 ship subject to tax under a local law of the city imposing a tax on
7 utilities, as defined in subdivision six of section 11-1101 of this
8 title, shall not be considered to be carrying on the trade, business,
9 profession or occupation carried on by such partnership.

10 (b) Services as employee. The performance of services by an individual
11 as an employee or as an officer or director of a corporation, society,
12 association, or political entity, or as a fiduciary, shall not be deemed
13 an unincorporated business, unless such services constitute part of a
14 business regularly carried on by such individual.

15 (c) Purchase and sale for own account. (1) Definitions. (A) Property.
16 For purposes of this subdivision, property shall mean real and personal
17 property, including but not limited to, property qualifying as invest-
18 ment capital within the meaning of subdivision (h) of section 11-501 of
19 this chapter, other stocks, notes, bonds, debentures, or other evidences
20 of indebtedness, interest rate, currency, or equity notional principal
21 contracts, foreign currencies, interests in, or derivative financial
22 instruments (including options, forward or futures contracts, short
23 positions, and similar financial instruments) in any property described
24 above, and any commodity traded on or subject to the rules of a board of
25 trade or commodity exchange, provided, however, property shall not
26 include: (i) debt instruments issued by the taxpayer; (ii) accounts
27 receivable held by a factor; (iii) property held as stock in trade,
28 inventory or otherwise held for sale to customers in the ordinary course
29 of the taxpayer's trade or business; (iv) debt instruments acquired in
30 the ordinary course of the taxpayer's trade or business for funds
31 loaned, services rendered or for the sale, rental or other transfer of
32 property by the taxpayer; (v) interests in unincorporated entities; or
33 (vi) positions in property described above entered into, assumed,
34 offset, assigned or terminated by a dealer with respect to such posi-
35 tions in property.

36 (B) Investor. For purposes of this subdivision, a taxpayer shall be
37 treated as acquiring, holding or disposing of an interest in an unincor-
38 porated entity as an investor if: (i) the unincorporated entity meets
39 the requirements of subparagraph (B) of paragraph four of this subdivi-
40 sion and the taxpayer does not receive a distributive share of such
41 entity's income, gain, loss, deduction, credit and basis from a business
42 carried on in whole or in part in the city that is materially greater
43 than its distributive share of any other item of income, gain, loss
44 deduction, credit or basis of such entity; or (ii) with respect to any
45 other unincorporated entity, the taxpayer is neither a general partner
46 nor authorized under the entity's governing instrument to manage or
47 participate in, nor managing, nor participating in, the day-to-day busi-
48 ness of the unincorporated entity.

49 (2) An individual or other unincorporated entity, except a dealer as
50 defined in subdivision (1) of section 11-501 of this chapter, shall not
51 be deemed engaged in an unincorporated business solely by reason of (A)
52 the purchase, holding and sale for his, her or its own account of prop-
53 erty, as defined in paragraph one of this subdivision, or the entry
54 into, assumption, offset, assignment, or other termination of a position
55 in any property so defined, or both, (B) the acquisition, holding or
56 disposition, other than in the ordinary course of a trade or business,

1 of interests in unincorporated entities engaged solely in activities
2 described in subparagraph (A), (B) or (C) of this paragraph, or (C) any
3 combination of the activities described in subparagraphs (A) and (B) of
4 this paragraph and any other activity not otherwise constituting the
5 conduct of an unincorporated business subject to the tax imposed by this
6 chapter, but this paragraph shall not apply if the unincorporated entity
7 is taxable as a corporation for federal income tax purposes.

8 (3) Notwithstanding anything to the contrary, the receipt by an indi-
9 vidual or other unincorporated entity of twenty-five thousand dollars or
10 less of gross receipts during the taxable year (determined without
11 regard to any deductions) from an unincorporated business wholly or
12 partly carried on within the city by such individual or unincorporated
13 entity shall not cause such individual or other unincorporated entity to
14 be treated as not engaged solely in the activities described in subpara-
15 graph (A), (B) or (C) of paragraph two of this subdivision.

16 (4) (A) If a taxpayer that is an unincorporated entity is primarily
17 engaged in (i) activities described in subparagraph (A), (B) or (C) of
18 paragraph two of this subdivision, or (ii) the acquisition, holding or
19 disposition, other than in the ordinary course of a trade or business,
20 of interests as an investor in unincorporated entities carrying on any
21 unincorporated business in whole or in part in the city, or both, the
22 activities described in subparagraph (A), (B), or (C) of paragraph two
23 of this subdivision carried on by the taxpayer or by any unincorporated
24 entity primarily engaged in the activities described in clause (i) or
25 (ii) of this subparagraph in which the taxpayer owns an interest shall
26 not be deemed an unincorporated business carried on by the taxpayer.

27 (B) For purposes of subparagraph (A) of this paragraph, an unincorpo-
28 rated entity will be treated as primarily engaged in activities
29 described in clause (i) or (ii) of subparagraph (A) of this paragraph,
30 or both, if at least ninety percent of the value of its total assets is
31 represented by assets described in subparagraph (C) of this paragraph.

32 (C) For purposes of subparagraph (B) of this paragraph, assets
33 described in this subparagraph include:

34 (i) property as defined in paragraph one of this subdivision;

35 (ii) interests in unincorporated entities not carrying on any unincor-
36 porated business in whole or in part in the city; and

37 (iii) interests in unincorporated entities carrying on an unincorpo-
38 rated business in whole or in part in the city held by the taxpayer as
39 an investor, as defined in paragraph one of this subdivision.

40 (D) For purposes of determining whether a taxpayer meets the require-
41 ments of subparagraph (B) of this paragraph, the value of assets
42 described in subparagraph (C) of this paragraph shall be the average
43 monthly gross value of the assets of the taxpayer. For purposes of this
44 paragraph, the value of assets of the taxpayer that consist of real
45 property or marketable securities shall be the fair market value thereof
46 and the value of assets other than real property or marketable securi-
47 ties shall be the value thereof shown on the books and records of the
48 taxpayer in accordance with generally accepted accounting principles. In
49 case it shall appear to the commissioner of finance that the use of
50 gross value in determining whether the requirements of subparagraph (B)
51 of this paragraph are met, improperly or inaccurately reflects the
52 taxpayer's primary activities, the commissioner of finance is authorized
53 in his or her discretion and in such manner as he or she may determine,
54 to reduce the gross value of the taxpayer's assets by liabilities
55 attributable thereto or to eliminate assets, so as to properly and accu-
56 rately reflect the taxpayer's primary activities.

1 (d) Holding, leasing or managing real property. An owner of real prop-
2 erty, a lessee or a fiduciary shall not be deemed engaged in an unincor-
3 porated business solely by reason of holding, leasing or managing real
4 property. If an owner of real property or lessee or fiduciary (except a
5 dealer holding real property primarily for sale to customers in the
6 ordinary course of his or her trade or business) who is holding, leasing
7 or managing real property is also carrying on an unincorporated business
8 in whole or in part in the city, whether or not such unincorporated
9 business is carried on at or is connected with such real property, such
10 holding, leasing or managing of real property shall not be deemed an
11 unincorporated business if, and only to the extent that, such real prop-
12 erty is held, leased or managed for the purpose of producing rental
13 income from such real property or gain upon the sale or other disposi-
14 tion of such real property. For purposes of this subdivision, the
15 conduct by such owner, lessee or fiduciary, at such real property, of a
16 trade, business, profession or occupation, including, but not limited
17 to, a garage, restaurant, laundry or health club, shall be deemed to be
18 an incident to the holding, leasing or managing of such real property,
19 and shall not be deemed the conduct of an unincorporated business, if
20 such trade, business, profession or occupation is conducted solely for
21 the benefit of tenants at such real property, as an incidental service
22 to such tenants, and is not open or available to the general public,
23 provided, however, if any such owner, lessee or fiduciary operates a
24 garage, parking lot or other similar facility at such real property that
25 is open or available to the general public, the provision by any such
26 owner, lessee or fiduciary of the service of parking, garaging or stor-
27 ing of motor vehicles on a monthly or longer term basis shall be deemed
28 to be an incident to the holding, leasing or managing of such real prop-
29 erty, and shall not be deemed the conduct of an unincorporated business
30 if, and only to the extent that, such monthly or longer term parking,
31 garaging or storing service is provided to tenants at such real property
32 as an incidental service to such tenants. If an owner, lessee or fiduci-
33 ary holding, leasing or managing real property operates at such real
34 property a garage, parking lot or other similar facility that is open or
35 available to the public, each such owner, lessee or fiduciary shall
36 file, together with and as a part of the returns required under section
37 11-514 of this chapter, a report or schedule for each such garage, park-
38 ing lot or other similar facility, or in the discretion of the commis-
39 sioner, make a separate entry on such returns, identifying the specific
40 location and address, license number and licensed capacity of each such
41 garage, parking lot or other similar facility, and shall include such
42 additional information, data and other matters relating to the provision
43 of such monthly or longer term parking, garaging or storing service to
44 tenants as shall be prescribed by the commissioner of finance. If the
45 separate information required to be reported by any owner, lessee or
46 fiduciary holding, leasing or managing real property for any garage,
47 parking lot or other similar facility at such real property that is open
48 or available to the public is not contained in the returns required
49 under section 11-514 of this chapter, or in any amended returns, in any
50 material respect, the provision of parking, garaging or storing service
51 to tenants at such real property shall be deemed the conduct of an unin-
52 corporated business and not incident to the holding, leasing or managing
53 of such real property.

54 (e) Sales representative. An individual, other than one who maintains
55 an office or who employs one or more assistants or who otherwise regu-
56 larly carries on a business, shall not be deemed engaged in an unincor-

1 porated business solely by reason of selling goods, wares, merchandise
2 or insurance for more than one enterprise. For purposes of this subdi-
3 vision, space utilized solely for the display of merchandise and/or for
4 the maintenance and storage of records normally used in the course of
5 business shall not be deemed an office, and the employment of clerical
6 and secretarial assistance shall not be deemed the employment of assist-
7 ants.

8 (f) Exempt trusts and organizations. A trust or other unincorporated
9 organization which by reason of its purposes or activities is exempt
10 from federal income tax shall not be deemed an unincorporated business
11 regardless of whether subject to federal income tax on unrelated busi-
12 ness taxable income.

13 § 11-503 Imposition of tax. (a) General. A tax at the rate of four
14 percent is hereby imposed for each taxable year, beginning with taxable
15 years ending after January first, nineteen hundred sixty-six, on the
16 unincorporated business taxable income of every unincorporated business
17 wholly or partly carried on within the city. This tax shall be in addi-
18 tion to any other taxes imposed.

19 (b) Credit against tax. (1) For each taxable year beginning after
20 nineteen hundred eighty-six but before nineteen hundred ninety-six:

21 (A) if the tax computed under subdivision (a) of this section is six
22 hundred dollars or less, a credit shall be allowed for the entire amount
23 of such tax;

24 (B) if the tax computed under subdivision (a) of this section exceeds
25 six hundred dollars but is less than eight hundred dollars, a credit
26 shall be allowed in the amount determined by multiplying such tax by a
27 fraction the numerator of which is eight hundred dollars minus the
28 amount of such tax and the denominator of which is two hundred dollars;
29 or

30 (C) if the tax computed under subdivision (a) of this section is eight
31 hundred dollars or more, no credit shall be allowed.

32 (2) For each taxable year beginning in nineteen hundred ninety-six:

33 (A) if the tax computed under subdivision (a) of this section is eight
34 hundred dollars or less, a credit shall be allowed for the entire amount
35 of such tax;

36 (B) if the tax computed under subdivision (a) of this section exceeds
37 eight hundred dollars but is less than one thousand dollars, a credit
38 shall be allowed in the amount determined by multiplying such tax by a
39 fraction the numerator of which is one thousand dollars minus the amount
40 of such tax and the denominator of which is two hundred dollars; or

41 (C) if the tax computed under subdivision (a) of this section is one
42 thousand dollars or more, no credit shall be allowed.

43 (3) For each taxable year beginning after nineteen hundred ninety-six
44 but before two thousand nine:

45 (A) if the tax computed under subdivision (a) of this section is one
46 thousand eight hundred dollars or less, a credit shall be allowed for
47 the entire amount of such tax;

48 (B) if the tax computed under subdivision (a) of this section exceeds
49 one thousand eight hundred dollars but is less than three thousand two
50 hundred dollars, a credit shall be allowed in the amount determined by
51 multiplying such tax by a fraction the numerator of which is three thou-
52 sand two hundred dollars minus the amount of such tax and the denomina-
53 tor of which is one thousand four hundred dollars; or

54 (C) if the tax computed under subdivision (a) of this section is three
55 thousand two hundred dollars or more, no credit shall be allowed.

56 (3-a) For each taxable year beginning after two thousand eight:

1 (A) if the tax computed under subdivision (a) of this section is three
2 thousand four hundred dollars or less, a credit shall be allowed for the
3 entire amount of such tax;

4 (B) if the tax computed under subdivision (a) of this section exceeds
5 three thousand four hundred dollars but is less than five thousand four
6 hundred dollars, a credit shall be allowed in the amount determined by
7 multiplying such tax by a fraction the numerator of which is five thou-
8 sand four hundred dollars minus the amount of such tax and the denomina-
9 tor of which is two thousand dollars; or

10 (C) if the tax computed under subdivision (a) of this section is five
11 thousand four hundred dollars or more, no credit shall be allowed.

12 (4) If separate partnerships, joint ventures or other unincorporated
13 entities have substantially the same partners or members, each of such
14 partners or members has substantially the same interest in each of such
15 partnerships, joint ventures or other unincorporated entities, and such
16 partnerships, joint ventures or other unincorporated entities are
17 engaged in substantially the same business or businesses or in substan-
18 tially related businesses, all of such partnerships, joint ventures or
19 other unincorporated entities shall be treated as one unincorporated
20 business for purposes of this subdivision. The provisions of this para-
21 graph shall not be construed to limit or affect the meaning or applica-
22 tion of any other provision of this chapter.

23 (5) Notwithstanding anything to the contrary, the credit allowable
24 under this subdivision shall be taken prior to any other credit allowed
25 by this section.

26 (c) Credit relating to stock transfer tax. (1) In addition to any
27 other credit permitted under this section, a taxpayer shall be allowed a
28 credit, to be credited or refunded in the manner hereinafter provided in
29 this subdivision, against the tax imposed by this chapter after the
30 allowance of any other credit under this section. The amount of such
31 credit shall be fifty percent of the tax incurred in market making tran-
32 sactions under the provisions of article twelve of the tax law on such
33 transactions subject to such tax occurring on and after August first,
34 nineteen hundred seventy-six and paid by such taxpayer, except when such
35 tax shall have been paid pursuant to section two hundred seventy-nine-a
36 of the tax law.

37 (2) For purposes of this subdivision:

38 a. the term "taxpayer" shall mean any unincorporated business subject
39 to tax under this chapter registered with the United States securities
40 and exchange commission in accordance with subsection (b) of section
41 fifteen of the securities exchange act of nineteen hundred thirty-four,
42 as amended, and acting as a dealer in a transaction described in subpar-
43 agraph b of this paragraph, and

44 b. the term "market making transaction" shall mean any transaction
45 involving a sale, including a short sale, by a dealer of shares or
46 certificates subject to the tax imposed by article twelve of the tax
47 law, provided such shares or certificates are sold:

48 (i) as stock in trade or inventory or as property held for sale in the
49 ordinary course of such dealer's trade or business including transfers
50 which are part of an underwriting,

51 (ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge
52 transaction involving a long or short position in any equity security
53 and a long or short position in a security entitling the holder to
54 acquire or sell such equity security; or (c) a risk arbitrage trans-
55 action in connection with a merger, acquisition, tender offer, recap-
56 italization, reorganization, or similar transaction, or

1 (iii) to offset a transaction made in error.

2 Provided, however, that, except as to subclause (c) of clause (ii) of
3 subparagraph b of this paragraph, the term "market making transaction"
4 shall not include any sale of shares or certificates identified in such
5 dealer's records as a security held for investment within the meaning of
6 section twelve hundred thirty-six of the internal revenue code.

7 (3) The credit allowed under this subdivision for any taxable year
8 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
9 ited or refunded in accordance with the provisions of section 11-526 of
10 this chapter, except as otherwise provided in subdivision (g) of
11 sections 11-512 and 11-514 of this chapter; provided, however, that the
12 provisions of this chapter notwithstanding, the amount to be refunded
13 pursuant to this subdivision shall not be paid prior to the first day of
14 the eighth month following the close of the taxable year, and the
15 provisions of subdivision (c) of section 11-528 of this chapter notwith-
16 standing, interest shall be allowed and paid on the overpayment of the
17 credit under this subdivision from the first day of the eleventh month
18 following the close of the taxable year, or three months after a claim
19 for the credit or refund provided for in this subdivision has been
20 filed, whichever is later.

21 (4) Provided, however, that the credit provided under this subdivi-
22 sion shall be allowed only to the extent that the amount of credit
23 allowable with respect to market making transactions under the
24 provisions of this subdivision (determined without regard to the
25 provisions of this paragraph) exceeds fifty percent of all rebates
26 (provided for under the provisions of section two hundred eighty-a of
27 article twelve of the tax law) allowed for such taxes incurred in the
28 same market making transactions with respect to which the credit is
29 determined. No credit shall be allowed under this subdivision with
30 respect to any tax incurred in market making transactions occurring on
31 or after October first, nineteen hundred eighty-one.

32 (d) Credit relating to certain sales and compensating use taxes. (1)
33 In addition to the credits allowed by subdivisions (b) and (c) of this
34 section, a taxpayer shall be allowed a credit against the tax imposed by
35 this chapter to be credited or refunded in the manner hereinafter
36 provided in this section. The amount of such credit shall be the excess
37 of (A) the amount of sales and compensating use taxes imposed by section
38 eleven hundred seven of the tax law during the taxpayer's taxable year
39 which became legally due on or after and was paid on or after July
40 first, nineteen hundred seventy-seven, less any credit or refund of such
41 taxes, with respect to the purchase or use by the taxpayer of machinery
42 or equipment for use or consumption directly and predominantly in the
43 production of tangible personal property, gas, electricity, refriger-
44 ation or steam for sale, by manufacturing, processing, generating,
45 assembling, refining, mining or extracting, or telephone central office
46 equipment or station apparatus or comparable telegraph equipment for use
47 directly and predominantly in receiving at destination or initiating and
48 switching telephone or telegraph communication, but not including parts
49 with a useful life of one year or less or tools or supplies used in
50 connection with such machinery, equipment or apparatus over (B) the
51 amount of any credit for such sales and compensating use taxes allowed
52 or allowable against the taxes imposed by subchapter two of chapter six
53 of this title, for any periods embraced within the taxable year of the
54 taxpayer under this chapter.

55 (2) The credit allowed under this section for any taxable year shall
56 be deemed to be an overpayment of tax by the taxpayer to be credited or

1 refunded, without interest, in accordance with the provisions of section
2 11-526 of this chapter.

3 (3) Where the taxpayer receives a refund or credit of any tax imposed
4 under section eleven hundred seven of the tax law for which the taxpayer
5 had claimed a credit under the provisions of this section in a prior
6 taxable year, the amount of such tax refund or credit shall be added to
7 the tax imposed by this section, and such amount shall be subtracted in
8 computing unincorporated business taxable income for the taxable year.

9 (e) Credit relating to the annual increase in certain payments to a
10 landlord by a taxpayer relocating industrial and commercial employment
11 opportunities. (1) In addition to any other credit allowed by this
12 section, a taxpayer shall be allowed a credit against the tax imposed by
13 this chapter to be credited or refunded, without interest, in the manner
14 hereinafter provided in this section.

15 (A) Where a taxpayer shall have relocated to the city from a location
16 outside the state, and by such relocation shall have created a minimum
17 of one hundred industrial or commercial employment opportunities, and
18 where such taxpayer shall have entered into a written lease for the
19 relocation premises, the terms of which lease provide for increased
20 additional payments to the landlord which are based solely and directly
21 upon any increase or addition in real estate taxes imposed on the leased
22 premises, the taxpayer upon approval and certification by the industrial
23 and commercial incentive board as hereinafter provided shall be entitled
24 to a credit against the tax imposed by this chapter. The amount of such
25 credit shall be: An amount equal to the annual increased payments actu-
26 ally made by the taxpayer to the landlord which are solely and directly
27 attributable to an increase or addition to the real estate tax imposed
28 upon the leased premises. Such credit shall be allowed only to the
29 extent that the taxpayer has not otherwise claimed said amount as a
30 deduction against the tax imposed by this chapter.

31 The industrial and commercial incentive board in approving and certi-
32 fying to the qualifications of the taxpayer to receive the tax credit
33 provided for herein shall first determine that the applicant has met the
34 requirements of this section, and further, that the granting of the tax
35 credit to the applicant is in the "public interest." In determining
36 that the granting of the tax credit is in the public interest, the board
37 shall make affirmative findings that: the granting of the tax credit to
38 the applicant will not effect an undue hardship on similar taxpayers
39 already located within the city; the existence of this tax incentive has
40 been instrumental in bringing about the relocation of the applicant to
41 the city; and the granting of the tax credit will foster the economic
42 recovery and economic development of the city.

43 The tax credit, if approved and certified by the industrial and
44 commercial incentive board, must be utilized annually by the taxpayer
45 for the length of the term of the lease or for a period not to exceed
46 ten years from the date of relocation, whichever period is shorter.

47 (B) Definitions: When used in this section, "Employment opportunity"
48 means the creation of a full time position of gainful employment for an
49 industrial or commercial employee and the actual hiring of such employee
50 for the said position.

51 "Industrial employee" means one engaged in the manufacture or assembl-
52 ing of tangible goods or the processing of raw materials.

53 "Commercial employee" means one engaged in the buying, selling or
54 otherwise providing of goods or services other than on a retail basis.

55 "Retail" means the selling or otherwise disposing or furnishing of
56 tangible goods or services directly to the ultimate user or consumer.

1 "Full time position" means the hiring of an industrial or commercial
2 employee in a position of gainful employment where the number of hours
3 worked by such employee is not less than thirty hours during any given
4 week.

5 "Industrial and commercial incentive board" means the board created
6 pursuant to subchapter two of chapter two of this title.

7 (2) The credit allowed under this section for any taxable year shall
8 be deemed to be an overpayment of tax by the taxpayer to be credited or
9 refunded, without interest, in accordance with the provisions of section
10 11-526 of this chapter.

11 (f) Credit relating to certain expenses involved in the cost of relo-
12 cating industrial and commercial employment opportunities. (1) In
13 addition to any other credit allowed by this section, a taxpayer shall
14 be allowed a credit against the tax imposed by this chapter to be cred-
15 ited or refunded in the manner hereinafter provided in this section.
16 The amount of such credit shall be:

17 (A) A maximum of three hundred dollars for each commercial employment
18 and a maximum of five hundred dollars for each industrial employment
19 opportunity relocated to the city from an area outside the state. Such
20 credit shall be allowed to a taxpayer who relocates a minimum of ten
21 employment opportunities. The credit shall be allowed against employment
22 opportunity relocation costs incurred by the taxpayer. Such credit shall
23 be allowed only to the extent that the taxpayer has not claimed a
24 deduction for allowable employment opportunity relocation costs. The
25 credit allowed hereunder may be taken by the taxpayer in whole or in
26 part in the year in which the employment opportunity is relocated by
27 such taxpayer or either of the two years succeeding such event;
28 provided, however, that no credit shall be allowed under this subdivi-
29 sion to a taxpayer for industrial employment opportunities relocated to
30 premises (i) that are within an industrial business zone established
31 pursuant to section 22-626 of the code of the preceding municipality and
32 (ii) for which a binding contract to purchase or lease was first entered
33 into by the taxpayer on or after July first, two thousand five.

34 The commissioner of finance is empowered to promulgate rules and regu-
35 lations and to prescribe the form of application to be used.

36 (B) Definitions: When used in this section, "Employment Opportunity"
37 means the creation of a full time position of gainful employment for an
38 industrial or commercial employee and the actual hiring of such employee
39 for the said position.

40 "Industrial Employee" means one engaged in the manufacture or assembl-
41 ing of tangible goods or the processing of raw materials.

42 "Commercial Employee" means one engaged in the buying, selling or
43 otherwise providing of goods or services other than on a retail basis.

44 "Retail" means the selling or otherwise disposing of tangible goods
45 directly to the ultimate user or consumer.

46 "Full Time Position" means the hiring of an industrial or commercial
47 employee in a position of gainful employment where the number of hours
48 worked by such employee is not less than thirty hours during any given
49 work week.

50 "Employment Opportunity Relocation Costs" means the costs incurred by
51 the taxpayer in moving furniture, files, papers and office equipment
52 into the city from a location outside the state; the costs incurred by
53 the taxpayer in the moving from a location outside the state; the costs
54 of installation of telephones and other communications equipment
55 required as a result of the relocation to the city from a location
56 outside the state; the cost incurred in the purchase of office furniture

1 and fixtures required as a result of the relocation to the city from a
2 location outside the state; and the cost of renovation of the premises
3 to be occupied as a result of the relocation provided, however, that
4 such renovation costs shall be allowable only to the extent that they do
5 not exceed seventy-five cents per square foot of the total area utilized
6 by the taxpayer in the occupied premises.

7 (2) The credit allowed under this section for any taxable year shall
8 be deemed to be an overpayment of tax by the taxpayer to be credited or
9 refunded without interest, in accordance with the provisions of section
10 11-526 of this chapter.

11 (i) Relocation and employment assistance credit. (1) In addition to
12 any other credit allowed by this section, a taxpayer that has obtained
13 the certifications required by chapter six-B of title twenty-two of the
14 code of the preceding municipality shall be allowed a credit against the
15 tax imposed by this chapter. The amount of the credit shall be the
16 amount determined by multiplying five hundred dollars or, in the case of
17 a taxpayer that has obtained pursuant to chapter six-B of such title
18 twenty-two a certification of eligibility dated on or after July first,
19 nineteen hundred ninety-five, one thousand dollars or, in the case of an
20 eligible business that has obtained pursuant to chapter six-B of such
21 title twenty-two a certification of eligibility dated on or after July
22 first, two thousand, for a relocation to eligible premises located with-
23 in a revitalization area defined in subdivision (n) of section 22-621 of
24 the code of the preceding municipality, three thousand dollars, by the
25 number of eligible aggregate employment shares maintained by the taxpay-
26 er during the taxable year with respect to particular premises to which
27 the taxpayer has relocated; provided, however, with respect to a relo-
28 cation for which no application for a certificate of eligibility is
29 submitted prior to July first, two thousand three, to eligible premises
30 that are not within a revitalization area, if the date of such relo-
31 cation as determined pursuant to subdivision (j) of section 22-621 of
32 the code of the preceding municipality is before July first, nineteen
33 hundred ninety-five, the amount to be multiplied by the number of eligi-
34 ble aggregate employment shares shall be five hundred dollars, and with
35 respect to a relocation for which no application for a certificate of
36 eligibility is submitted prior to July first, two thousand three, to
37 eligible premises that are within a revitalization area, if the date of
38 such relocation as determined pursuant to subdivision (j) of such
39 section is before July first, nineteen hundred ninety-five, the amount
40 to be multiplied by the number of eligible aggregate employment shares
41 shall be five hundred dollars, and if the date of such relocation as
42 determined pursuant to subdivision (j) of such section is on or after
43 July first, nineteen hundred ninety-five, and before July first, two
44 thousand, one thousand dollars; provided, however, that no credit shall
45 be allowed for the relocation of any retail activity or hotel services;
46 provided, further, that no credit shall be allowed under this subdivi-
47 sion to any taxpayer that has elected pursuant to subdivision (d) of
48 section 22-622 of the code of the preceding municipality to take such
49 credit against a gross receipts tax imposed under chapter eleven of this
50 title; and provided that in the case of an eligible business that has
51 obtained pursuant to chapter six-B of such title twenty-two certifi-
52 cations of eligibility for more than one relocation, the portion of the
53 total amount of eligible aggregate employment shares to be multiplied by
54 the dollar amount specified in this paragraph for each such certifi-
55 cation of a relocation shall be the number of total attributed eligible
56 aggregate employment shares determined with respect to such relocation

1 pursuant to subdivision (o) of section 22-621 of the code of the preced-
2 ing municipality. For purposes of this subdivision, the terms "eligible
3 aggregate employment shares," "relocate," "retail activity" and "hotel
4 services" shall have the meanings ascribed by section 22-621 of the code
5 of the preceding municipality.

6 (2) The credit allowed under this subdivision with respect to eligible
7 aggregate employment shares maintained with respect to particular prem-
8 ises to which the taxpayer has relocated shall be allowed for the first
9 taxable year during which such eligible aggregate employment shares are
10 maintained with respect to such premises and for any of the twelve
11 succeeding taxable years during which eligible aggregate employment
12 shares are maintained with respect to such premises; provided that the
13 credit allowed for the twelfth succeeding taxable year shall be calcu-
14 lated by multiplying the number of eligible aggregate employment shares
15 maintained with respect to such premises in the twelfth succeeding taxa-
16 ble year by the lesser of one and a fraction the numerator of which is
17 such number of days in the taxable year of relocation less the number of
18 days the eligible business maintained employment shares in the eligible
19 premises in the taxable year of relocation and the denominator of which
20 is the number of days in such twelfth succeeding taxable year during
21 which such eligible aggregate employment shares are maintained with
22 respect to such premises. Except as provided in paragraph four of this
23 subdivision, if the amount of the credit allowable under this subdivi-
24 sion for any taxable year exceeds the tax imposed for such year, the
25 excess may be carried over, in order, to the five immediately succeeding
26 taxable years and, to the extent not previously deductible, may be
27 deducted from the taxpayer's tax for such years.

28 (3) The credit allowable under this subdivision shall be deducted
29 after the credits allowed by subdivisions (b) and (j) of this section,
30 but prior to the deduction of any other credit allowed by this section.

31 (4) In the case of a taxpayer that has obtained a certification of
32 eligibility pursuant to chapter six-B of title twenty-two of the code of
33 the preceding municipality dated on or after July first, two thousand
34 for a relocation to eligible premises located within the revitalization
35 area defined in subdivision (n) of section 22-621 of the code of the
36 preceding municipality, the credits allowed under this subdivision, or
37 in the case of a taxpayer that has relocated more than once, the portion
38 of such credits attributed to such certification of eligibility pursuant
39 to paragraph one of this subdivision, against the tax imposed by this
40 chapter for the taxable year of such relocation and for the four taxable
41 years immediately succeeding the taxable year of such relocation, shall
42 be deemed to be overpayments of tax by the taxpayer to be credited or
43 refunded, without interest, in accordance with the provisions of section
44 11-526 of this chapter. For such taxable years, such credits or portions
45 thereof may not be carried over to any succeeding taxable year;
46 provided, however, that this paragraph shall not apply to any relocation
47 for which an application for a certification of eligibility was not
48 submitted prior to July first, two thousand three, unless the date of
49 such relocation is on or after July first, two thousand.

50 (j) (1) If a partner in an unincorporated business is taxable under
51 this chapter and is required to include in unincorporated business taxa-
52 ble income his, her or its distributive share of income, gain, loss and
53 deductions of, or guaranteed payments from, such unincorporated busi-
54 ness, such partner shall be allowed a credit against the tax imposed by
55 this chapter equal to the lesser of the amounts determined in subpara-
56 graphs (A) and (B) of this paragraph:

1 (A) The amount determined in this subparagraph is the product of (i)
2 the sum of (I) the tax imposed by this chapter on the unincorporated
3 business for its taxable year ending within or with the taxable year of
4 the partner and paid by the unincorporated business and (II) the amount
5 of any credit or credits taken by the unincorporated business under this
6 section (except the credit allowed by subdivision (b) of this section)
7 for its taxable year ending within or with the taxable year of the part-
8 ner, to the extent that such credits do not reduce such unincorporated
9 business's tax below zero, and (ii) a fraction, the numerator of which
10 is the net total of the partner's distributive share of income, gain,
11 loss and deductions of, and guaranteed payments from, the unincorporated
12 business for such taxable year, and the denominator of which is the sum,
13 for such taxable year, of the net total distributive shares of income,
14 gain, loss and deductions of, and guaranteed payments to, all partners
15 in the unincorporated business for whom or which such net total, as
16 separately determined for each partner, is greater than zero.

17 (B) The amount determined in this subparagraph is the difference
18 between (i) the tax computed pursuant to this chapter on the unincorpo-
19 rated business taxable income of the partner, without allowance of any
20 credits allowed by this section, and (ii) the tax so computed, deter-
21 mined as if the partner had no such distributive share or guaranteed
22 payments with respect to the unincorporated business, provided, however,
23 that the amounts computed in clauses (i) and (ii) of this subparagraph
24 shall be computed with the following modifications:

25 (I) such amounts shall be computed without taking into account any
26 carryforward or carryback by the partner of a net operating loss;

27 (II) if, prior to taking into account any distributive share or guar-
28 anteed payments from any unincorporated business or any net operating
29 loss carryforward or carryback, the unincorporated business taxable
30 income of the partner is less than zero, such unincorporated business
31 taxable income shall be treated as zero; and

32 (III) if such partner's net total distributive share of income, gain,
33 loss and deductions of, and guaranteed payments from, any unincorporated
34 business is less than zero, such net total shall be treated as zero. The
35 amount determined in this subparagraph shall not be less than zero.

36 (2) (A) Notwithstanding anything to the contrary in paragraph one of
37 this subdivision, the credit or the sum of the credits that may be taken
38 by a partner for a taxable year under this subdivision with respect to
39 an unincorporated business or unincorporated businesses in which he, she
40 or it is a partner shall not exceed the tax imposed on the unincorporat-
41 ed business taxable income of such partner under this chapter for such
42 taxable year reduced by the credit allowed under subdivision (b) of this
43 section. If the credit allowed under paragraph one of this subdivision
44 or the sum of such credits exceeds such tax as so reduced, the amount of
45 the excess may be carried forward, in order, to each of the seven imme-
46 diately succeeding taxable years and, to the extent not previously
47 taken, shall be allowed as a credit in each of such years, provided, the
48 credit determined for the taxable year under paragraph one of this
49 subdivision shall be taken before taking any credit carryforward pursu-
50 ant to this paragraph and the credit carryforward attributable to the
51 earliest taxable year shall be taken before taking a credit carryforward
52 attributable to a subsequent taxable year.

53 (B) Notwithstanding anything to the contrary in subparagraph (A) of
54 this paragraph, in the case of a partner which is a partnership, no
55 credit carryforward to any taxable year shall be allowed unless one or
56 more of the partners therein during such taxable year were persons

1 having a proportionate interest or interests, amounting to at least
2 eighty percent of all such interests, in the unincorporated business
3 gross income and unincorporated business deductions of the partnership
4 which was allowed the credit for which a carryforward is claimed. In
5 such event, the carryforward allowable on account of such credit shall
6 not exceed the percentage of the amount otherwise allowable, determined
7 by dividing (i) the sum of the proportionate interests in the unincorpo-
8 rated business gross income and unincorporated business deductions of
9 the partnership, for the year to which the credit is carried forward,
10 attributable to such partners, by (ii) the sum of such proportionate
11 interests owned by all partners for such taxable year. The amount by
12 which the carryforward otherwise allowable exceeds the amount allowable
13 pursuant to this subparagraph shall not be a carryforward to any other
14 taxable year.

15 (3) The credit allowed under this subdivision shall not be allowed to
16 a partner in an unincorporated business with respect to any tax paid by
17 the unincorporated business under this chapter for any taxable year
18 beginning before July first, nineteen hundred ninety-four.

19 (4) Notwithstanding anything to the contrary, the credit allowable
20 under this subdivision shall be taken after the credit allowed by subdivi-
21 sion (b) of this section is taken, but before any other credit allowed
22 by this section is taken.

23 (5) The commissioner of finance of the city of Staten Island shall
24 convene a working group, consisting of representatives of the department
25 of finance of the city of Staten Island and representatives of affected
26 industries, and other persons the commissioner deems appropriate, to
27 study the treatment under the unincorporated business tax of income from
28 investment and real estate activities and the impact of the credit
29 permitted by this subdivision, including but not limited to cases where
30 interests in a taxpayer are held by another taxpayer subject to tax on
31 unincorporated business taxable income and the first taxpayer is enti-
32 tled to claim a deduction for a net operating loss carryover and the
33 second is not entitled to a corresponding deduction with the result, in
34 certain cases, that the net income allocated to the second taxpayer may
35 be subject to an effective rate of tax in excess of the rate imposed by
36 this chapter. In addition, the working group shall also study the tax
37 treatment of parking garages which are open or available to the general
38 public and which also provide available space to tenants. In conducting
39 such study, such working group shall take into account such factors as
40 economic development, tax administration and other goals of tax policy
41 and shall consider alternatives that would reduce disincentives for
42 investing in corporations and other entities engaged in business in the
43 city of Staten Island, such as exempting income from investment activ-
44 ities from the tax on unincorporated business taxable income. The
45 commissioner shall prepare a report based on the deliberations of the
46 working group on or before April fifteenth, nineteen hundred ninety-
47 five.

48 (k) Credit relating to certain sales and compensating use taxes on
49 certain services. (1) In addition to any other credit allowed by this
50 section, a taxpayer shall be allowed a credit against the tax imposed by
51 this chapter to be credited or refunded in the manner hereinafter
52 provided in this subdivision. The amount of such credit shall be equal
53 to the amount of sales and compensating use taxes imposed by section
54 eleven hundred seven of the tax law during the taxpayer's taxable year,
55 and the amount of any interest imposed in connection therewith, which
56 was paid after January first, nineteen hundred ninety-five, less any

1 credit or refund of such taxes (or such interest), with respect to the
2 purchase or use by the taxpayer of the services described in subdivision
3 (b) of section eleven hundred five-b of the tax law.

4 (2) The credit allowed under this subdivision for any taxable year
5 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
6 ited or refunded, without interest, in accordance with the provisions of
7 section 11-526 of this chapter.

8 (3) Where the taxpayer receives a refund or credit of any tax imposed
9 under section eleven hundred seven of the tax law, or of any interest
10 imposed in connection therewith, for which the taxpayer had claimed a
11 credit under this subdivision in a prior taxable year, the amount of
12 such tax, or such interest, refund or credit shall be added to the tax
13 imposed by this chapter, and such amount shall be subtracted in comput-
14 ing unincorporated business taxable income for the taxable year.

15 (1) Lower Manhattan relocation and employment assistance credit. (1)
16 In addition to any other credit allowed by this section, a taxpayer that
17 has obtained the certifications required by chapter six-C of title twen-
18 ty-two of the code of the preceding municipality shall be allowed a
19 credit against the tax imposed by this chapter. The amount of the credit
20 shall be the amount determined by multiplying three thousand dollars by
21 the number of eligible aggregate employment shares maintained by the
22 taxpayer during the taxable year with respect to eligible premises to
23 which the taxpayer has relocated; provided, however, that no credit
24 shall be allowed for the relocation of any retail activity or hotel
25 services; provided, further, that no credit shall be allowed under this
26 subdivision to any taxpayer that has elected pursuant to subdivision (d)
27 of section 22-624 of the code of the preceding municipality to take such
28 credit against a gross receipts tax imposed under chapter eleven of this
29 title. For purposes of this subdivision, the terms "eligible aggregate
30 employment shares", "eligible premises", "relocate", "retail activity"
31 and "hotel services" shall have the meanings ascribed by section 22-623
32 of the code of the preceding municipality.

33 (2) The credit allowed under this subdivision with respect to eligible
34 aggregate employment shares maintained with respect to eligible premises
35 to which the taxpayer has relocated shall be allowed for the taxable
36 year of the relocation and for any of the twelve succeeding taxable
37 years during which eligible aggregate employment shares are maintained
38 with respect to eligible premises; provided that the credit allowed for
39 the twelfth succeeding taxable year shall be calculated by multiplying
40 the number of eligible aggregate employment shares maintained with
41 respect to eligible premises in the twelfth succeeding taxable year by
42 the lesser of one and a fraction the numerator of which is such number
43 of days in the taxable year of relocation less the number of days the
44 taxpayer maintained employment shares in eligible premises in the taxa-
45 ble year of relocation and the denominator of which is the number of
46 days in such twelfth succeeding taxable year during which such eligible
47 aggregate employment shares are maintained with respect to such prem-
48 ises.

49 (3) Except as provided in paragraph four of this subdivision, if the
50 amount of the credit allowable under this subdivision for any taxable
51 year exceeds the tax imposed for such year, the excess may be carried
52 over, in order, to the five immediately succeeding taxable years and, to
53 the extent not previously deductible, may be deducted from the taxpay-
54 er's tax for such years.

55 (4) The credits allowed under this subdivision, against the tax
56 imposed by this chapter for the taxable year of the relocation and for

1 the four taxable years immediately succeeding the taxable year of such
2 relocation, shall be deemed to be overpayments of tax by the taxpayer to
3 be credited or refunded, without interest, in accordance with the
4 provisions of section 11-526 of this chapter. For such taxable years,
5 such credits or portions thereof may not be carried over to any succeed-
6 ing taxable year.

7 (5) The credit allowable under this subdivision shall be deducted
8 after the credits allowed by subdivisions (b), (i) and (j) of this
9 section, but prior to the deduction of any other credit allowed by this
10 section.

11 (n) Industrial business zone tax credit. (1) For taxable years begin-
12 ning on or after January first, two thousand six, in addition to any
13 other credit allowed by this section, an eligible business that first
14 enters into a binding contract on or after July first, two thousand five
15 to purchase or lease eligible premises to which it relocates shall be
16 allowed a one-time credit against the tax imposed by this chapter to be
17 credited or refunded in the manner hereinafter provided in this subdivi-
18 sion. The amount of such credit shall be one thousand dollars per full-
19 time employee; provided, however, that the amount of such credit shall
20 not exceed the lesser of actual relocation costs or one hundred thousand
21 dollars.

22 (2) When used in this subdivision, the following terms shall have the
23 following meanings:

24 "Eligible business" means any business subject to tax under this chap-
25 ter that (A) has been conducting substantial business operations and
26 engaging primarily in industrial and manufacturing activities at one or
27 more locations within the city of Staten Island or outside the state of
28 New York continuously during the twenty-four consecutive full months
29 immediately preceding relocation, (B) has leased the premises from which
30 it relocates continuously during the twenty-four consecutive full months
31 immediately preceding relocation, (C) first enters into a binding
32 contract on or after July first, two thousand five to purchase or lease
33 eligible premises to which such business will relocate, and (D) will be
34 engaged primarily in industrial and manufacturing activities at such
35 eligible premises.

36 "Eligible premises" means premises located entirely within an indus-
37 trial business zone. For any eligible business, an industrial business
38 zone tax credit shall not be granted with respect to more than one
39 eligible premises.

40 "Full-time employee" means (A) one person gainfully employed in an
41 eligible premises by an eligible business where the number of hours
42 required to be worked by such person is not less than thirty-five hours
43 per week; or (B) two persons gainfully employed in an eligible premises
44 by an eligible business where the number of hours required to be worked
45 by each such person is more than fifteen hours per week but less than
46 thirty-five hours per week.

47 "Industrial business zone" means an area within the city of Staten
48 Island established pursuant to section 22-626 of the code of the preced-
49 ing municipality.

50 "Industrial business zone tax credit" means a credit, as provided for
51 in this subdivision, against a tax imposed under this chapter.

52 "Industrial and manufacturing activities" means activities involving
53 the assembly of goods to create a different article, or the processing,
54 fabrication, or packaging of goods. Industrial and manufacturing activ-
55 ities shall not include waste management or utility services.

1 "Relocation" means the physical relocation of furniture, fixtures,
2 equipment, machinery and supplies directly to an eligible premises, from
3 one or more locations of an eligible business, including at least one
4 location at which such business conducts substantial business operations
5 and engages primarily in industrial and manufacturing activities. For
6 purposes of this subdivision, the date of relocation shall be (A) the
7 date of the completion of the relocation to the eligible premises or (B)
8 ninety days from the commencement of the relocation to the eligible
9 premises, whichever is earlier.

10 "Relocation costs" means costs incurred in the relocation of such
11 furniture, fixtures, equipment, machinery and supplies, including, but
12 not limited to, the cost of dismantling and reassembling equipment and
13 the cost of floor preparation necessary for the reassembly of the equip-
14 ment. Relocation costs shall include only such costs that are incurred
15 during the ninety-day period immediately following the commencement of
16 the relocation to an eligible premises. Relocation costs shall not
17 include any costs for structural or capital improvements or items
18 purchased in connection with the relocation.

19 (3) The credit allowed under this subdivision for any taxable year
20 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
21 ited or refunded without interest, in accordance with the provisions of
22 section 11-526 of this chapter.

23 (4) The number of full-time employees for the purposes of calculating
24 an industrial business zone tax credit shall be the average number of
25 full-time employees, calculated on a weekly basis, employed in the
26 eligible premises by the eligible business in the fifty-two week period
27 immediately following relocation.

28 (5) The credit allowed under this subdivision must be taken by the
29 taxpayer in the taxable year in which such fifty-two week period ends.

30 (6) For the purposes of calculating entire net income in the taxable
31 year that an industrial business zone tax credit is allowed, a taxpayer
32 must add back the amount of the credit allowed under this subdivision,
33 to the extent of any relocation costs deducted in the current taxable
34 year or a prior taxable year in calculating federal taxable income.

35 (7) The credit allowed under this subdivision shall not be granted for
36 an eligible business for more than one relocation. Notwithstanding the
37 foregoing, an industrial business zone tax credit allowed under this
38 subdivision shall not be granted if the eligible business receives bene-
39 fits pursuant to chapter six-B or six-C of title twenty-two of the code
40 of the preceding municipality, through a grant program administered by
41 the business relocation assistance corporation, or through the Staten
42 Island city printers relocation fund grant.

43 (8) The commissioner of finance is authorized to promulgate rules and
44 regulations and to prescribe forms necessary to effectuate the purposes
45 of this subdivision.

46 The commissioner of finance is empowered to promulgate rules and regu-
47 lations and to prescribe the form of application to be used.

48 (B) Definitions: When used in this section, "Employment Opportunity"
49 means the creation of a full time position of gainful employment for an
50 industrial or commercial employee and the actual hiring of such employee
51 for the said position.

52 "Industrial Employee" means one engaged in the manufacture or assembl-
53 ing of tangible goods or the processing of raw materials.

54 "Commercial Employee" means one engaged in the buying, selling or
55 otherwise providing of goods or services other than on a retail basis.

1 "Retail" means the selling or otherwise disposing of tangible goods
2 directly to the ultimate user or consumer.

3 "Full Time Position" means the hiring of an industrial or commercial
4 employee in a position of gainful employment where the number of hours
5 worked by such employee is not less than thirty hours during any given
6 work week.

7 "Employment Opportunity Relocation Costs" means the costs incurred by
8 the taxpayer in moving furniture, files, papers and office equipment
9 into the city from a location outside the state; the costs incurred by
10 the taxpayer in the moving from a location outside the state; the costs
11 of installation of telephones and other communications equipment
12 required as a result of the relocation to the city from a location
13 outside the state; the cost incurred in the purchase of office furniture
14 and fixtures required as a result of the relocation to the city from a
15 location outside the state; and the cost of renovation of the premises
16 to be occupied as a result of the relocation provided, however, that
17 such renovation costs shall be allowable only to the extent that they do
18 not exceed seventy-five cents per square foot of the total area utilized
19 by the taxpayer in the occupied premises.

20 (2) The credit allowed under this section for any taxable year shall
21 be deemed to be an overpayment of tax by the taxpayer to be credited or
22 refunded without interest, in accordance with the provisions of section
23 11-526 of this chapter.

24 (o) Biotechnology credit. (a)(1) A taxpayer that is a qualified emerg-
25 ing technology company, engages in biotechnologies, and meets the eligi-
26 bility requirements of this subdivision, shall be allowed a credit
27 against the tax imposed by this subchapter. The amount of credit shall
28 be equal to the sum of the amounts specified in subparagraphs three,
29 four and five of this paragraph, subject to the limitations in subpara-
30 graph seven of this paragraph and paragraph (b) of this subdivision. For
31 the purposes of this subdivision, "qualified emerging technology compa-
32 ny" shall mean a company located in city: (A) whose primary products or
33 services are classified as emerging technologies and whose total annual
34 product sales are ten million dollars or less; or (B) a company that has
35 research and development activities in city and whose ratio of research
36 and development funds to net sales equals or exceeds the average ratio
37 for all surveyed companies classified as determined by the National
38 Science Foundation in the most recent published results from its Survey
39 of Industry Research and Development, or any comparable successor survey
40 as determined by the department, and whose total annual product sales
41 are ten million dollars or less. For the purposes of this subdivision,
42 the definition of research and development funds shall be the same as
43 that used by the National Science Foundation in the aforementioned
44 survey. For the purposes of this subdivision, "biotechnologies" shall
45 mean the technologies involving the scientific manipulation of living
46 organisms, especially at the molecular and/or the sub-molecular genetic
47 level, to produce products conducive to improving the lives and health
48 of plants, animals, and humans; and the associated scientific research,
49 pharmacological, mechanical, and computational applications and services
50 connected with these improvements. Activities included with such appli-
51 cations and services shall include, but not be limited to, alternative
52 mRNA splicing, DNA sequence amplification, antigenetic switching bioaug-
53 mentation, bioenrichment, bioremediation, chromosome walking, cytogenet-
54 ic engineering, DNA diagnosis, fingerprinting, and sequencing, electro-
55 poration, gene translocation, genetic mapping, site-directed

1 mutagenesis, bio-transduction, bio-mechanical and bio-electrical engi-
2 neering, and bio-informatics.

3 (2) An eligible taxpayer shall (A) have no more than one hundred full-
4 time employees, of which at least seventy-five percent are employed in
5 the city, (B) have a ratio of research and development funds to net
6 sales, as referred to in section thirty-one hundred two-e of the public
7 authorities law, which equals or exceeds six percent during the calendar
8 year ending with or within the taxable year for which the credit is
9 claimed, and (C) have gross revenues, along with the gross revenues of
10 its "affiliates" and "related members" not exceeding twenty million
11 dollars for the calendar year immediately preceding the calendar year
12 ending with or within the taxable year for which the credit is claimed.
13 For the purposes of this subdivision, "affiliates" shall mean those
14 corporations that are members of the same affiliated group, as defined
15 in section fifteen hundred four of the internal revenue code, as the
16 taxpayer. For the purposes of this subdivision, "related members" shall
17 mean a person, corporation, or other entity, including an entity that is
18 treated as a partnership or other pass-through vehicle for purposes of
19 federal taxation, whether such person, corporation or entity is a
20 taxpayer or not, where one such person, corporation or entity, or set of
21 related persons, corporations or entities, directly or indirectly owns
22 or controls a controlling interest in another entity. Such entity or
23 entities may include all taxpayers under chapters six, eleven and seven-
24 teen of this title, and subchapters two and three of this chapter. A
25 controlling interest shall mean, in the case of a corporation, either
26 thirty percent or more of the total combined voting power of all classes
27 of stock of such corporation, or thirty percent or more of the capital,
28 profits or beneficial interest in such voting stock of such corporation;
29 and in the case of a partnership, association, trust or other entity,
30 thirty percent or more of the capital, profits or beneficial interest in
31 such partnership, association, trust or other entity.

32 (3) An eligible taxpayer shall be allowed a credit for eighteen per
33 centum of the cost or other basis for federal income tax purposes of
34 research and development property that is acquired by the taxpayer by
35 purchase as defined in section 179(d) of the internal revenue code and
36 placed in service during the calendar year that ends with or within the
37 taxable year for which the credit is claimed. Provided, however, for the
38 purposes of this paragraph only, an eligible taxpayer shall be allowed a
39 credit for such percentage of the (A) cost or other basis for federal
40 income tax purposes for property used in the testing or inspection of
41 materials and products, (B) the costs or expenses associated with quali-
42 ty control of the research and development, (C) fees for use of sophis-
43 ticated technology facilities and processes, (D) fees for the production
44 or eventual commercial distribution of materials and products resulting
45 from the activities of an eligible taxpayer as long as such activities
46 fall under activities relating to biotechnologies. The costs, expenses
47 and other amounts for which a credit is allowed and claimed under this
48 paragraph shall not be used in the calculation of any other credit
49 allowed under this subchapter. For the purposes of this subdivision,
50 "research and development property" shall mean property that is used for
51 purposes of research and development in the experimental or laboratory
52 sense. Such purposes shall not be deemed to include the ordinary testing
53 or inspection of materials or products for quality control, efficiency
54 surveys, management studies, consumer surveys, advertising, promotions,
55 or research in connection with literary, historical or similar projects.

1 (4) An eligible taxpayer shall be allowed a credit for nine per centum
2 of qualified research expenses paid or incurred by the taxpayer in the
3 calendar year ending with or within the taxable year for which the cred-
4 it is claimed. For the purposes of this subdivision, "qualified research
5 expenses" shall mean expenses associated with in-house research and
6 processes, and costs associated with the dissemination of the results of
7 the products that directly result from such research and development
8 activities; provided, however, that such costs shall not include adver-
9 tising or promotion through media. In addition, costs associated with
10 the preparation of patent applications, patent application filing fees,
11 patent research fees, patent examinations fees, patent post allowance
12 fees, patent maintenance fees, and grant application expenses and fees
13 shall qualify as qualified research expenses. In no case shall the cred-
14 it allowed under this paragraph apply to expenses for litigation or the
15 challenge of another entity's intellectual property rights, or for
16 contract expenses involving outside paid consultants.

17 (5) An eligible taxpayer shall be allowed a credit for qualified high-
18 technology training expenditures as described in this paragraph paid or
19 incurred by the taxpayer during the calendar year that ends with or
20 within the taxable year for which the credit is claimed.

21 (A) The amount of credit shall be one hundred percent of the training
22 expenses described in subparagraph (C) of this paragraph, subject to a
23 limitation of no more than four thousand dollars per employee per calen-
24 dar year for such training expenses.

25 (B) Qualified high-technology training shall include a course or
26 courses taken and satisfactorily completed by an employee of the taxpay-
27 er at an accredited, degree granting post-secondary college or universi-
28 ty in city that (i) directly relates to biotechnology activities, and
29 (ii) is intended to upgrade, retrain or improve the productivity or
30 theoretical awareness of the employee. Such course or courses may
31 include, but are not limited to, instruction or research relating to
32 techniques, meta, macro, or micro-theoretical or practical knowledge
33 bases or frontiers, or ethical concerns related to such activities. Such
34 course or courses shall not include classes in the disciplines of
35 management, accounting or the law or any class designed to fulfill the
36 discipline specific requirements of a degree program at the associate,
37 baccalaureate, graduate or professional level of these disciplines.
38 Satisfactory completion of a course or courses shall mean the earning
39 and granting of credit or equivalent unit, with the attainment of a
40 grade of "B" or higher in a graduate level course or courses, a grade of
41 "C" or higher in an undergraduate level courses or courses, or a similar
42 measure of competency for a course that is not measured according to a
43 standard grade formula.

44 (C) Qualified high-technology training expenditures shall include
45 expenses for tuition and mandatory fees, software required by the insti-
46 tution, fees for textbooks or other literature required by the institu-
47 tion offering the course or courses, minus applicable scholarships and
48 tuition or fee waivers not granted by the taxpayer or any affiliates of
49 the taxpayer, that are paid or reimbursed by the taxpayer. Qualified
50 high-technology expenditures do not include room and board, computer
51 hardware or software not specifically assigned for such course or cours-
52 es, late-charges, fines or membership dues and similar expenses. Such
53 qualified expenditures shall not be eligible for the credit provided by
54 this section unless the employee for whom the expenditures are disbursed
55 is continuously employed by the taxpayer in a full-time, full-year posi-
56 tion primarily located at a qualified site during the period of such

1 coursework and lasting through at least one hundred eighty days after
2 the satisfactory completion of the qualifying course-work. Qualified
3 high-technology training expenditures shall not include expenses for
4 in-house or shared training outside of a city higher education institu-
5 tion or the use of consultants outside of credit granting courses,
6 whether such consultants function inside of such higher education insti-
7 tution or not.

8 (D) If a taxpayer relocates from an academic business incubator facil-
9 ity partnered with an accredited post-secondary education institution
10 located within city, which provides space and business support services
11 to taxpayers, to another site, the credit provided in this subdivision
12 shall be allowed for all expenditures referenced in subparagraph (C) of
13 this paragraph paid or incurred in the two preceding calendar years that
14 the taxpayer was located in such an incubator facility for employees of
15 the taxpayer who also relocate from said incubator facility to such city
16 site and are employed and primarily located by the taxpayer in city.
17 Such expenditures in the two preceding years shall be added to the
18 amounts otherwise qualifying for the credit provided by this subdivision
19 that were paid or incurred in the calendar year that the taxpayer relo-
20 cates from such a facility. Such expenditures shall include expenses
21 paid for an eligible employee who is a full-time, full-year employee of
22 said taxpayer during the calendar year that the taxpayer relocated from
23 an incubator facility notwithstanding (i) that such employee was
24 employed full or part-time as an officer, staff-person or paid intern of
25 the taxpayer when such taxpayer was located at such incubator facility
26 or (ii) that such employee was not continuously employed when such
27 taxpayer was located at the incubator facility during the one hundred
28 eighty day period referred to in subparagraph (C) of this paragraph,
29 provided such employee received wages or equivalent income for at least
30 seven hundred fifty hours during any twenty-four month period when the
31 taxpayer was located at the incubator facility. Such expenditures shall
32 include payments made to such employee after the taxpayer has relocated
33 from the incubator facility for qualified expenditures if such payments
34 are made to reimburse an employee for expenditures paid by the employee
35 during such two preceding years. The credit provided under this para-
36 graph shall be allowed in any taxable year that the taxpayer qualifies
37 as an eligible taxpayer.

38 (E) For purposes of this subdivision the term "academic year" shall
39 mean the annual period of sessions of a post-secondary college or
40 university.

41 (F) For the purposes of this subdivision the term "academic incubator
42 facility" shall mean a facility providing low-cost space, technical
43 assistance, support services and educational opportunities, including
44 but not limited to central services provided by the manager of the
45 facility to the tenants of the facility, to an entity located in city.
46 Such entity's primary activity must be in biotechnologies, and such
47 entity must be in the formative stage of development. The academic incu-
48 bator facility and the entity must act in partnership with an accredited
49 post-secondary college or university located in city. An academic incu-
50 bator facility's mission shall be to promote job creation, entrepreneur-
51 ship, technology transfer, and provide support services to incubator
52 tenants, including, but not limited to, business planning, management
53 assistance, financial-packaging, linkages to financing services, and
54 coordinating with other sources of assistance.

55 (6) An eligible taxpayer may claim credits under this subdivision for
56 three consecutive years. In no case shall the credit allowed by this

1 subdivision to a taxpayer exceed two hundred fifty thousand dollars per
2 calendar year for eligible expenditures made during such calendar year.

3 (7) The credit allowed under this subdivision for any taxable year
4 shall not reduce the tax due for such year to less than the amount
5 computed in subdivision (a) of this section. Provided, however, if the
6 amount of credit allowed under this subdivision for any taxable year
7 reduces the tax to such amount, any amount of credit not deductible in
8 such taxable year shall be treated as an overpayment of tax to be cred-
9 ited or refunded in accordance with the provisions of section 11-526 of
10 this chapter; provided, however, that notwithstanding the provisions of
11 section 11-528 of this chapter, no interest shall be paid thereon.

12 (8) The credit allowed under this subdivision shall only be allowed
13 for taxable years beginning on or after January first, two thousand ten
14 and before January first, two thousand nineteen.

15 (b)(1) The percentage of the credit allowed to a taxpayer under this
16 subdivision in any calendar year shall be:

17 (A) If the average number of individuals employed full time by a
18 taxpayer in the city during the calendar year that ends with or within
19 the taxable year which the credit is claimed is at least one hundred
20 five percent of the taxpayer's base year employment, one hundred
21 percent, except that in no case shall the credit allowed under this
22 clause exceed two hundred fifty thousand dollars per calendar year.
23 Provided, however, the increase in base year employment shall not apply
24 to a taxpayer allowed a credit under this subdivision that was (I)
25 located outside of the city, (II) not doing business, or (III) did not
26 have any employees, in the year preceding the first year that the credit
27 is claimed. Any such taxpayer shall be eligible for one hundred percent
28 of the credit for the first calendar year that ends with or within the
29 taxable year for which the credit is claimed, provided that such taxpay-
30 er locates in the city, begins doing business in the city or hires
31 employees in the city during such calendar year and is otherwise eligi-
32 ble for the credit pursuant to the provisions of this subdivision.

33 (B) If the average number of individuals employed full time by a
34 taxpayer in the city during the calendar year that ends with or within
35 the taxable year for which the credit is claimed is less than one
36 hundred five percent of the taxpayer's base year employment, fifty
37 percent, except that in no case shall the credit allowed under this
38 clause exceed one hundred twenty five thousand dollars per calendar
39 year. In the case of an entity located in city receiving space and busi-
40 ness support services by an academic incubator facility, if the average
41 number of individuals employed full time by such entity in the city
42 during the calendar year in which the credit allowed under this subdivi-
43 sion is claimed is less than one hundred five percent of the taxpayer's
44 base year employment, the credit shall be zero.

45 (2) For the purposes of this subdivision, "base year employment" means
46 the average number of individuals employed full-time by the taxpayer in
47 the city in the year preceding the first calendar year that ends with or
48 within the taxable year for which the credit is claimed.

49 (3) For the purposes of this subdivision, average number of individ-
50 uals employed full-time shall be computed by adding the number of such
51 individuals employed by the taxpayer at the end of each quarter during
52 each calendar year or other applicable period and dividing the sum so
53 obtained by the number of such quarters occurring within such calendar
54 year or other applicable period.

55 (4) Notwithstanding anything contained in this section to the contra-
56 ry, the credit provided by this subdivision shall be allowed against the

1 taxes authorized by this chapter for the taxable year after reduction by
2 all other credits permitted by this chapter.

3 (p) Beer production credit. (1) A taxpayer subject to tax under this
4 chapter, that is registered as a distributor under article eighteen of
5 the tax law, and that produces sixty million or fewer gallons of beer in
6 this state in the taxable year, shall be allowed a credit against the
7 tax imposed by this chapter in the amount specified in paragraph two of
8 this subdivision. Provided, however, that no credit shall be allowed for
9 any beer produced in excess of fifteen million five hundred thousand
10 gallons in the taxable year. Notwithstanding anything in this title to
11 the contrary, if a partnership is allowed a credit under this subdivi-
12 sion, a taxpayer that is a partner in such partnership shall not be
13 allowed a credit under this subdivision for any taxable year that
14 includes the last day of the taxable year for which the partnership is
15 allowed such credit.

16 (2) The amount of the credit per taxpayer per taxable year for each
17 gallon of beer produced in the city on or after January first, two thou-
18 sand seventeen shall be determined as follows:

19 (i) for the first five hundred thousand gallons of beer produced in
20 the city in the taxable year, the credit shall equal twelve cents per
21 gallon; and

22 (ii) for each gallon of beer produced in the city in the taxable year
23 in excess of five hundred thousand gallons, the credit shall equal three
24 and eighty-six one hundredths cents per gallon. The credit allowed under
25 this subdivision for any taxable year shall be treated as an overpayment
26 of tax to be credited or refunded in accordance with the provisions of
27 section 11-526 of this chapter; provided, however, that notwithstanding
28 the provisions of section 11-528 of this chapter, no interest shall be
29 paid thereon.

30 (q) Credit for the provision of child care. In addition to any other
31 credit allowed under this section, a taxpayer whose application for a
32 credit authorized by section 11-144 of this title has been approved by
33 the department of finance shall be allowed a credit against the tax
34 imposed by this chapter. The amount of the credit shall be determined as
35 provided in such section. To the extent the amount of the credit allowed
36 by this subdivision exceeds the amount of tax due pursuant to this chap-
37 ter, as calculated without such credit, such excess amount shall be
38 treated as an overpayment of tax to be credited or refunded in accord-
39 ance with the provisions of section 11-526 of this chapter, provided,
40 however, that notwithstanding the requirements of section 11-528 of this
41 chapter to the contrary, no interest shall be paid thereon.

42 § 11-504 Taxable years to which tax applies; tax for taxable years
43 beginning prior to and ending after January first, nineteen hundred
44 sixty-six. (a) General. The tax imposed by section 11-503 of this
45 chapter, with any modification permitted by subdivision (b) of this
46 section, is imposed for each taxable year beginning with taxable years
47 ending on or after January first, nineteen hundred sixty-six.

48 (b) Alternate methods for determining tax for taxable years ending on
49 or after January first, nineteen hundred sixty-six. (1) The tax for any
50 taxable year ending on or after January first, nineteen hundred sixty-
51 six and before December thirty-first, nineteen hundred sixty-six, shall
52 be an amount equal to the tax which would have been imposed had section
53 11-503 of this chapter been in effect for the entire taxable year,
54 multiplied by the number of months, or major portions thereof, in such
55 taxable year which occur after December thirty-first, nineteen hundred

1 sixty-five and divided by the number of months, or major portions there-
2 of, in such taxable year.

3 (2) In lieu of the method of computation of tax prescribed in para-
4 graph one of this subdivision, if the taxpayer maintained adequate
5 records for the portion of any taxable year ending on or after January
6 first, nineteen hundred sixty-six, and before December thirty-first,
7 nineteen hundred sixty-six, which falls within the calendar year nine-
8 teen hundred sixty-six, the tax for such taxable year at the election of
9 the taxpayer may be computed on the basis of the unincorporated business
10 taxable income which the taxpayer would have reported had he or she
11 filed a federal income tax return for a taxable year beginning January
12 first, nineteen hundred sixty-six and ending with the close of such
13 taxable year ending before December thirty-first, nineteen hundred
14 sixty-six. Such taxable year beginning January first, nineteen hundred
15 sixty-six and ending before December thirty-first, nineteen hundred
16 sixty-six shall be deemed, unless clearly indicated otherwise, to be the
17 taxable year of the taxpayer. For purposes of this paragraph, the unin-
18 corporated business exemptions allowable under section 11-510 of this
19 chapter, the credit allowable under subdivision (b) of section 11-503 of
20 this chapter and any net operating loss deduction as modified pursuant
21 to subdivision (b) of section 11-507 of this chapter shall each be
22 reduced by the same part of such exemptions, credit, or net operating
23 loss deduction, as the case may be, as the number of months, or major
24 portions thereof, in the taxable year occurring before January first,
25 nineteen hundred sixty-six is of the number of months, or major portions
26 thereof, in such taxable year. Except as provided in paragraph two, the
27 tax for such period ending before December thirty-first, nineteen
28 hundred sixty-six, shall be computed in accordance with the other
29 provisions of this chapter.

30 § 11-505 Unincorporated business taxable income. The unincorporated
31 business taxable income of an unincorporated business shall be the
32 excess of its unincorporated business entire net income allocated to the
33 city, less the amount of:

34 (1) Its deductions under section 11-509 of this chapter not subject to
35 allocation; and

36 (2) Its unincorporated business exemptions under section 11-510 of
37 this chapter.

38 § 11-506 Unincorporated business gross income. (a) (1) General.
39 Unincorporated business gross income of an unincorporated business means
40 the sum of the items of income and gain of the business, of whatever
41 kind and in whatever form paid, includible in gross income for the taxa-
42 ble year for federal income tax purposes, including income and gain from
43 any property employed in the business, or from liquidation of the busi-
44 ness, or from collection of installment obligations of the business, or
45 from the sale or other disposition by an unincorporated entity of an
46 interest in another unincorporated entity if and to the extent such
47 income or gain is attributable to a trade, business, profession or occu-
48 pation carried on in whole or in part in the city by such other unincor-
49 porated entity, with the modifications specified in this section.

50 (2) The character of a partner's distributive share of gross income,
51 gains, losses and deductions of an unincorporated entity shall be deter-
52 mined as if such gross income, gains, losses and deductions were real-
53 ized directly by such partner regardless of how the interest in the
54 unincorporated entity was acquired and regardless of whether the
55 distributive share is proportionate to the partner's capital interest in
56 the unincorporated entity, provided, however, this paragraph shall not

1 apply to payments to a partner treated as occurring between the unincor-
2 porated entity and one who is not a partner under section seven hundred
3 seven of the internal revenue code, and provided, further, this para-
4 graph shall not affect the determination of whether gross income, gains,
5 losses or deductions of an unincorporated entity are subject to the tax
6 imposed by this chapter as realized from an unincorporated business.

7 (b) Modifications increasing federal gross income. There shall be
8 added to federal gross income of the business the following items
9 attributable to the business:

10 (1) Interest income on obligations of any state other than this state,
11 or of a political subdivision of any such other state unless created by
12 compact or agreement to which this state is a party.

13 (2) Interest or dividend income on obligations or securities of any
14 authority, commission, or instrumentality of the United States, which
15 the laws of the United States exempt from federal income tax but not
16 from state or local income taxes.

17 (3) In the case of a taxpayer who has exercised the election permitted
18 by subdivision (b) of section 11-509 of this chapter, if the property to
19 which such election relates was sold or otherwise disposed of during the
20 taxable year, the amount required by such subdivision to be added to
21 federal gross income.

22 (4) The entire amount allowable as an exclusion or deduction for stock
23 transfer taxes imposed by article twelve of the tax law in determining
24 federal gross income but only to the extent that such taxes are incurred
25 and paid in market making transactions.

26 (5) The amount allowed as an exclusion or deduction for sales and use
27 taxes imposed by section eleven hundred seven of the tax law in deter-
28 mining federal gross income but only such portion of such exclusion or
29 deduction which is not in excess of the amount of the credit allowed
30 pursuant to subdivision (d) of section 11-503 of this chapter.

31 (6) The amount allowed as an exclusion or deduction as rent in deter-
32 mining federal gross income but only such portion of such exclusion or
33 deduction which is not in excess of the amount of the credit allowed
34 pursuant to subdivision (e) of section 11-503 of this chapter.

35 (7) The amount allowed as an exclusion or deduction in determining
36 federal gross income but only such portion of such exclusion or
37 deduction which is not in excess of the amount of the credit allowed
38 pursuant to subdivision (f) of section 11-503 of this chapter.

39 (8) For taxable years beginning after December thirty-first, nineteen
40 hundred eighty-one, except with respect to property which is a qualified
41 mass commuting vehicle described in subparagraph (D) of paragraph eight
42 of subsection (f) of section one hundred sixty-eight of the internal
43 revenue code, relating to qualified mass commuting vehicles, any amount
44 which would properly be includible for federal income tax purposes had
45 the taxpayer not made the election permitted pursuant to such paragraph
46 eight as it was in effect for agreements entered into prior to January
47 first, nineteen hundred eighty-four.

48 (9) Upon the disposition of property to which subdivision (o) of
49 section 11-507 of this chapter applies, the amount, if any, by which the
50 aggregate of the amounts described in such subdivision fifteen attribut-
51 able to such property exceeds the aggregate of the amounts described in
52 subdivision (n) of section 11-507 of this chapter attributable to such
53 property.

54 (10) The amount allowed as an exclusion or deduction for sales and use
55 taxes imposed by section eleven hundred seven of the tax law in deter-
56 mining federal gross income, but only such portion of such exclusion or

1 deduction which is not in excess of the amount of the credit allowed
2 pursuant to subdivision (g) of section 11-503 of this chapter.

3 (12) The amount allowed as an exclusion or deduction for sales and use
4 taxes imposed by section eleven hundred seven of the tax law, or for any
5 interest imposed in connection therewith, in determining federal gross
6 income, but only such portion of such exclusion or deduction which is
7 not in excess of the amount of the credit allowed pursuant to subdivi-
8 sion (k) of section 11-503 of this chapter.

9 (13) Notwithstanding any other provision of this chapter to the
10 contrary, the amount allowed as an exclusion or deduction in determining
11 federal gross income of any loss, including but not limited to, losses
12 from notional principal contracts, losses, other than as a dealer, from
13 the holding, sale, disposition, assumption, offset or termination of a
14 position in, property, as defined in paragraph one of subdivision (c) of
15 section 11-502 of this chapter, or other substantially similar losses
16 from ordinary and routine trading or investment activity to the extent
17 determined by the commissioner of finance, realized in connection with
18 activities described in paragraph two of subdivision (c) of section
19 11-502 of this chapter if, and to the extent that, such activities are
20 not deemed an unincorporated business carried on by the taxpayer pursu-
21 ant to the provisions of subdivision (c) of section 11-502 of this chap-
22 ter.

23 (14) Notwithstanding any other provision of this chapter to the
24 contrary, in the case of a taxpayer that is an unincorporated entity
25 described in subparagraph (B) of paragraph four of subdivision (c) of
26 section 11-502 of this chapter, the amount allowed as an exclusion or
27 deduction in determining federal gross income of any loss realized from
28 the sale or other disposition of an interest in another unincorporated
29 entity if, and to the extent that, such loss is attributable to activ-
30 ities of such other unincorporated entity not deemed an unincorporated
31 business carried on by the taxpayer pursuant to the provisions of subdivi-
32 sion (c) of section 11-502 of this chapter.

33 (15) Notwithstanding any other provision of this chapter to the
34 contrary, the amount allowed as an exclusion or deduction in determining
35 federal gross income of any loss realized from the holding, leasing or
36 managing of real property if, and to the extent that, such holding,
37 leasing or managing of real property is not deemed an unincorporated
38 business carried on by the taxpayer pursuant to the provisions of subdivi-
39 sion (d) of section 11-502 of this chapter.

40 (16) Notwithstanding any other provision of this chapter to the
41 contrary, the amount allowed as an exclusion or deduction in determining
42 federal gross income of any loss realized from the provision by an
43 owner, lessee or fiduciary holding, leasing or managing real property of
44 the service of parking, garaging or storing of motor vehicles on a
45 monthly or longer term basis to tenants at such real property if, and to
46 the extent that, the provision of such services to such tenants is not
47 deemed an unincorporated business carried on by the taxpayer pursuant to
48 the provisions of subdivision (d) of section 11-502 of this chapter.

49 (17) For taxable years beginning in two thousand nineteen and two
50 thousand twenty, the amount of the increase in the federal interest
51 deduction allowed pursuant to section 163(j)(10) of the internal revenue
52 code.

53 (18) Notwithstanding any other provision of this chapter to the
54 contrary, for taxable years beginning before January first, two thousand
55 twenty-one, the amount of increase in the federal deduction allowed

1 pursuant to any amendment to section 461(l) of the internal revenue code
2 made after March first, two thousand twenty.

3 (c) Modifications reducing federal gross income. There shall be
4 subtracted from federal gross income of the business the following items
5 attributable to the business:

6 (1) Interest income on obligations of the United States and its
7 possessions to the extent includible in gross income for federal income
8 tax purposes;

9 (2) Interest or dividend income on obligations or securities of any
10 authority, commission or instrumentality of the United States to the
11 extent includible in gross income for federal income tax purposes but
12 exempt from state or local income taxes under the laws of the United
13 States;

14 (3) Interest or dividend income on obligations or securities to the
15 extent exempt from income tax under the laws of the city or this state
16 authorizing the issuance of such obligations or securities but includi-
17 ble in gross income for federal income tax purposes;

18 (3-a) Fifty percent of dividends to the extent includible in gross
19 income for federal income tax purposes and not subtracted under para-
20 graph two or three of this subdivision, provided, however, that there
21 shall be no subtraction pursuant to this paragraph for any portion of a
22 dividend from stock with respect to which a dividend deduction would be
23 disallowed by subsection (c) of section two hundred forty-six of the
24 internal revenue code if the unincorporated business were a corporation;

25 (4) The amount of any refund or credit for overpayment of income taxes
26 imposed by the city, this state or any other taxing jurisdiction, or the
27 tax imposed by article thirteen-A of the tax law, to the extent properly
28 included in gross income for federal tax purposes;

29 (5) With respect to gain derived from the sale or other disposition of
30 any property acquired prior to January first, nineteen hundred sixty-
31 six, except property described in subsections one and four of section
32 twelve hundred twenty-one of the internal revenue code, the difference
33 between:

34 (a) the amount of gain included in federal gross income with respect
35 to each such property, and

36 (b) the amount of gain, if smaller than the amount described in
37 subparagraph (a) of this paragraph, that would be included in federal
38 gross income with respect to each such property if the federal adjusted
39 basis of such property on the date of the sale or other disposition had
40 been equal to its fair market value on January first, nineteen hundred
41 sixty-six, or the date of its sale or other disposition prior to January
42 first, nineteen hundred sixty-six, plus or minus all adjustments to
43 basis made with respect to such property for federal income tax purposes
44 for periods on and after January first, nineteen hundred sixty-six;
45 provided, however, that the total modification provided by this subpara-
46 graph shall not exceed the taxpayer's net gain from the sale or other
47 disposition of all such property.

48 (6) For taxable years beginning after December thirty-first, nineteen
49 hundred eighty-one, except with respect to property which is a qualified
50 mass commuting vehicle described in subparagraph (D) of paragraph eight
51 of subsection (f) of section one hundred sixty-eight of the internal
52 revenue code, relating to qualified mass commuting vehicles, any amount
53 properly includible in federal gross income solely as a result of an
54 election made pursuant to the provisions of such paragraph eight as it
55 was in effect for agreements entered into prior to January first, nine-
56 teen hundred eighty-four.

1 (7) Upon the disposition of property to which subdivision (o) of
2 section 11-507 of this chapter applies, the amount, if any, by which the
3 aggregate of the amounts described in subdivision (n) of section 11-507
4 of this chapter attributable to such property exceeds the aggregate of
5 the amounts described in subdivision (o) of section 11-507 of this chap-
6 ter attributable to such property.

7 (8) Notwithstanding any other provision of this chapter to the contra-
8 ry, the amount of any income or gain, to the extent includible in gross
9 income for federal income tax purposes, realized from the holding, leas-
10 ing or managing of real property if, and to the extent that, such hold-
11 ing, leasing or managing of real property is not deemed an unincorporat-
12 ed business carried on by the taxpayer pursuant to the provisions of
13 subdivision (d) of section 11-502 of this chapter.

14 (9) Notwithstanding any other provision of this chapter to the contra-
15 ry, the amount of any income or gain, to the extent includible in gross
16 income for federal income tax purposes, including but not limited to,
17 dividends, interest, payments with respect to securities loans, income
18 from notional principal contracts, or income and gains, other than as a
19 dealer, from the holding, sale, disposition, assumption, offset or
20 termination of a position in, property, as defined in paragraph one of
21 subdivision (c) of section 11-502 of this chapter, or other substantial-
22 ly similar income from ordinary and routine trading or investment activ-
23 ity to the extent determined by the commissioner of finance, realized in
24 connection with activities described in paragraph two of subdivision (c)
25 of section 11-502 of this chapter if, and to the extent that, such
26 activities are not deemed an unincorporated business carried on by the
27 taxpayer pursuant to the provisions of subdivision (c) of section 11-502
28 of this chapter.

29 (10) Notwithstanding any other provision of this chapter to the
30 contrary, in the case of a taxpayer that is an unincorporated entity
31 described in subparagraph (B) of paragraph four of subdivision (c) of
32 section 11-502 of this chapter, the amount of any income or gain, to the
33 extent includible in gross income for federal income tax purposes, real-
34 ized from the sale or other disposition of an interest in another unin-
35 corporated entity if, and to the extent that, such income or gain is
36 attributable to activities of such other unincorporated entity not
37 deemed an unincorporated business carried on by the taxpayer pursuant to
38 the provisions of subdivision (c) of section 11-502 of this chapter.

39 (11) Notwithstanding any other provision of this chapter to the
40 contrary, the amount of any income or gain, to the extent includible in
41 gross income for federal income tax purposes, realized from the
42 provision by an owner, lessee or fiduciary holding, leasing or managing
43 real property of the service of parking, garaging or storing of motor
44 vehicles on a monthly or longer term basis to tenants at such real prop-
45 erty if, and to the extent that, the provision of such services to such
46 tenants is not deemed an unincorporated business pursuant to the
47 provisions of subdivision (d) of section 11-502 of this chapter.

48 (12) The amount of any grant received through either the COVID-19
49 pandemic small business recovery grant program, pursuant to section
50 sixteen-ff of the New York state urban development corporation act, or
51 the small business resilience grant program administered by the depart-
52 ment of small business services, to the extent the amount of either such
53 grant is included in federal taxable income.

54 (d) Upon the disposition of property to which subdivisions (t) and (u)
55 of section 11-507 of this chapter apply, the amount of any gain or loss

1 includible in entire net income shall be adjusted to reflect the modifi-
2 cations provided in such subdivisions attributable to such property.

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

8 (B) Effective rate of tax. "Effective rate of tax" means, as to any
9 city, the maximum statutory rate of tax imposed by the city on or meas-
10 ured by a related member's net income multiplied by the apportionment
11 percentage, if any, applicable to the related member under the laws of
12 said jurisdiction. For purposes of this definition, the effective rate
13 of tax as to any city is zero where the related member's net income tax
14 liability in said city is reported on a combined or consolidated return
15 including both the taxpayer and the related member where the reported
16 transactions between the taxpayer and the related member are eliminated
17 or offset. Also, for purposes of this definition, when computing the
18 effective rate of tax for a city in which a related member's net income
19 is eliminated or offset by a credit or similar adjustment that is
20 dependent upon the related member either maintaining or managing intan-
21 gible property or collecting interest income in such city, the maximum
22 statutory rate of tax imposed by such city shall be decreased to reflect
23 the statutory rate of tax that applies to the related member as effec-
24 tively reduced by such credit or similar adjustment.

25 (C) Royalty payments. Royalty payments are payments directly connected
26 to the acquisition, use, maintenance or management, ownership, sale,
27 exchange, or any other disposition of licenses, trademarks, copyrights,
28 trade names, trade dress, service marks, mask works, trade secrets,
29 patents and any other similar types of intangible assets as determined
30 by the commissioner of finance, and include amounts allowable as inter-
31 est deductions under section one hundred sixty-three of the internal
32 revenue code to the extent such amounts are directly or indirectly for,
33 related to or in connection with the acquisition, use, maintenance or
34 management, ownership, sale, exchange or disposition of such intangible
35 assets.

36 (D) Valid business purpose. A valid business purpose is one or more
37 business purposes, other than the avoidance or reduction of taxation,
38 which alone or in combination constitute the primary motivation for some
39 business activity or transaction, which activity or transaction changes
40 in a meaningful way, apart from tax effects, the economic position of
41 the taxpayer. The economic position of the taxpayer includes an increase
42 in the market share of the taxpayer, or the entry by the taxpayer into
43 new business markets.

44 (2) Royalty expense add backs. (A) For the purpose of computing unin-
45 corporated business entire net income, a taxpayer must add back royalty
46 payments directly or indirectly paid, accrued, or incurred in connection
47 with one or more direct or indirect transactions with one or more
48 related members during the taxable year to the extent deductible in
49 calculating federal taxable income.

50 (B) Exceptions. (i) The adjustment required in this subdivision shall
51 not apply to the portion of the royalty payment that the taxpayer estab-
52 lishes, by clear and convincing evidence of the type and in the form
53 specified by the commissioner of finance, meets all of the following
54 requirements: (I) the related member was subject to tax in this city or
55 another city within the United States or a foreign nation or some combi-
56 nation thereof on a tax base that included the royalty payment paid,

1 accrued or incurred by the taxpayer; (II) the related member during the
2 same taxable year directly or indirectly paid, accrued or incurred such
3 portion to a person that is not a related member; and (III) the trans-
4 action giving rise to the royalty payment between the taxpayer and the
5 related member was undertaken for a valid business purpose.

6 (ii) The adjustment required in this subdivision shall not apply if
7 the taxpayer establishes, by clear and convincing evidence of the type
8 and in the form specified by the commissioner of finance, that: (I) the
9 related member was subject to tax on or measured by its net income in
10 this city or another city within the United States, or some combination
11 thereof; (II) the tax base for said tax included the royalty payment
12 paid, accrued or incurred by the taxpayer; and (III) the aggregate
13 effective rate of tax applied to the related member in those jurisdic-
14 tions is no less than eighty percent of the statutory rate of tax that
15 applied to the taxpayer under section 11-503 of this chapter for the
16 taxable year.

17 (iii) The adjustment required in this subdivision shall not apply if
18 the taxpayer establishes, by clear and convincing evidence of the type
19 and in the form specified by the commissioner of finance, that: (I) the
20 royalty payment was paid, accrued or incurred to a related member organ-
21 ized under the laws of a country other than the United States; (II) the
22 related member's income from the transaction was subject to a comprehen-
23 sive income tax treaty between such country and the United States; (III)
24 the related member was subject to tax in a foreign nation on a tax base
25 that included the royalty payment paid, accrued or incurred by the
26 taxpayer; (IV) the related member's income from the transaction was
27 taxed in such country at an effective rate of tax at least equal to that
28 imposed by this city; and (V) the royalty payment was paid, accrued or
29 incurred pursuant to a transaction that was undertaken for a valid busi-
30 ness purpose and using terms that reflect an arm's length relationship.

31 (iv) The adjustment required in this subdivision shall not apply if
32 the taxpayer and the commissioner of finance agree in writing to the
33 application or use of alternative adjustments or computations. The
34 commissioner of finance may, in his or her discretion, agree to the
35 application or use of alternative adjustments or computations when he or
36 she concludes that in the absence of such agreement the income of the
37 taxpayer would not be properly reflected.

38 (f) Upon the disposition of property to which subdivisions (w) and (x)
39 of section 11-507 of this chapter apply, the amount of any gain or loss
40 includible in unincorporated business gross income shall be adjusted to
41 reflect the modifications provided in such subdivisions attributable to
42 such property.

43 § 11-507 Unincorporated business deductions. The unincorporated busi-
44 ness deductions of an unincorporated business means the items of loss
45 and deduction directly connected with or incurred in the conduct of the
46 business, which are allowable for federal income tax purposes for the
47 taxable year, including losses and deductions connected with any proper-
48 ty employed in the business, with the following modifications:

49 (a) A deduction shall be allowed for charitable contributions of the
50 unincorporated business, to the extent that such contributions would be
51 deductible for federal income tax purposes if made by a corporation, but
52 not in excess of five per centum of the amount by which the unincorpo-
53 rated business gross income exceeds the sum of (A) the unincorporated
54 business deductions computed without the benefit of any deduction for
55 charitable contributions and (B) the deduction allowed under subdivision

1 (b) of section 11-509 of this chapter, where the election permitted by
2 such subdivision has been exercised.

3 (b) (1) A deduction shall be allowed for net operating losses incurred
4 by the unincorporated business, except as otherwise provided by para-
5 graph two of this subdivision, in an amount computed in the same manner
6 as the net operating loss deduction which would be allowed for the taxa-
7 ble year for federal income tax purposes if the unincorporated business
8 were an individual taxpayer, but determined solely by reference to the
9 unincorporated business gross income and unincorporated business
10 deductions, allocated to the city, of the unincorporated business;
11 provided, however, that such net operating loss deduction which would be
12 allowed for the taxable year for federal income tax purposes shall for
13 purposes of this paragraph be determined as if the unincorporated busi-
14 ness had elected under section one hundred seventy-two of the internal
15 revenue code to relinquish the entire carryback period with respect to
16 net operating losses, except with respect to the first ten thousand
17 dollars of each of such losses, sustained during taxable years ending
18 after June thirtieth, nineteen hundred eighty-nine. Such deduction shall
19 not include any net operating loss sustained during any taxable year
20 beginning prior to January first, nineteen hundred sixty-six and for the
21 purposes of this paragraph a net operating loss shall be determined
22 without regard to any deductions allowed pursuant to subdivision (b) of
23 section 11-509 of this chapter and any net operating loss for a taxable
24 year beginning in nineteen hundred eighty-one shall be computed without
25 regard to the deduction allowed with respect to recovery property under
26 section one hundred sixty-eight of the internal revenue code; in lieu of
27 such deduction, a taxpayer shall be allowed for such taxable year with
28 respect to such property the depreciation deduction allowable under
29 section one hundred sixty-seven of such internal revenue code as such
30 section was in full force and effect on December thirty-first, nineteen
31 hundred eighty.

32 (2) In the case of a partnership, no net operating loss carryback or
33 carryover to any taxable year shall be allowed unless one or more of the
34 partners during such taxable year were persons having a proportionate
35 interest or interests, amounting to at least eighty percent of all such
36 interests, in the unincorporated business gross income and unincorporat-
37 ed business deductions of the partnership which sustained the loss for
38 which a carryback or carryover is claimed. In such event, the carryback
39 or carryover allowable on account of such loss shall not exceed the
40 percentage of the amount otherwise allowable, determined by dividing (A)
41 the sum of the proportionate interests in the unincorporated business
42 gross income and unincorporated business deductions of the partnership,
43 for the year to which the loss is carried back or carried over, attrib-
44 utable to such partners, by (B) the sum of such proportionate interests
45 owned by all partners for such taxable year. The amount by which the
46 carryback or carryover otherwise allowable exceeds the amount allowable
47 pursuant to the preceding sentence shall not be a carryback or carryover
48 to any other taxable year.

49 (3) Notwithstanding any other provision of this chapter to the contra-
50 ry, for taxable years beginning before January first, two thousand twen-
51 ty-one, any amendment to section one hundred seventy-two of the internal
52 revenue code made after March first, two thousand twenty shall not apply
53 to this chapter.

54 (c) No deduction shall be allowed, except as provided in section
55 11-509 of this chapter for amounts paid or incurred to a proprietor or
56 partner for services or for use of capital.

1 (d) No deduction shall be allowed for income taxes imposed by the
2 city, this state or any other taxing jurisdiction, or the tax imposed by
3 article thirteen-A of the tax law.

4 (e) No deduction shall be allowed for (A) interest on indebtedness
5 incurred or continued to purchase or carry obligations or securities the
6 interest on which is exempt from tax under this chapter; (B) expenses
7 paid or incurred for the production or collection of such income or the
8 management, conservation or maintenance of property held for the
9 production of such income; or (C) the amortizable bond premium on any
10 bond the interest income from which is so exempt.

11 (f) No deduction shall be allowed in respect of the excess of net
12 long-term capital gain over net short-term capital loss, but capital
13 losses incurred in the unincorporated business shall be treated as ordi-
14 nary losses and shall be allowed in full.

15 (g) In the case of a taxpayer who has exercised the election permitted
16 by subdivision (b) of section 11-509 of this chapter, no deduction shall
17 be allowed for expenditures with reference to the property to which such
18 election relates, or for depreciation of such property, except as
19 permitted by said subdivision.

20 (h) A deduction shall be allowed, to the extent not allowable for
21 federal income tax purposes, for (A) interest on indebtedness incurred
22 or continued to purchase or carry obligations or securities the interest
23 on which is subject to tax under this chapter but exempt from federal
24 income tax; (B) ordinary and necessary expenses paid or incurred during
25 the taxable year for the production or collection of such income or the
26 management, conservation or maintenance of property held for the
27 production of such income; and (C) the amortizable bond premium for the
28 taxable year on any bond the interest on which is subject to tax under
29 this chapter but exempt from federal income tax.

30 (i) At the election of the taxpayer, a deduction shall be allowed for
31 expenditures paid or incurred during the taxable year for the
32 construction, reconstruction, erection or improvement of industrial
33 waste treatment facilities and air pollution control facilities.

34 (1) (A) The term "industrial waste treatment facilities" shall mean
35 facilities for the treatment, neutralization or stabilization of indus-
36 trial waste, as the term "industrial waste" is defined in section
37 17-0105 of the environmental conservation law, from a point immediately
38 preceding the point of such treatment, neutralization or stabilization
39 to the point of disposal, including the necessary pumping and transmit-
40 ting facilities, but excluding such facilities installed for the primary
41 purpose of salvaging materials which are usable in the manufacturing
42 process or are marketable.

43 (B) The term "air pollution control facilities" shall mean facilities
44 which remove, reduce, or render less noxious air contaminants emitted
45 from an air contamination source, as the terms "air contaminant" and
46 "air contamination source" are defined in section 19-0107 of the envi-
47 ronmental conservation law, from a point immediately preceding the point
48 of such removal, reduction or rendering to the point of discharge of
49 air, meeting emission standards as established by the air pollution
50 control board, but excluding such facilities installed for the primary
51 purpose of salvaging materials which are usable in the manufacturing
52 process or are marketable and excluding those facilities which rely for
53 their efficacy on dilution, dispersion or assimilation of air contam-
54 inants in the ambient air after emission.

55 (2) However, such deduction shall be allowed only (A) with respect to
56 tangible property which is depreciable, pursuant to section one hundred

1 sixty-seven of the internal revenue code, having a situs in the city and
2 used in the taxpayer's trade or business, the construction, recon-
3 struction, erection or improvement of which, in the case of industrial
4 waste treatment facilities, is initiated on or after January first,
5 nineteen hundred sixty-six, and only for expenditures paid or incurred
6 prior to January first, nineteen hundred seventy-two, or which, in the
7 case of air pollution control facilities, is initiated on or after Janu-
8 ary first, nineteen hundred sixty-six, and

9 (B) on condition that such facilities have been certified by the state
10 commissioner of environmental conservation or his or her designated
11 representative, in the same manner as provided in either section 17-0707
12 or 19-0309 of the environmental conservation law, as applicable, as
13 complying with the provision of the environmental conservation law, the
14 sanitary code and regulations, permits or orders promulgated pursuant
15 thereto, and

16 (C) on condition that for the taxable year and all succeeding taxable
17 years, no deduction for such expenditures or for depreciation of the
18 same property allowed for federal income tax purposes shall be allowed
19 under this chapter, except to the extent that the basis of the property
20 may be attributable to factors other than such expenditures, or in case
21 a deduction is allowable pursuant to this subdivision, for only a part
22 of such expenditures, on condition that any deduction allowed for feder-
23 al income tax purposes for such expenditures or for depreciation of the
24 same property be proportionately reduced in computing unincorporated
25 business deductions for the taxable year and all succeeding taxable
26 years, and

27 (D) where the election provided for in subdivision (b) of section
28 11-509 of this chapter has not been exercised in respect to the same
29 property.

30 (3) (A) If expenditures in respect to an industrial waste treatment
31 facility or an air pollution control facility have been deducted as
32 provided herein and if within ten years from the end of the taxable year
33 in which such deduction was allowed such property or any part thereof is
34 used for the primary purpose of salvaging materials which are usable in
35 the manufacturing process or are marketable, the taxpayer shall report
36 such change of use in its return for the first taxable year during which
37 it occurs, and the commissioner of finance may recompute the tax for the
38 year or years for which such deduction was allowed and any carryback or
39 carryover year, and may assess any additional tax resulting from such
40 recomputation within the time fixed by paragraph eight of subdivision
41 (c) of section 11-523 of this chapter.

42 (B) If a deduction is allowed as herein provided for expenditures paid
43 or incurred during any taxable year on the basis of a temporary certif-
44 icate of compliance issued pursuant to the public health law, and if the
45 taxpayer fails to obtain a permanent certificate of compliance upon
46 completion of the facilities with respect to which such temporary
47 certificate was issued, the taxpayer shall report such failure in its
48 report for the taxable year during which such facilities are completed,
49 and the commissioner of finance may recompute the tax for the year or
50 years for which such deduction was allowed and any carryback or carry-
51 over year, and may assess any additional tax resulting from such recom-
52 putation within the time fixed by paragraph eight of subdivision (c) of
53 section 11-523 of this chapter.

54 (4) In any taxable year when property is sold or otherwise disposed
55 of, with respect to which a deduction has been allowed pursuant to this
56 subdivision, such deduction shall be disregarded in computing gain or

1 loss, and the gain or loss on the sale or other disposition of such
2 property shall be the gain or loss allowable for federal income tax
3 purposes for such taxable year.

4 (j) In the case of mines, oil and gas wells and other natural depos-
5 its, no deduction of any allowance for percentage depletion pursuant to
6 section six hundred thirteen or section six hundred thirteen A of the
7 internal revenue code of nineteen hundred fifty-four, as amended, shall
8 be allowed. However, an allowance for depletion with respect to such
9 property shall be deductible in the amount which would be allowable
10 under section six hundred eleven of such internal revenue code if such
11 deduction were computed without reference to such section six hundred
12 thirteen or section six hundred thirteen A of such code. With respect to
13 the computation of depletion pursuant to this section, the basis for
14 such computation for taxable years beginning in nineteen hundred seven-
15 ty-two shall be the federal basis. For subsequent taxable years, the
16 basis of such computation shall be reduced only by the deduction for the
17 allowance for depletion deductible pursuant to this section. In any
18 taxable year when any such property is sold or otherwise disposed of,
19 with respect to which a deduction has been allowed pursuant to this
20 subdivision, the gain or loss thereon entering into the computation of
21 federal taxable income shall be disregarded in computing unincorporated
22 business taxable income and there shall be added to or subtracted from
23 federal gross income, so modified, the gain or loss upon such sale or
24 other disposition. In computing such gain or loss, the basis of the
25 property sold or disposed of shall be adjusted to reflect the deduction
26 allowed with respect to such property pursuant to this subdivision.

27 (k) A deduction shall be allowed for that portion of wages and sala-
28 ries paid or incurred for the taxable year for which a deduction is not
29 allowed pursuant to the provisions of section two hundred eighty-C of
30 the internal revenue code.

31 (l) For taxable years beginning after December thirty-first, nineteen
32 hundred eighty-one, except with respect to property which is a qualified
33 mass commuting vehicle described in subparagraph (D) of paragraph eight
34 of subsection (f) of section one hundred sixty-eight of the internal
35 revenue code, relating to qualified mass commuting vehicles, a deduction
36 shall be allowed for any amount which the taxpayer could have excluded
37 for purposes of this chapter had it not made the election provided for
38 in such paragraph eight as it was in effect for agreements entered into
39 prior to January first, nineteen hundred eighty-four.

40 (m) For taxable years beginning after December thirty-first, nineteen
41 hundred eighty-one, except with respect to property which is a qualified
42 mass commuting vehicle described in subparagraph (D) of paragraph eight
43 of subsection (f) of section one hundred sixty-eight of the internal
44 revenue code, relating to qualified mass commuting vehicles, no
45 deduction shall be allowed for any amount deductible for federal income
46 tax purposes solely as a result of an election made pursuant to the
47 provisions of such paragraph eight as it was in effect for agreements
48 entered into prior to January first, nineteen hundred eighty-four.

49 (n) In the case of property placed in service in taxable years begin-
50 ning before nineteen hundred ninety-four, for taxable years beginning
51 after December thirty-first, nineteen hundred eighty-one, except with
52 respect to property subject to the provisions of section two hundred
53 eighty-F of the internal revenue code and property subject to the
54 provisions of section one hundred sixty-eight of the internal revenue
55 code which is placed in service in this state in taxable years beginning
56 after December thirty-first, nineteen hundred eighty-four, no deduction

1 shall be allowed for the amount allowable as a deduction determined
2 under section one hundred sixty-eight of the internal revenue code.

3 (o) In the case of property placed in service in taxable years begin-
4 ning before nineteen hundred ninety-four, for taxable years beginning
5 after December thirty-first, nineteen hundred eighty-one, except with
6 respect to property subject to the provisions of section two hundred
7 eighty-F of the internal revenue code and property subject to the
8 provisions of section one hundred sixty-eight of the internal revenue
9 code which is placed in service in this state in taxable years beginning
10 after December thirty-first, nineteen hundred eighty-four, and provided
11 a deduction has not been disallowed pursuant to subdivision (m) of this
12 section, a taxpayer shall be allowed with respect to property which is
13 subject to the provisions of section one hundred sixty-eight of the
14 internal revenue code the depreciation deduction allowable under section
15 one hundred sixty-seven of the internal revenue code as such section
16 would have applied to property placed in service on December thirty-
17 first, nineteen hundred eighty.

18 (p) Notwithstanding any other provision of this chapter to the contra-
19 ry, no deduction shall be allowed for interest, depreciation or any
20 other expense directly or indirectly attributable to the holding, leas-
21 ing or managing of real property or to income or gain therefrom if, and
22 to the extent that, such holding, leasing or managing of real property
23 is not deemed an unincorporated business carried on by the taxpayer
24 pursuant to the provisions of subdivision (d) of section 11-502 of this
25 chapter.

26 (q) Notwithstanding any other provision of this chapter to the contra-
27 ry, no deduction shall be allowed for any expenses directly or indirect-
28 ly attributable to activities described in paragraph two of subdivision
29 (c) of section 11-502 of this chapter if, and to the extent that, such
30 activities are not deemed an unincorporated business carried on by the
31 taxpayer pursuant to the provisions of subdivision (c) of section 11-502
32 of this chapter.

33 (r) Notwithstanding any other provision of this chapter to the contra-
34 ry, in the case of a taxpayer that is an unincorporated entity described
35 in subparagraph (B) of paragraph four of subdivision (c) of section
36 11-502 of this chapter, no deduction shall be allowed for any losses or
37 expenses directly or indirectly attributable to the sale or other dispo-
38 sition of an interest in another unincorporated entity if, and to the
39 extent that, such losses or expenses are attributable to activities of
40 such other unincorporated entity not deemed an unincorporated business
41 carried on by the taxpayer pursuant to the provisions of subdivision (c)
42 of section 11-502 of this chapter.

43 (s) Notwithstanding any other provision of this chapter to the contra-
44 ry, no deduction shall be allowed for interest, depreciation or any
45 other expense directly or indirectly attributable to the provision by an
46 owner, lessee or fiduciary holding, leasing or managing real property of
47 the service of parking, garaging or storing of motor vehicles on a
48 monthly or longer term basis to tenants at such real property if, and to
49 the extent that, the provision of such services to such tenants is not
50 deemed an unincorporated business pursuant to the provisions of subdivi-
51 sion (d) of section 11-502 of this chapter.

52 (t) For taxable years ending after September tenth, two thousand one,
53 in the case of qualified property described in paragraph two of
54 subsection k of section one hundred sixty-eight of the internal revenue
55 code, other than qualified New York Liberty Zone property described in
56 paragraph two of subsection b of section fourteen hundred L of the

1 internal revenue code, without regard to clause (i) of subparagraph (C)
2 of such paragraph, no deduction shall be allowed for the amount allow-
3 able as a deduction under section one hundred sixty-seven of the inter-
4 nal revenue code.

5 (u) For taxable years ending after September tenth, two thousand one,
6 in the case of qualified property described in paragraph two of
7 subsection k of section one hundred sixty-eight of the internal revenue
8 code other than qualified New York Liberty Zone property described in
9 paragraph two of subsection b of section fourteen hundred L of the
10 internal revenue code, without regard to clause (i) of subparagraph (C)
11 of such paragraph, a deduction shall be allowed with respect to such
12 property equal to the depreciation deduction allowable under section one
13 hundred sixty-seven of the internal revenue code as such section would
14 have applied to such property had it been acquired by the taxpayer on
15 September tenth, two thousand one, provided, however, that for taxable
16 years beginning on or after January first, two thousand four, in the
17 case of a passenger motor vehicle or a sport utility vehicle subject to
18 the provisions of subdivision (w) of this section, the limitation under
19 clause (i) of subparagraph (A) of paragraph one of subdivision (a) of
20 section two hundred eighty-F of the internal revenue code applicable to
21 the amount allowed as a deduction under this paragraph shall be deter-
22 mined as of the date such vehicle was placed in service and not as of
23 September tenth, two thousand one.

24 (v) For taxable years beginning on or after January first, two thou-
25 sand four, in the case of a taxpayer that is not an eligible farmer as
26 defined in subsection (n) of section six hundred six of the tax law, no
27 deduction shall be allowed for the amounts allowable as a deduction
28 under sections one hundred seventy-nine, one hundred sixty-seven and one
29 hundred sixty-eight of the internal revenue code with respect to a sport
30 utility vehicle that is not a passenger automobile as defined in para-
31 graph five of subsection (d) of section two hundred eighty-F of the
32 internal revenue code.

33 (w) For taxable years beginning on or after January first, two thou-
34 sand four, in the case of a taxpayer that is not an eligible farmer as
35 defined in subsection (n) of section six hundred six of the tax law, a
36 deduction shall be allowed with respect to a sport utility vehicle that
37 is not a passenger automobile as defined in paragraph five of subsection
38 (d) of section two hundred eighty-F of the internal revenue code equal
39 to the amounts allowable as a deduction under sections one hundred
40 seventy-nine, one hundred sixty-seven and one hundred sixty-eight of the
41 internal revenue code, determined as if such sport utility vehicle were
42 a passenger automobile as defined in such paragraph five.

43 § 11-508 Allocation to the city. (a) General; allocation of business
44 income. If an unincorporated business is carried on both within and
45 without the city, as determined under regulations of the commissioner of
46 finance, there shall be allocated to the city, in the manner provided in
47 subdivision (b), (c) or (d) of this section, a fair and equitable
48 portion of its business income. For taxable years beginning before July
49 first, nineteen hundred ninety-six, if the unincorporated business has
50 no regular place of business outside the city, all of such business
51 income shall be allocated to the city.

52 (b) (1) Allocation by taxpayer's books. For taxable years beginning
53 before January first, two thousand five, the portion allocable to the
54 city may be determined from the books of the business if the methods
55 used in keeping such books are approved by the commissioner of finance
56 as fairly and equitably reflecting the income from the city.

1 (2)(i) If a taxpayer determines the portion of business income to be
2 allocated to the city using the method prescribed in paragraph one of
3 this subdivision on a timely filed original return with respect to each
4 of the two taxable years, each of which must consist of twelve months,
5 immediately preceding the taxpayer's first taxable year beginning on or
6 after January first, two thousand five, the taxpayer may make a one-time
7 election to continue to use that method for taxable years beginning on
8 or after January first, two thousand five and before January first, two
9 thousand twelve. Such election shall be made by using the method
10 prescribed in paragraph one of this subdivision on an original timely
11 filed return with respect to the first taxable year beginning on or
12 after January first, two thousand five and before January first, two
13 thousand six. Such election may not be made, or if made, shall be deemed
14 revoked as of the beginning of the taxable year if, for either of the
15 two taxable years immediately preceding the year in which the election
16 is made, the commissioner of finance has determined the methods used in
17 keeping such books do not fairly and equitably reflect the income from
18 the city.

19 (ii) (A) A taxpayer that has made the election provided for in subpar-
20 agraph (i) of this paragraph may revoke it by filing an original or
21 amended return using an allocation method permitted by this section
22 other than the method prescribed in paragraph one of this subdivision
23 unless the commissioner of finance has determined that such method does
24 not fairly and equitably reflect the income from the city.

25 (B) The election provided for in subparagraph (i) of this paragraph
26 shall be deemed to have been revoked as of the beginning of the taxable
27 year if, for any taxable year during which the election is intended to
28 be in effect, the commissioner of finance has determined that the meth-
29 ods used in keeping the taxpayer's books do not fairly and equitably
30 reflect the income from the city.

31 (C) In the case of a taxpayer that is a partnership or other unincor-
32 porated entity, the election provided for in subparagraph (i) of this
33 paragraph shall be deemed to have been revoked as of the beginning of
34 the taxable year unless one or more of the persons having a propor-
35 tionate interest or interests, amounting to more than fifty percent of
36 all such interests, in the taxpayer's unincorporated business gross
37 income and unincorporated business deductions for such taxable year were
38 persons having a proportionate interest or interests, amounting to more
39 than fifty percent of all such interests, in the taxpayer's unincorpo-
40 rated business gross income and unincorporated business deductions at
41 the end of the taxpayer's last taxable year beginning before January
42 first, two thousand five. For purposes of this clause, a transfer of an
43 ownership interest in unincorporated business gross income or unincorpo-
44 rated business deductions upon the death of a partner or owner to such
45 deceased partner's or owner's estate shall be disregarded but transfers
46 by such decedent's estate shall not be disregarded.

47 (D) Once the election provided for in subparagraph (i) of this para-
48 graph has been revoked by the taxpayer pursuant to clause (A) or deemed
49 revoked pursuant to clauses (B) or (C) of this subparagraph, the taxpay-
50 er shall be barred from using the method prescribed in paragraph one of
51 this subdivision for the taxable year in which the election has been
52 revoked or deemed revoked and any subsequent taxable year.

53 (c) Allocation by formula. If subdivision (b) does not apply to the
54 taxpayer, the portion allocable to the city shall be determined by
55 multiplying (A) the business income by (B) a business allocation
56 percentage to be determined by adding together the percentages computed

1 under paragraphs one, two and three of this subdivision, and dividing
2 the result by the number of percentages; provided, however, that for
3 taxable years beginning on or after July first, nineteen hundred nine-
4 ty-six, a taxpayer that is a "manufacturing business," as defined in
5 subdivision (g) of this section, may determine its business allocation
6 percentage as provided in such subdivision (g):

7 (1) Property percentage. The percentage computed by dividing (A) the
8 average of the value, at the beginning and end of the taxable year, of
9 real and tangible personal property connected with the unincorporated
10 business and located within the city, by (B) the average of the value,
11 at the beginning and end of the taxable year, of all real and tangible
12 personal property connected with the unincorporated business and located
13 both within and without the city. For this purpose, for taxable years
14 beginning before January first, two thousand five, real property shall
15 include real property rented to the unincorporated business and, for
16 this purpose, for taxable years beginning on and after January first,
17 two thousand five, real and tangible personal property shall include
18 real and tangible personal property rented to the unincorporated busi-
19 ness and the value of such real and tangible personal property rented to
20 the unincorporated business shall mean the product of (i) eight and (ii)
21 the gross rents payable for the rental of such property during the taxa-
22 ble year.

23 (2) Payroll percentage. The percentage computed by dividing (A) the
24 total wages, salaries and other personal service compensation paid or
25 incurred during the taxable year to employees in connection with the
26 unincorporated business carried on within the city, by (B) the total of
27 all wages, salaries and other personal service compensation paid or
28 incurred during the taxable year to employees in connection with the
29 unincorporated business carried on both within and without the city.

30 (3) Gross income percentage. The percentage computed by dividing (A)
31 the gross sales or charges for services performed by or through an agen-
32 cy located within the city, by (B) the total of all gross sales or
33 charges for services performed within and without the city. The sales or
34 charges to be allocated to the city shall include all sales negotiated
35 or consummated, and charges for services performed, by an employee,
36 agent, agency or independent contractor chiefly situated at, connected
37 by contract or otherwise with, or sent out from, offices of the unincor-
38 porated business, or other agencies, situated within the city; provided,
39 however, that for taxable years beginning on or after July first, nine-
40 teen hundred ninety-six, sales of tangible personal property shall not
41 be allocated to the city as provided in this paragraph, but shall be
42 allocated to the city only where shipments are made to points within the
43 city, and provided, further, that:

44 (A) for taxable years beginning on or after July first, two thousand
45 five, for taxpayers having gross receipts for the taxable year, deter-
46 mined without regard to any deductions, of less than one hundred thou-
47 sand dollars, charges for services performed shall be allocated to the
48 city to the extent that the services are performed within the city;

49 (B) for taxable years beginning on or after July first, two thousand
50 six, for taxpayers having gross receipts for the taxable year, deter-
51 mined without regard to any deductions, of less than three hundred thou-
52 sand dollars, charges for services performed shall be allocated to the
53 city to the extent that the services are performed within the city; and

54 (C) for taxable years beginning on or after July first, two thousand
55 seven, for all other taxpayers, charges for services performed shall be

1 allocated to the city to the extent that the services are performed
2 within the city.

3 (d) Other allocation methods. The portion allocable to the city shall
4 be determined in accordance with rules and regulations of the commis-
5 sioner of finance if it shall appear to the commissioner of finance that
6 the income from the city is not fairly and equitably reflected under the
7 provisions of either subdivision (b) or subdivision (c) of this section.

8 (e) Special rules for real estate. Income and deductions from the
9 rental of real property, and gain and loss from the sale, exchange or
10 other disposition of real property, shall not be subject to allocation
11 under subdivision (b), (c), or (d) of this section, but shall be consid-
12 ered as entirely derived from or connected with the state, other than
13 this state, in which such property is located or, if such property is
14 located in this state, the political subdivision thereof. To the extent
15 that anything in this subdivision is inconsistent with any provision of
16 subdivision (d) of section 11-502, subdivision (c) of section 11-506 or
17 subdivision (p) of section 11-507 of this chapter, the provisions of
18 such subdivisions shall take precedence over the provisions of this
19 subdivision.

20 (e-1) Special rules for publishers and broadcasters. (1) Notwithstand-
21 ing anything in paragraph three of subdivision (c) of this section to
22 the contrary and except as provided in paragraph four of this subdivi-
23 sion, in the case of a taxpayer engaged in the business of publishing
24 newspapers or periodicals, there shall be allocated to the city, for
25 purposes of such paragraph three, the gross sales or charges for
26 services arising from sales of subscriptions to, and advertising
27 contained in, such newspapers or periodicals, to the extent that such
28 newspapers or periodicals are delivered to points within the city.

29 (2) Notwithstanding anything in paragraph three of subdivision (c) of
30 this section to the contrary and except as provided in paragraph four of
31 this subdivision, in the case of a taxpayer engaged in the business of
32 broadcasting radio or television programs, whether through the public
33 airwaves or by cable, direct or indirect satellite transmission, or any
34 other means of transmission, there shall be allocated to the city, for
35 purposes of such paragraph three, a portion of the gross sales or charg-
36 es for services arising from the sale of subscriptions to such programs
37 or from the broadcasting of such programs and of commercial messages in
38 connection therewith, such portion to be determined according to the
39 number of listeners or viewers within and without the city.

40 (3) Notwithstanding anything in this section, other than subdivision
41 (e) of this section, to the contrary, in the case of a taxpayer that is
42 substantially engaged, in the aggregate, in any combination of the busi-
43 nesses referred to in paragraphs one, two and four of this subdivision,
44 the portion of business income allocable to the city shall be determined
45 in accordance with the provisions of subdivision (c) of this section, as
46 modified by paragraphs one, two and four of this subdivision, unless the
47 commissioner of finance determines that the business income from the
48 city is not fairly and equitably reflected under the provisions of such
49 subdivision (c), in which event the provisions of subdivision (d) of
50 this section shall apply in determining the portion of business income
51 allocable to the city and the provisions of subdivision (b) of this
52 section shall not apply. For purposes of this subdivision, a taxpayer
53 shall be deemed to be substantially engaged in a business or businesses
54 referred to in such paragraphs one and two if more than ten percent of
55 the taxpayer's gross receipts for the taxable year are attributable to
56 such business or businesses.

1 (4) Notwithstanding anything in paragraph one or two of this subdivi-
2 sion to the contrary, for taxable years beginning on or after January
3 first, two thousand two, in the case of a taxpayer engaged in the busi-
4 ness of publishing newspapers or periodicals, or broadcasting radio or
5 television programs, whether through the public airwaves or by cable,
6 direct or indirect satellite transmission, or any other means of trans-
7 mission, there shall be allocated to the city, for purposes of paragraph
8 three of subdivision (c) of this section, the gross sales or charges to
9 subscribers located in the city for subscriptions to such newspapers,
10 periodicals, or program services. For purposes of this paragraph, a
11 subscriber shall be deemed located in the city if, in the case of news-
12 papers and periodicals, the mailing address for the subscription is
13 within the city and, in the case of program services, the billing
14 address for the subscription is within the city. For purposes of this
15 clause, "subscriber" shall mean a member of the general public who
16 receives such newspapers, periodicals or program services and does not
17 further distribute them.

18 (e-2) Rules for receipts from certain services to investment compa-
19 nies. (1) For taxable years beginning on or after January first, two
20 thousand one, for purposes of paragraph three of subdivision (c) of this
21 section, the portion of receipts received from an investment company
22 arising from the sale of management, administration or distribution
23 services to such investment company determined in accordance with para-
24 graph two of this subdivision shall be deemed to arise from services
25 performed within the city, such portion referred to herein as the Staten
26 Island city portion.

27 (2) The Staten Island city portion shall be the product of the total
28 of such receipts from the sale of such services and a fraction. The
29 numerator of that fraction is the sum of the monthly percentages, as
30 defined hereinafter, determined for each month of the investment compa-
31 ny's taxable year for federal income tax purposes which taxable year
32 ends within the taxable year of the taxpayer, but excluding any month
33 during which the investment company had no outstanding shares. The
34 monthly percentage for each such month is determined by dividing the
35 number of shares in the investment company which are owned on the last
36 day of the month by shareholders that are domiciled in the city by the
37 total number of shares in the investment company outstanding on that
38 date. The denominator of the fraction is the number of such monthly
39 percentages.

40 (3)(A) For purposes of this subdivision the term "domicile", in the
41 case of an individual shall have the meaning ascribed to it under chap-
42 ter seventeen of this title; an estate or trust is domiciled in the city
43 if it is a city resident estate or trust as defined in paragraph three
44 of subdivision (b) of section 11-1705 of the code of the proceeding
45 municipality; a business entity is domiciled in the city if the location
46 of the actual seat of management or control is in the city. It shall be
47 presumed that the domicile of a shareholder, with respect to any month,
48 is his, her or its mailing address on the records of the investment
49 company as of the last day of such month.

50 (B) For purposes of this subdivision, the term "investment company"
51 means a regulated investment company, as defined in section eight
52 hundred fifty-one of the internal revenue code, and a partnership to
53 which subdivision (a) of section seven thousand seven hundred four of
54 the internal revenue code applies, by virtue of paragraph three of
55 subdivision (c) of section seven thousand seven hundred four of such
56 code, and that meets the requirements of subdivision (b) of section

1 eight hundred fifty-one of such code. The provisions of this subpara-
2 graph shall be applied to the taxable year for federal income tax
3 purposes of the business entity that is asserted to constitute an
4 investment company that ends within the taxable year of the taxpayer.

5 (C) For purposes of this subdivision, the term "receipts from an
6 investment company" includes amounts received directly from an invest-
7 ment company as well as amounts received from the shareholders in such
8 investment company in their capacity as such.

9 (D) For purposes of this subdivision, the term "management services"
10 means the rendering of investment advice to an investment company,
11 making determinations as to when sales and purchases of securities are
12 to be made on behalf of an investment company, or the selling or
13 purchasing of securities constituting assets of an investment company,
14 and related activities, but only where such activity or activities are
15 performed pursuant to a contract with the investment company entered
16 into pursuant to subdivision (a) of section fifteen of the federal
17 investment company act of nineteen hundred forty, as amended.

18 (E) For purposes of this subdivision, the term "distribution services"
19 means the services of advertising, servicing investor accounts, includ-
20 ing redemptions, marketing shares or selling shares of an investment
21 company, but, in the case of advertising, servicing investor accounts,
22 including redemptions, or marketing shares, only where such service is
23 performed by a person who is, or was, in the case of a closed end compa-
24 ny, also engaged in the service of selling such shares. In the case of
25 an open end company, such service of selling shares must be performed
26 pursuant to a contract entered into pursuant to subdivision (b) of
27 section fifteen of the federal investment company act of nineteen
28 hundred forty, as amended.

29 (F) For purposes of this subdivision, the term "administration
30 services" includes clerical, accounting, bookkeeping, data processing,
31 internal auditing, legal and tax services performed for an investment
32 company but only if the provider of such service or services during the
33 taxable year in which such service or services are sold also sells
34 management or distribution services, as defined in this subdivision, to
35 such investment company.

36 (e-3) Rules for receipts for services performed by registered securi-
37 ties or commodities brokers or dealers. (1) For taxable years beginning
38 after two thousand eight, in the case of a taxpayer which is a regis-
39 tered securities or commodities broker or dealer, for purposes of para-
40 graph three of subdivision (c) of this section, the receipts specified
41 in subparagraphs (A) through (G) of this paragraph shall be deemed to
42 arise from services performed within the city to the extent set forth in
43 such subparagraphs.

44 (A) Receipts constituting brokerage commissions derived from the
45 execution of securities or commodities purchase or sales orders for the
46 accounts of customers shall be deemed to arise from services performed
47 at the mailing address in the records of the taxpayer of the customer
48 who is responsible for paying such commissions.

49 (B) Receipts constituting margin interest earned on behalf of broker-
50 age accounts shall be deemed to arise from services performed at the
51 mailing address in the records of the taxpayer of the customer who is
52 responsible for paying such margin interest.

53 (C) Gross income, including any accrued interest or dividends, from
54 principal transactions for the purchase or sale of stocks, bonds,
55 foreign exchange and other securities or commodities, including futures
56 and forward contracts, options and other types of securities or commod-

1 ities derivatives contracts, shall be deemed to arise from services
2 performed within the city either (i) to the extent that production cred-
3 its are awarded to branches, offices or employees of the taxpayer within
4 the city as a result of such principal transactions or (ii) if the
5 taxpayer so elects, to the extent that the gross proceeds from such
6 principal transactions, determined without deduction for any cost
7 incurred by the taxpayer to acquire the securities or commodities, are
8 generated from sales of securities or commodities to customers within
9 the city based upon the mailing addresses of such customers in the
10 records of the taxpayer. For purposes of clause (ii) of this subpara-
11 graph, the taxpayer shall separately calculate such gross income from
12 principal transactions by type of security or commodity. For purposes of
13 this subparagraph, gross income from principal transactions shall be
14 determined after the deduction of any cost incurred by the taxpayer to
15 acquire the securities or commodities. For purposes of this subdivision,
16 the term "production credits" means credits granted pursuant to the
17 internal accounting system used by the taxpayer to measure the amount of
18 revenue that should be awarded to a particular branch or office or
19 employee of the taxpayer which is based, at least in part, on the
20 branch's, the office's or the employee's particular activities. Upon
21 request, the taxpayer shall be required to furnish a detailed explana-
22 tion of such internal accounting system to the department.

23 (D) (i) Receipts constituting fees earned by the taxpayer for advisory
24 services to a customer in connection with the underwriting of securities
25 for such customer, such customer being the entity which is contemplating
26 issuing or is issuing securities, or fees earned by the taxpayer for
27 managing an underwriting shall be deemed to arise from services
28 performed at the mailing address in the records of the taxpayer of such
29 customer who is responsible for paying such fees.

30 (ii) Receipts constituting the primary spread or selling concession
31 from underwritten securities shall be deemed to arise from services
32 performed within the city to the extent that production credits are
33 awarded to branches, offices or employees of the taxpayer within the
34 city as a result of the sale of the underwritten securities.

35 (iii) The term "primary spread" means the difference between the price
36 paid by the taxpayer to the issuer of the securities being marketed and
37 the price received from the subsequent sale of the underwritten securi-
38 ties at the initial public offering price, less any selling concession
39 and any fees paid to the taxpayer for advisory services or any manager's
40 fees, if such fees are not paid by the customer to the taxpayer sepa-
41 rately. The term "public offering price" means the price agreed upon by
42 the taxpayer and the issuer at which the securities are to be offered to
43 the public. The term "selling concession" means the amount paid to the
44 taxpayer for participating in the underwriting of a security where the
45 taxpayer is not the lead underwriter.

46 (E) Receipts constituting interest earned by the taxpayer on loans and
47 advances made by the taxpayer to an entity affiliated with the taxpayer
48 shall be deemed to arise from services performed at the principal place
49 of business of such affiliated entity. For purposes of this subpara-
50 graph, an entity shall be considered affiliated with the taxpayer if
51 such entity and the taxpayer have eighty percent or more common direct
52 or indirect, actual or beneficial ownership.

53 (F) Receipts constituting account maintenance fees shall be deemed to
54 arise from services performed at the mailing address in the records of
55 the taxpayer of the customer who is responsible for paying such account
56 maintenance fees.

1 (G) Receipts constituting fees for management or advisory services,
2 including fees for advisory services in relation to merger or acquisi-
3 tion activities, but excluding fees paid for services described in para-
4 graph one of subdivision (e-2) of this section, shall be deemed to arise
5 from services performed at the mailing address in the records of the
6 taxpayer of the customer who is responsible for paying such fees.

7 (2) For purposes of this subdivision, the term "securities" shall have
8 the same meaning as in paragraph two of subdivision (c) of section four
9 hundred seventy-five of the internal revenue code and the term "commod-
10 ities" shall have the same meaning as in paragraph two of subdivision
11 (e) of section four hundred seventy-five of such code. The term "regis-
12 tered securities or commodities broker or dealer" means a broker or
13 dealer registered as such by the securities and exchange commission or
14 the commodities futures trading commission, and shall include an OTC
15 derivatives dealer as defined under regulations of the securities and
16 exchange commission at title seventeen, part two hundred forty, section
17 3b-12 of the code of federal regulations (17 CFR 240.3b-12).

18 (3) If the taxpayer receives any of the receipts enumerated in para-
19 graph one of this subdivision as a result of a securities correspondent
20 relationship such taxpayer has with another registered securities or
21 commodities broker or dealer with the taxpayer acting in this relation-
22 ship as the clearing firm, such receipts shall be deemed to arise from
23 services performed within the city to the extent set forth in each of
24 the subparagraphs in paragraph one of this subdivision. The amount of
25 such receipts shall exclude the amount the taxpayer is required to pay
26 to the correspondent firm for such correspondent relationship. If the
27 taxpayer receives any of the receipts enumerated in paragraph one of
28 this subdivision as a result of a securities correspondent relationship
29 such taxpayer has with another registered securities or commodities
30 broker or dealer with the taxpayer acting in this relationship as the
31 introducing firm, such receipts shall be deemed to arise from services
32 performed within the city to the extent set forth in each of the subpar-
33 agraphs in paragraph one of this subdivision.

34 (4) If, for purposes of subparagraph (A), (B), (F), or (G) of para-
35 graph one of this subdivision, and clause (i) of subparagraph (C) of
36 paragraph one of this subdivision, the taxpayer is unable from its
37 records to determine the mailing address of the customer, the receipts
38 described in any of such subparagraphs and such clause shall be deemed
39 to arise from services performed at the branch or office of the taxpayer
40 that generates the transaction for the customer that generated such
41 receipts.

42 (f) Allocation of investment income. (1) The investment income of an
43 unincorporated business shall be allocated to the city by multiplying
44 such investment income by an investment allocation percentage to be
45 determined as follows:

46 (A) multiply the amount of its investment capital invested in each
47 stock, bond or other security, other than governmental securities,
48 during the period covered by its return by the issuer's allocation
49 percentage, determined as provided in paragraph two of this subdivision,
50 of the issuer or obligor thereof:

51 (B) add together the products so obtained; and

52 (C) divide the sum so obtained by the total of its investment capital
53 invested during such period in stocks, bonds and other securities;
54 provided, however, that in case any investment capital is invested in
55 any stock, bond or other security during only a portion of the period
56 covered by the return, only such portion of such capital shall be taken

1 into account; and provided, further, that if a taxpayer's investment
2 allocation percentage is zero, interest received on bank accounts shall
3 be allocated in the manner provided in subdivision (b), (c) or (d) of
4 this section.

5 (2) (A) In the case of an issuer or obligor subject to tax under
6 subchapter two or three-A of chapter six of this title, or subject to
7 tax as a utility corporation under chapter eleven of this title, the
8 issuer's allocation percentage shall be the percentage of the appropri-
9 ate measure which is required to be allocated within the city on the
10 report or reports, if any, required of the issuer or obligor under chap-
11 ter six or eleven of this title for the preceding year. The appropriate
12 measure referred to in this subparagraph shall be: in the case of an
13 issuer or obligor subject to subchapter two of chapter six of this
14 title, entire capital; and in the case of an issuer or obligor subject
15 to chapter eleven of this title as a utility corporation, gross income.

16 (B) In the case of an issuer or obligor subject to tax under part four
17 of subchapter three of chapter six of this title, the issuer's allo-
18 cation percentage shall be determined as follows:

19 (i) In the case of a banking corporation described in paragraphs one
20 through eight of subdivision (a) of section 11-640 of this title which
21 is organized under the laws of the United States, this state or any
22 other state of the United States, the issuer's allocation percentage
23 shall be its alternative entire net income allocation percentage, as
24 defined in subdivision (c) of section 11-642 of this title, for the
25 preceding year. In the case of such a banking corporation whose alterna-
26 tive entire net income for the preceding year is derived exclusively
27 from business carried on within the city, its issuer's allocation
28 percentage shall be one hundred percent.

29 (ii) In the case of a banking corporation described in paragraph two
30 of subdivision (a) of section 11-640 of this title which is organized
31 under the laws of a country other than the United States, the issuer's
32 allocation percentage shall be determined by dividing (I) the amount
33 described in clause (i) of subparagraph (A) of paragraph two of subdivi-
34 sion (a) of section 11-642 of this title with respect to such issuer or
35 obligor for the preceding year, by (II) the gross income of such issuer
36 or obligor from all sources within and without the United States, for
37 such preceding year, whether or not included in alternative entire net
38 income for such year.

39 (iii) In the case of an issuer or obligor described in paragraph nine
40 of subdivision (a) or in paragraph two of subdivision (d) of section
41 11-640 of this title, the issuer's allocation percentage shall be deter-
42 mined by dividing the portion of the entire capital of the issuer or
43 obligor allocable to the city for the preceding year by the entire capi-
44 tal, wherever located, of the issuer or obligor for the preceding year.

45 (C) Provided, however, that if a report or reports for the preceding
46 year are not filed, or if filed do not contain information which would
47 permit the determination of such issuer's allocation percentage, then
48 the issuer's allocation percentage to be used shall, at the discretion
49 of the commissioner of finance, be either (i) the issuer's allocation
50 percentage derived from the most recently filed report or reports of the
51 issuer or obligor or (ii) a percentage calculated, by the commissioner
52 of finance, reasonably to indicate the degree of economic presence in
53 the city of the issuer or obligor during the preceding year.

54 (3) For purposes of this subdivision, investment capital shall be
55 determined by taking the average value of the gross assets included
56 therein, less liabilities deductible therefrom pursuant to the

1 provisions of subdivision (h) of section 11-501 of this chapter. The
2 value of investment capital which consists of marketable securities
3 shall be the fair market value thereof and the value of investment capi-
4 tal other than marketable securities shall be the value thereof shown on
5 the books and records of the unincorporated business in accordance with
6 generally accepted accounting principles.

7 (g) Special rules for manufacturing businesses. (1) For taxable years
8 beginning on or after July first, nineteen hundred ninety-six and before
9 January first, two thousand eleven, a manufacturing business may elect
10 to determine its business allocation percentage by adding together the
11 percentages determined under paragraphs one, two and three of subdivi-
12 sion (c) of this section and an additional percentage equal to the
13 percentage determined under paragraph three of subdivision (c) of this
14 section, and dividing the result by the number of percentages so added
15 together.

16 (2) An election under this subdivision must be made on a timely filed
17 (determined with regard to extensions granted) original return for the
18 taxable year. Once made for a taxable year, such election shall be irre-
19 vocable for that taxable year. A separate election must be made for each
20 taxable year. A manufacturing business that has failed to make an
21 election as provided in this paragraph shall be required to determine
22 its business allocation percentage without regard to the provisions of
23 this subdivision. Notwithstanding anything in this paragraph to the
24 contrary, the commissioner of finance may permit a manufacturing busi-
25 ness to make or revoke an election under this subdivision, upon such
26 terms and conditions as the commissioner may prescribe, where the
27 commissioner determines that such permission should be granted in the
28 interests of fairness and equity due to a change in circumstances
29 resulting from an audit adjustment.

30 (3) As used in this subdivision, the term "manufacturing business"
31 means an unincorporated business primarily engaged in the manufacturing
32 and sale thereof of tangible personal property; and the term "manufac-
33 turing" includes the process, including the assembly process (i) of
34 working raw materials into wares suitable for use or (ii) which gives
35 new shapes, new qualities or new combinations to matter which already
36 has gone through some artificial process, by the use of machinery,
37 tools, appliances and other similar equipment. An unincorporated busi-
38 ness shall be deemed to be primarily engaged in the activities described
39 in the preceding sentence if more than fifty percent of its gross
40 receipts for the taxable year are attributable to such activities.

41 (h) Notwithstanding subdivision (d) of this section, if it shall
42 appear to the commissioner of finance that any business or investment
43 allocation percentage determined pursuant to this section does not prop-
44 erly reflect the activity, business, or income of a taxpayer within the
45 city, the commissioner of finance shall be authorized in his or her
46 discretion, in the case of a business allocation percentage, to adjust
47 it by (1) excluding one or more of the factors therein; (2) including
48 one or more factors, such as expenses, purchases, contract values, minus
49 subcontract values; (3) excluding one or more assets in computing such
50 allocation percentage, provided the income therefrom is also excluded in
51 determining unincorporated business entire net income, or (4) any other
52 similar or different method calculated to effect a fair and proper allo-
53 cation of the income reasonably attributable to the city, and in the
54 case of an investment allocation percentage, to adjust it by excluding
55 one or more assets in computing such percentage; provided the income
56 therefrom is also excluded in determining unincorporated business entire

1 net income. The commissioner of finance from time to time shall publish
2 all rulings of general public interest with respect to any application
3 of the provisions of this subdivision.

4 (i) Notwithstanding subdivision (c) of this section, but subject to
5 subdivision (g) of this section, the business allocation percentage
6 shall be computed in the manner set forth in this subdivision.

7 (1) For taxable years beginning in two thousand nine, the business
8 allocation percentage shall be determined by adding together the follow-
9 ing percentages:

10 (A) the product of thirty percent and the percentage determined under
11 paragraph one of subdivision (c) of this section,

12 (B) the product of thirty percent and the percentage determined under
13 paragraph two of subdivision (c) of this section, and

14 (C) the product of forty percent and the percentage determined under
15 paragraph three of subdivision (c) of this section.

16 (2) For taxable years beginning in two thousand ten, the business
17 allocation percentage shall be determined by adding together the follow-
18 ing percentages:

19 (A) the product of twenty-seven percent and the percentage determined
20 under paragraph one of subdivision (c) of this section,

21 (B) the product of twenty-seven percent and the percentage determined
22 under paragraph two of subdivision (c) of this section, and

23 (C) the product of forty-six percent and the percentage determined
24 under paragraph three of subdivision (c) of this section.

25 (3) For taxable years beginning in two thousand eleven, the business
26 allocation percentage shall be determined by adding together the follow-
27 ing percentages:

28 (A) the product of twenty-three and one-half percent and the percent-
29 age determined under paragraph one of subdivision (c) of this section,

30 (B) the product of twenty-three and one-half percent and the percent-
31 age determined under paragraph two of subdivision (c) of this section,
32 and

33 (C) the product of fifty-three percent and the percentage determined
34 under paragraph three of subdivision (c) of this section.

35 (4) For taxable years beginning in two thousand twelve, the business
36 allocation percentage shall be determined by adding together the follow-
37 ing percentages:

38 (A) the product of twenty percent and the percentage determined under
39 paragraph one of subdivision (c) of this section,

40 (B) the product of twenty percent and the percentage determined under
41 paragraph two of subdivision (c) of this section, and

42 (C) the product of sixty percent and the percentage determined under
43 paragraph three of subdivision (c) of this section.

44 (5) For taxable years beginning in two thousand thirteen, the business
45 allocation percentage shall be determined by adding together the follow-
46 ing percentages:

47 (A) the product of sixteen and one-half percent and the percentage
48 determined under paragraph one of subdivision (c) of this section,

49 (B) the product of sixteen and one-half percent and the percentage
50 determined under paragraph two of subdivision (c) of this section, and

51 (C) the product of sixty-seven percent and the percentage determined
52 under paragraph three of subdivision (c) of this section.

53 (6) For taxable years beginning in two thousand fourteen, the business
54 allocation percentage shall be determined by adding together the follow-
55 ing percentages:

1 (A) the product of thirteen and one-half percent and the percentage
2 determined under paragraph one of subdivision (c) of this section,

3 (B) the product of thirteen and one-half percent and the percentage
4 determined under paragraph two of subdivision (c) of this section, and

5 (C) the product of seventy-three percent and the percentage determined
6 under paragraph three of subdivision (c) of this section.

7 (7) For taxable years beginning in two thousand fifteen, the business
8 allocation percentage shall be determined by adding together the follow-
9 ing percentages:

10 (A) the product of ten percent and the percentage determined under
11 paragraph one of subdivision (c) of this section,

12 (B) the product of ten percent and the percentage determined under
13 paragraph two of subdivision (c) of this section, and

14 (C) the product of eighty percent and the percentage determined under
15 paragraph three of subdivision (c) of this section.

16 (8) For taxable years beginning in two thousand sixteen, the business
17 allocation percentage shall be determined by adding together the follow-
18 ing percentages:

19 (A) the product of six and one-half percent and the percentage deter-
20 mined under paragraph one of subdivision (c) of this section,

21 (B) the product of six and one-half percent and the percentage deter-
22 mined under paragraph two of subdivision (c) of this section, and

23 (C) the product of eighty-seven percent and the percentage determined
24 under paragraph three of subdivision (c) of this section.

25 (9) For taxable years beginning in two thousand seventeen, the busi-
26 ness allocation percentage shall be determined by adding together the
27 following percentages:

28 (A) the product of three and one-half percent and the percentage
29 determined under paragraph one of subdivision (c) of this section,

30 (B) the product of three and one-half percent and the percentage
31 determined under paragraph two of subdivision (c) of this section, and

32 (C) the product of ninety-three percent and the percentage determined
33 under paragraph three of subdivision (c) of this section.

34 (10) For taxable years beginning after two thousand seventeen, the
35 business allocation percentage shall be the percentage determined under
36 paragraph three of subdivision (c) of this section.

37 (11) The commissioner shall promulgate rules necessary to implement
38 the provisions of this subdivision under such circumstances where any of
39 the percentages to be determined under paragraph one, two or three of
40 subdivision (c) of this section cannot be determined because the taxpay-
41 er has no property, payroll or gross receipts from sales or services
42 within or without the city.

43 § 11-509 Deductions not subject to allocation. (a) In computing
44 unincorporated business taxable income, there shall be allowed, without
45 allocation under section 11-508 of this chapter, deductions for reason-
46 able compensation for taxable years beginning before January first, two
47 thousand seven, not in excess of five thousand dollars, and for taxable
48 years beginning on or after January first, two thousand seven, not in
49 excess of ten thousand dollars, for personal services of the proprietor
50 and each partner actively engaged in the unincorporated business, but
51 the aggregate of such deductions shall not exceed twenty per centum of
52 the unincorporated business taxable income computed without the benefit
53 of any deductions under this subdivision or the unincorporated business
54 exemptions under section 11-510 of this chapter.

55 (b) Subject to the conditions provided in paragraphs three and four of
56 this subdivision at the election of the taxpayer there shall also be

1 allowed, without allocation under section 11-508 of this chapter, either
2 or both of the items set forth in paragraphs one and two of this subdivi-
3 sion, except that only one of the items shall be allowed with respect
4 to any one item of property.

5 (1) Depreciation with respect to any property such as described in
6 paragraphs three or four of this subdivision, and subject to the condi-
7 tions provided therein, not exceeding twice the depreciation allowed
8 with respect to the same property for federal income tax purposes. Such
9 deduction shall be allowed only upon condition that no deduction shall
10 be allowed pursuant to section 11-507 of this chapter for depreciation
11 of the same property, and the total of all deductions allowed pursuant
12 to this paragraph in any taxable year or years with respect to any prop-
13 erty shall not exceed its cost or other basis and, in the case of an
14 unincorporated business carried on both within and without this city,
15 with respect to property described in paragraph four of this subdivi-
16 sion, such total shall not exceed its cost or other basis multiplied by
17 (A) the percentage of the excess of the taxpayer's unincorporated busi-
18 ness gross income over its unincorporated business deductions allocated
19 to this city, or (B) the percentage of the taxpayer's business income
20 allocated to this city, whichever is applicable, which percentage shall
21 be determined under section 11-508 of this chapter for the first year
22 such depreciation is deducted.

23 (2) Expenditures paid or incurred during the taxable year for the
24 construction, reconstruction, erection or acquisition of any property
25 such as described in paragraph three or four of this subdivision, and
26 subject to the conditions provided therein, which is used or to be used
27 for purposes of research or development in the experimental or laborato-
28 ry sense. Such purposes shall not be deemed to include the ordinary
29 testing or inspection of materials or products for quality control,
30 efficiency surveys, management studies, consumer surveys, advertising,
31 promotions or research in connection with literary, historical or simi-
32 lar projects. Such deduction shall be allowed only on condition that, in
33 the case of an unincorporated business carried on both within and with-
34 out this city, with respect to property described in paragraph four of
35 this subdivision, such deduction does not exceed the expenditures multi-
36 plied by (A) the percentage of the excess of the taxpayer's unincorpo-
37 rated business gross income over its unincorporated business deductions
38 allocated to this city, or (B) the percentage of the taxpayer's business
39 income allocated to this city, whichever is applicable, which percentage
40 shall be determined under section 11-508 of this chapter for the first
41 year such depreciation is deducted, and that, for the taxable year and
42 all succeeding taxable years, no deduction shall be allowed pursuant to
43 section 11-507 of this chapter on account of such expenditures or on
44 account of depreciation of the same property, except to the extent that
45 its basis may be attributable to factors other than such expenditures,
46 or in case a deduction is allowable pursuant to this paragraph for only
47 a part of such expenditures, on condition that any deduction allowable
48 for federal income tax purposes on account of such expenditures or on
49 account of depreciation of the same property shall be proportionately
50 reduced in determining the deductions allowable pursuant to section
51 11-507 of this chapter for the taxable year and all succeeding taxable
52 years. With respect to property which is used or to be used for research
53 and development only in part, or during only part of its useful life,
54 the deduction allowable pursuant to this paragraph shall be limited to a
55 proportionate part of the expenditures relating thereto. If a deduction
56 shall have been allowed pursuant to this paragraph for all or part of

1 such expenditures with respect to any property, and such property is
2 used for purposes other than research and development to a greater
3 extent than originally reported, the taxpayer shall report such use in
4 the taxpayer's return for the first taxable year during which it occurs,
5 and the commissioner of finance may recompute the tax for the year or
6 years for which such deduction was allowed, and may assess any addi-
7 tional tax resulting from such recomputation within the time fixed by
8 subdivision (c) of section 11-523 of this chapter.

9 (3) For purposes of this paragraph, such deduction shall be allowed
10 only with respect to tangible property which is depreciable pursuant to
11 section one hundred sixty-seven of the internal revenue code, having a
12 situs in the city and used in the taxpayer's trade or business, (A)
13 constructed, reconstructed or erected after December thirty-first, nine-
14 teen hundred sixty-five, pursuant to a contract which was, on or before
15 December thirty-first, nineteen hundred sixty-seven, and at all times
16 thereafter, binding on the taxpayer or, property, the physical
17 construction, reconstruction or erection of which began on or before
18 December thirty-first, nineteen hundred sixty-seven or which began after
19 such date pursuant to an order placed on or before December thirty-
20 first, nineteen hundred sixty-seven, and then only with respect to that
21 portion of the basis thereof or the expenditure relating thereto which
22 is properly attributable to such construction, reconstruction or
23 erection after December thirty-first, nineteen hundred sixty-five, or
24 (B) acquired after December thirty-first, nineteen hundred sixty-five,
25 pursuant to a contract which was, on or before December thirty-first,
26 nineteen hundred sixty-seven, and at all times thereafter, binding on
27 the taxpayer or pursuant to an order placed on or before December thir-
28 ty-first, nineteen hundred sixty-seven, by purchase as defined in
29 section one hundred seventy-nine (d) of the internal revenue code, if
30 the original use of such property commenced with the taxpayer, commenced
31 in the city and commenced after December thirty-first, nineteen hundred
32 sixty-five or (C) acquired, constructed, reconstructed, or erected
33 subsequent to December thirty-first, nineteen hundred sixty-seven, if
34 such acquisition, construction, reconstruction or erection is pursuant
35 to a plan of the taxpayer which was in existence December thirty-first,
36 nineteen hundred sixty-seven and not thereafter substantially modified,
37 and such acquisition, construction, reconstruction or erection would
38 qualify under the rules in paragraph four, five or six of subsection (h)
39 of section forty-eight of the internal revenue code provided all refer-
40 ences in such paragraphs four, five and six to the dates October nine,
41 nineteen hundred sixty-six, and October ten, nineteen hundred sixty-six,
42 shall be read as December thirty-first, nineteen hundred sixty-seven. A
43 taxpayer shall be allowed a deduction under subparagraph (A), (B) or (C)
44 of this paragraph only if the tangible property shall be delivered or
45 the construction, reconstruction or erection shall be completed on or
46 before December thirty-first, nineteen hundred sixty-nine, except in the
47 case of tangible property which is acquired, constructed, reconstructed
48 or erected pursuant to a contract which was, on or before December thir-
49 ty-first, nineteen hundred sixty-seven, and at all times thereafter,
50 binding on the taxpayer. However, for any taxable year beginning on or
51 after January first, nineteen hundred sixty-eight, a taxpayer shall not
52 be allowed a deduction under paragraph one of this subdivision with
53 respect to tangible personal property leased to any other person or
54 corporation, provided, any contract or agreement to lease or rent or for
55 a license to use such property shall be considered a lease. With
56 respect to property which a taxpayer uses for purposes other than leas-

1 ing for part of a taxable year and leases for a part of a taxable year,
2 a deduction under paragraph one of this subdivision may be taken in
3 proportion to the part of the year such property is used by the taxpay-
4 er.

5 (4) For purposes of this paragraph, such deductions shall be allowed
6 only with respect to tangible property which is depreciable pursuant to
7 section one hundred sixty-seven of the internal revenue code, having a
8 situs in this city and used in the taxpayer's trade or business, (A) the
9 construction, reconstruction, or erection of which is completed after
10 December thirty-first, nineteen hundred sixty-seven, and then only with
11 respect to that portion of the basis thereof or the expenditures relat-
12 ing thereto which is properly attributable to such construction, recon-
13 struction or erection after December thirty-first, nineteen hundred
14 sixty-three, or (B) acquired after December thirty-first, nineteen
15 hundred sixty-seven, by purchase as defined in section one hundred
16 seventy-nine (d) of the internal revenue code, if the original use of
17 such property commenced with the taxpayer, commenced in this city and
18 commenced after December thirty-first, nineteen hundred sixty-five.
19 Provided, however, a deduction under paragraph one of this subdivision
20 shall be allowed with respect to property described in this paragraph
21 only on condition that such property shall be principally used by the
22 taxpayer in the production of goods by manufacturing; processing; assem-
23 bling; refining; mining; extracting; farming; agriculture; horticulture;
24 floriculture; viticulture or commercial fishing, provided, manufacturing
25 shall mean the process of working raw materials into wares suitable for
26 use or which gives new shapes, new qualities or new combinations to
27 matter which already has gone through some artificial process by the use
28 of machinery, tools, appliances, and other similar equipment. Property
29 used in the production of goods shall include machinery, equipment or
30 other tangible property which is principally used in the repair and
31 service of other machinery, equipment or other tangible property used
32 principally in the production of goods and shall include all facilities
33 used in the manufacturing operation, including storage of material to be
34 used in manufacturing and of the products that are manufactured. At the
35 option of the taxpayer, air and water pollution control facilities which
36 qualify for elective deductions under subdivision (i) of section 11-507
37 of this chapter may be treated, for purposes of this paragraph, as
38 tangible property principally used in the production of goods by manu-
39 facturing; processing; assembling; refining; mining; extracting; farm-
40 ing; agriculture; horticulture; floriculture; viticulture or commercial
41 fishing, in which event, a deduction shall not be allowed under subdivi-
42 sion (i) of section 11-507 of this chapter. However, for any taxable
43 year beginning on or after January first, nineteen hundred sixty-eight,
44 a taxpayer shall not be allowed a deduction under paragraph one of this
45 subdivision with respect to tangible personal property leased to any
46 other person or corporation, provided, any contract or agreement to
47 lease or rent or for a license to use such property shall be considered
48 a lease. With respect to property which a taxpayer uses for purposes
49 other than leasing for part of a taxable year and leases for a part of a
50 taxable year, a deduction under paragraph one shall be allowed in
51 proportion to the part of the year such property is used by the taxpay-
52 er.

53 (5) If the deductions allowable for any taxable year pursuant to this
54 subdivision exceed the taxpayer's unincorporated business taxable
55 income, determined without the allowance of such deductions, the excess
56 may be carried over to the following taxable year or years and may be

1 deducted, without allocation under section 11-508 of this chapter, in
2 computing unincorporated business taxable income for such year or years.

3 (6) In any taxable year when property is sold or otherwise disposed
4 of, with respect to which a deduction has been allowed pursuant to para-
5 graph one or two of this subdivision, the basis of such property shall
6 be adjusted to reflect the deductions so allowed, and if the basis as so
7 adjusted is lower than the adjusted basis of the same property for
8 federal income tax purposes, there shall be added to federal gross
9 income the amount of the difference between such adjusted bases.

10 § 11-510 Unincorporated business exemptions. In computing unincorpo-
11 rated business taxable income, there shall be allowed, without allo-
12 cation under section 11-508 of this chapter:

13 (a) an unincorporated business exemption of five thousand dollars,
14 prorated for taxable years of less than twelve months under regulations
15 of the commissioner of finance;

16 (b) if a partner in an unincorporated business is taxable under this
17 chapter or under any local law imposed pursuant to section one of chap-
18 ter seven hundred seventy-two of the laws of nineteen hundred sixty-six,
19 an exemption for the amount of the partner's proportionate interest in
20 the excess of the unincorporated business gross income over the
21 deductions allowed under sections 11-507 and 11-509 of this chapter, but
22 this exemption shall be limited to the amount which is included in the
23 partner's unincorporated business taxable income allocable to the city,
24 or included in a corporate partner's net income allocable to the city,
25 provided, however, no such exemption shall be allowed to an unincorpo-
26 rated business for any taxable year of the unincorporated business
27 beginning after June thirtieth, nineteen hundred ninety-four.

28 § 11-511 Declarations of estimated tax. (a) Requirement of declara-
29 tion. Except as provided in subdivision (j) of this section, every
30 unincorporated business shall make a declaration of its estimated tax
31 for the taxable year, containing such information as the commissioner of
32 finance may prescribe by regulations or instruction, if: (1) for taxable
33 years beginning after nineteen hundred eighty-six but before nineteen
34 hundred ninety-six, its unincorporated business taxable income can
35 reasonably be expected to exceed fifteen thousand dollars; (2) for taxa-
36 ble years beginning in nineteen hundred ninety-six, its unincorporated
37 business taxable income can reasonably be expected to exceed twenty
38 thousand dollars; (3) for taxable years beginning after nineteen hundred
39 ninety-six but before two thousand nine, its estimated tax can reason-
40 ably be expected to exceed one thousand eight hundred dollars; and (4)
41 for taxable years beginning after two thousand eight, its estimated tax
42 can reasonably be expected to exceed three thousand four hundred
43 dollars.

44 (b) Definition of estimated tax. The term "estimated tax" means the
45 amount which an unincorporated business estimates to be its tax under
46 this chapter for the taxable year, less the amount which it estimates to
47 be the sum of any credits allowable against the tax other than the cred-
48 it allowable under subdivision (c) of section 11-503 of this chapter.

49 (c) Time for filing declaration. Except as hereinafter provided, a
50 declaration of estimated tax required under this section shall be filed
51 on or before April fifteenth of the taxable year provided, however, that
52 if the requirements of subdivision (a) of this section are first met:

53 (1) after April first and before June second of the taxable year, the
54 declaration shall be filed on or before June fifteenth, or

55 (2) after June first and before September second of the taxable year,
56 the declaration shall be filed on or before September fifteenth, or

1 (3) after September first of the taxable year, the declaration shall
2 be filed on or before January fifteenth of the succeeding year.

3 (d) Filing of declarations on or before January fifteenth.

4 (1) A declaration of estimated tax by an unincorporated business
5 having an estimated unincorporated business taxable income from farming,
6 including oyster farming, for the taxable year which is at least two-
7 thirds of its total estimated unincorporated business taxable income for
8 the taxable year may be filed at any time on or before January fifteenth
9 of the succeeding year.

10 (2) For taxable years beginning before nineteen hundred ninety-seven,
11 a declaration of estimated tax under this section of forty dollars or
12 less for the taxable year may be filed at any time on or before January
13 fifteenth of the succeeding year under regulations of the commissioner
14 of finance.

15 (e) Amendments of declaration. An unincorporated business may amend a
16 declaration under regulations of the commissioner of finance.

17 (f) Return as declaration or amendment. If on or before February
18 fifteenth of the succeeding taxable year an unincorporated business
19 subject to the estimated tax requirements of this section files its
20 return for the taxable year for which the declaration is required, and
21 pays on or before such date the full amount of the tax shown to be due
22 on the return:

23 (1) such return shall be considered as its declaration if no declara-
24 tion was required to be filed during the taxable year, but is otherwise
25 required to be filed on or before January fifteenth of the succeeding
26 year, and

27 (2) such return shall be considered as the amendment permitted by
28 subdivision (e) of this section to be filed on or before January
29 fifteenth if the tax shown on the return is greater than the estimated
30 tax shown in a declaration previously made.

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

34 (h) Short taxable year. An unincorporated business subject to the
35 estimated tax requirements of this section and having a taxable year of
36 less than twelve months shall make a declaration in accordance with
37 regulations of the commissioner of finance.

38 (i) Declaration of unincorporated business under a disability. The
39 declaration of estimated tax for an unincorporated business which is
40 unable to make a declaration for any reason shall be made and filed by
41 the committee, fiduciary or other person charged with the care of the
42 property of such unincorporated business, other than a receiver in
43 possession of only a part of such property, or by his or her duly
44 authorized agent.

45 (j) Declaration of estimated tax for taxable years beginning prior to
46 July thirteenth, nineteen hundred sixty-six. Notwithstanding subdivision
47 (c) of this section, no declaration of estimated tax required by subdivi-
48 sion (a) of this section need be filed until September twelfth, nine-
49 teen hundred sixty-six.

50 § 11-512 Payments of estimated tax. (a) General. The estimated tax
51 with respect to which a declaration is required shall be paid as
52 follows:

53 (1) If the declaration is filed on or before April fifteenth of the
54 taxable year, the estimated tax shall be paid in four equal install-
55 ments. The first installment shall be paid at the time of the filing of
56 the declaration, and the second, third and fourth installments shall be

1 paid on the following June fifteenth, September fifteenth, and January
2 fifteenth, respectively.

3 (2) If the declaration is filed after April fifteenth and not after
4 June fifteenth of the taxable year, and is not required to be filed on
5 or before April fifteenth of the taxable year, the estimated tax shall
6 be paid in three equal installments. The first installment shall be
7 paid at the time of the filing of the declaration, and the second and
8 third installments shall be paid on the following September fifteenth
9 and January fifteenth, respectively.

10 (3) If the declaration is filed after June fifteenth and not after
11 September fifteenth of the taxable year, and is not required to be filed
12 on or before June fifteenth of the taxable year, the estimated tax shall
13 be paid in two equal installments. The first installment shall be paid
14 at the time of the filing of the declaration, and the second shall be
15 paid on the following January fifteenth.

16 (4) If the declaration is filed after September fifteenth of the taxa-
17 ble year, and is not required to be filed on or before September
18 fifteenth of the taxable year, the estimated tax shall be paid in full
19 at the time of the filing of the declaration.

20 (5) If the declaration is filed after the time prescribed therefor, or
21 after the expiration of any extension of time therefor, paragraphs two,
22 three and four of this subdivision shall not apply, and there shall be
23 paid at the time of such filing all installments of estimated tax paya-
24 ble at or before such time, and the remaining installments shall be paid
25 at the times at which, and in the amounts in which, they would have been
26 payable if the declaration had been filed when due.

27 (b) Amendments of declaration. If any amendment of a declaration is
28 filed, the remaining installments, if any, shall be ratably increased or
29 decreased, as the case may be, to reflect any increase or decrease in
30 the estimated tax by reason of such amendment, and if any amendment is
31 made after September fifteenth of the taxable year, any increase in the
32 estimated tax by reason thereof shall be paid at the time of making such
33 amendment.

34 (c) Application to short taxable year. This section shall apply to a
35 taxable year of less than twelve months in accordance with regulations
36 of the commissioner of finance.

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

40 (e) Installments paid in advance. An unincorporated business may elect
41 to pay any installment of its estimated tax prior to the date prescribed
42 for the payment thereof.

43 (f) Cross reference. For unincorporated businesses with taxable years
44 beginning prior to July thirteenth, nineteen hundred sixty-six, see
45 subdivision (j) of section 11-511 of this chapter.

46 (g) Taxpayers with credit relating to stock transfer tax. The portion
47 of an overpayment attributable to a credit allowable pursuant to subdivi-
48 sion (c) of section 11-503 of this chapter may not be credited against
49 any payment due under this section.

50 § 11-513 Accounting periods and methods. (a) Accounting periods. A
51 taxpayer's taxable year under this chapter shall be the same as the
52 taxpayer's taxable year for federal income tax purposes.

53 (b) Accounting methods. A taxpayer's method of accounting under this
54 chapter shall be the same as the taxpayer's method of accounting for
55 federal income tax purposes. In the absence of any method of accounting
56 for federal income tax purposes, unincorporated business taxable income

1 shall be computed under such method as in the opinion of the commission-
2 er of finance clearly reflects income.

3 (c) Change of accounting period or method. (1) If a taxpayer's taxa-
4 ble year or method of accounting is changed for federal income tax
5 purposes, the taxable year or method of accounting for purposes of this
6 chapter shall be similarly changed.

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

15 (3) If a taxpayer's method of accounting is changed from an accrual
16 to an installment method, any additional tax for the year of such change
17 of method and for any subsequent year, which is attributable to the
18 receipt of installment payments properly accrued in a prior year, shall
19 be reduced by the portion of tax for any prior taxable year attributable
20 to the accrual of such installment payments, in accordance with regu-
21 lations of the commissioner of finance.

22 § 11-514 Returns, payment of tax. (a) General. An unincorporated
23 business income tax return shall be made and filed, and the balance of
24 any tax shown on the face of such return, not previously paid as
25 installments of estimated tax, shall be paid, on or before the fifteenth
26 day of the fourth month following the close of a taxable year, except
27 that in the case of an unincorporated business classified as a partner-
28 ship for federal income tax purposes, such return shall be made and
29 filed and such balance shall be paid on or before the fifteenth day of
30 the third month following the close of a taxable year for taxable years
31 beginning on or after January first, two thousand sixteen, by or for
32 every:

33 (1) unincorporated business, for taxable years beginning after nine-
34 teen hundred eighty-six but before nineteen hundred ninety-seven, having
35 unincorporated business gross income, determined for purposes of this
36 subdivision without any deduction for the cost of goods sold or services
37 performed, of more than ten thousand dollars, or having any amount of
38 unincorporated business taxable income;

39 (2) partnership, for taxable years beginning after nineteen hundred
40 ninety-six, having unincorporated business gross income, determined for
41 purposes of this subdivision without any deduction for the cost of goods
42 sold or services performed, of more than twenty-five thousand dollars,
43 or having unincorporated business taxable income of more than fifteen
44 thousand dollars;

45 (3) unincorporated business other than a partnership, for taxable
46 years beginning after nineteen hundred ninety-six, having unincorporated
47 business gross income, determined for purposes of this subdivision with-
48 out any deduction for the cost of goods sold or services performed, of
49 more than seventy-five thousand dollars, or having unincorporated busi-
50 ness taxable income of more than thirty-five thousand dollars; and

51 (4) unincorporated business, for taxable years beginning after two
52 thousand eight, having unincorporated business gross income, determined
53 for purposes of this subdivision without any deduction for the cost of
54 goods sold or services performed, of more than ninety-five thousand
55 dollars.

1 (b) Decedents. The return for any deceased individual shall be made
2 and filed by his or her executor, administrator, or other person charged
3 with his or her property. If a final return of a decedent is for a
4 fractional part of a year, the due date of such return shall be the
5 fifteenth day of the fourth month following the close of the twelve-
6 month period which began with the first day of such fractional part of
7 the year.

8 (c) Individuals under a disability. The return for an individual who
9 is unable to make a return by reason of minority or other disability
10 shall be made and filed by such individual's guardian, committee, fidu-
11 ciary or other person charged with the care of his or her person or
12 property, other than a receiver in possession of only a part of his or
13 her property, or by such individual's duly authorized agent.

14 (d) Estates and trusts. The return for an estate or trust shall be
15 made and filed by the fiduciary.

16 (e) Joint fiduciaries. If two or more fiduciaries are acting jointly,
17 the return may be made by any one of them.

18 (f) Returns for taxable years ending prior to December thirty-first,
19 nineteen hundred sixty-six. With respect to taxable years ending prior
20 to December thirty-first, nineteen hundred sixty-six, the returns
21 required to be made and filed pursuant to this section shall be made and
22 filed on or before the fifteenth day of the fourth month following the
23 close of such taxable year or September twelfth, nineteen hundred
24 sixty-six, whichever is later.

25 (g) Taxpayers with credit relating to stock transfer tax. Subdivision
26 (a) of this section shall apply to a taxpayer which has a right to a
27 credit pursuant to subdivision (c) of section 11-503 of this chapter,
28 except that the tax, or balance thereof, payable to the commissioner of
29 finance in full pursuant to subdivision (a) of this section, at the time
30 the report is required to be filed, shall be calculated and paid at such
31 time as if the credit provided for in subdivision (c) of section 11-503
32 of this chapter were not allowed.

33 § 11-515 Time and place for filing returns and paying tax. A person
34 required to make and file a return under this chapter shall, without
35 assessment, notice or demand, pay any tax due thereon to the commission-
36 er of finance on or before the date fixed for filing such return, deter-
37 mined without regard to any extension of time for filing the return.
38 The commissioner of finance shall prescribe by regulation the place for
39 filing any return, declaration, statement, or other document required
40 pursuant to this chapter and for payment of any tax.

41 § 11-516 Signing of returns and other documents. (a) General. Any
42 return, declaration, statement or other document required to be made
43 pursuant to this chapter shall be signed in accordance with regulations
44 or instructions prescribed by the commissioner of finance. The fact
45 that an individual's name is signed to a return, declaration, statement,
46 or other document, shall be prima facie evidence for all purposes that
47 the return, declaration, statement or other document was actually signed
48 by such individual.

49 (b) Partnerships. Any return, statement or other document required of
50 a partnership shall be signed by one or more partners. The fact that a
51 partner's name is signed to a return, statement, or other document,
52 shall be prima facie evidence for all purposes that such partner is
53 authorized to sign on behalf of the partnership.

54 (c) Certifications. The making or filing of any return, declaration,
55 statement or other document or copy thereof required to be made or filed
56 pursuant to this chapter, including a copy of a federal return, shall

1 constitute a certification by the person making or filing such return,
2 declaration, statement or other document or copy thereof that the state-
3 ments contained therein are true and that any copy filed is a true copy.

4 § 11-517 Extensions of time. (a) General. The commissioner of
5 finance may grant a reasonable extension of time for payment of tax or
6 estimated tax, or any installment, or for filing any return, declara-
7 tion, statement, or other document required pursuant to this chapter, on
8 such terms and conditions as it may require. Except for a taxpayer who
9 is outside the United States, no such extension for filing any return,
10 declaration, statement or other document, shall exceed six months.

11 (b) Furnishing of security. If any extension of time is granted for
12 payment of any amount of tax, the commissioner of finance may require
13 the taxpayer to furnish a bond or other security in an amount not
14 exceeding twice the amount for which the extension of time for payment
15 is granted, on such terms and conditions as the commissioner of finance
16 may require.

17 § 11-518 Requirements concerning returns, notices, records and state-
18 ments. (a) General. The commissioner of finance may prescribe regu-
19 lations as to the keeping of records, the content and forms of returns
20 and statements, and the filing of copies of federal income tax returns
21 and determinations. The commissioner of finance may require any person,
22 by regulation or notice served upon such person, to make such returns,
23 render such statements, or keep such records, as the commissioner of
24 finance may deem sufficient to show whether or not such person is liable
25 under this chapter for tax or for collection of tax.

26 (b) Notice of qualification as receiver, etc. Every receiver, trustee
27 in bankruptcy, assignee for benefit of creditors, or other like fiduci-
28 ary shall give notice of his or her qualification as such to the commis-
29 sioner of finance, as may be required by regulation.

30 § 11-519 Report of change in federal or New York state taxable
31 income. If the amount of a taxpayer's federal or New York state taxable
32 income reported on his or her federal or New York state income tax for
33 any taxable year is changed or corrected by the United States internal
34 revenue service or the New York state tax commission or other competent
35 authority, or as the result of a renegotiation of a contract or subcon-
36 tract with the United States or the state of New York, or if a taxpayer,
37 pursuant to subsection (d) of section sixty-two hundred thirteen of the
38 internal revenue code, executes a notice of waiver of the restrictions
39 provided in subsection (a) of said section, or if a taxpayer, pursuant
40 to subsection (f) of section six hundred eighty-one of the tax law,
41 executes a notice or waiver of the restrictions provided in subsection
42 (c) of such section of the tax law, the taxpayer shall report such
43 change or correction in federal or New York state taxable income or such
44 execution of such notice of waiver and the changes or corrections of the
45 taxpayer's federal or New York state taxable income on which it is
46 based, within ninety days after the final determination of such change,
47 correction, or renegotiation, or such execution of such notice of waiv-
48 er, or as otherwise required by the commissioner of finance, and shall
49 concede the accuracy of such determination or state wherein it is erro-
50 neous. Any taxpayer filing an amended federal or New York state income
51 tax return shall also file within ninety days thereafter an amended
52 return under this chapter, and shall give such information as the
53 commissioner of finance may require. The commissioner of finance may by
54 regulation prescribe such exceptions to the requirements of this section
55 as the commissioner deems appropriate.

1 § 11-519.1 Report of change of state sales and compensating use tax
2 liability. Where the state tax commission changes or corrects a taxpay-
3 er's sales and compensating use tax liability with respect to the
4 purchase or use of items for which a sales or compensating use tax cred-
5 it against the tax imposed by this chapter was claimed, the taxpayer
6 shall report such change or correction to the commissioner of finance
7 within ninety days of the final determination of such change or
8 correction, or as required by the commissioner of finance, and shall
9 concede the accuracy of such determination or state wherein it is erro-
10 neous. Any taxpayer filing an amended return or report relating to the
11 purchase or use of such items shall also file within ninety days there-
12 after a copy of such amended return or report with the commissioner of
13 finance.

14 § 11-520 Change of election. Any election expressly authorized by
15 this chapter, other than the election authorized by section 11-506 of
16 this chapter, may be changed on such terms and conditions as the commis-
17 sioner of finance may prescribe by regulation.

18 § 11-521 Notice of deficiency. (a) General. If upon examination of a
19 taxpayer's return under this chapter the commissioner of finance deter-
20 mines that there is a deficiency of income tax, the commissioner may
21 mail a notice of deficiency to the taxpayer. If a taxpayer fails to file
22 a return required under this chapter, the commissioner of finance is
23 authorized to estimate the taxpayer's city unincorporated business taxa-
24 ble income and tax thereon, from any information in the commissioner's
25 possession, and to mail a notice of deficiency to the taxpayer. A notice
26 of deficiency shall be mailed by certified or registered mail to the
27 taxpayer at his or her last known address in or out of the city. If the
28 taxpayer is deceased or under a legal disability, a notice of deficiency
29 may be mailed to his or her last known address in or out of the city,
30 unless the commissioner of finance has received notice of the existence
31 of a fiduciary relationship with respect to the taxpayer.

32 (b) Notice of deficiency as assessment. After ninety days from the
33 mailing of a notice of deficiency or, if the commissioner of finance has
34 established a conciliation procedure pursuant to section 11-124 of this
35 title and the taxpayer has requested a conciliation conference in
36 accordance therewith, after ninety days from the mailing of the concil-
37 iation decision or the date of the commissioner's confirmation of the
38 discontinuance of the conciliation proceeding, such notice shall be an
39 assessment of the amount of tax specified therein, together with the
40 interest, additions to tax and penalties stated in such notice, except
41 only for any such tax or other amounts as to which the taxpayer has
42 within such ninety day period filed with the tax appeals tribunal a
43 petition under section 11-529 of this chapter. If the notice of defi-
44 ciency or conciliation decision is addressed to a person outside of the
45 United States, such period shall be one hundred fifty days instead of
46 ninety days.

47 (c) Restrictions on assessment and levy. No assessment of a deficiency
48 in tax and no levy or proceeding in court for its collection shall be
49 made, begun or prosecuted, except as otherwise provided in section
50 11-534 of this chapter, until a notice of deficiency has been mailed to
51 the taxpayer, nor until the expiration of the time for filing a petition
52 with the tax appeals tribunal contesting such notice, nor, if a petition
53 with respect to the taxable year has been both served upon the commis-
54 sioner of finance and filed with the tax appeals tribunal, until the
55 decision of the tax appeals tribunal has become final. For exception in

1 the case of judicial review of the decision of the tax appeals tribunal,
2 see subdivision (c) of section 11-530 of this chapter.

3 (d) Exceptions for mathematical errors. If a mathematical error
4 appears on a return, including an overstatement of the amount paid as
5 estimated tax, the commissioner of finance shall notify the taxpayer
6 that an amount of tax in excess of that shown upon the return is due,
7 and that such excess has been assessed.

8 Such notice shall not be considered as a notice of deficiency for the
9 purposes of this section, subdivision (f) of section 11-527 of this
10 chapter, limiting credits or refunds after petition to the tax appeals
11 tribunal, or subdivision (b) of section 11-529 of this chapter, author-
12 izing the filing of a petition with the tax appeals tribunal based on a
13 notice of deficiency, nor shall such assessment or collection be prohib-
14 ited by the provisions of subdivision (c) of this section.

15 (e) Exception where change in federal or New York state taxable income
16 is not reported.

17 (1) If the taxpayer fails to comply with section 11-519 of this chap-
18 ter in not reporting a change or correction increasing or decreasing the
19 taxpayer's federal or New York state taxable income as reported on the
20 taxpayer's federal or New York state return or in not reporting a change
21 or correction which is treated in the same manner as if it were a defi-
22 ciency for federal or New York state income tax purposes or in not
23 filing an amended return or in not reporting the execution of a notice
24 of waiver described in such section, instead of the mode and time of
25 assessment provided for in subdivision (b) of this section, the commis-
26 sioner of finance may assess a deficiency based upon such changed or
27 corrected federal or New York state taxable income by mailing to the
28 taxpayer a notice of additional tax due specifying the amount of the
29 deficiency, and such deficiency, together with the interest, additions
30 to tax and penalties stated in such notice, shall be deemed assessed on
31 the date such notice is mailed unless within thirty days after the mail-
32 ing of such notice a report of the federal or New York state change or
33 correction or an amended return, where such return was required by
34 section 11-519 of this chapter, is filed accompanied by a statement
35 showing wherein such federal or New York state determination and such
36 notice of additional tax due are erroneous.

37 (2) Such notice shall not be considered as a notice of deficiency for
38 the purposes of this section, subdivision (f) of section 11-527 of this
39 chapter, limiting credits or refunds after petition to the tax appeals
40 tribunal, or subdivision (b) of section 11-529 of this chapter, author-
41 izing the filing of a petition with the tax appeals tribunal based on a
42 notice of deficiency, nor shall such assessment or collection thereof be
43 prohibited by the provisions of subdivision (c) of this section.

44 (3) If the taxpayer is deceased or under a legal disability, a notice
45 of additional tax due may be mailed to his or her last known address in
46 or out of the city, unless the commissioner of finance has received
47 notice of the existence of a fiduciary relationship with respect to the
48 taxpayer.

49 (f) Waiver of restrictions. The taxpayer shall at any time, whether or
50 not a notice of deficiency has been issued, have the right to waive the
51 restrictions on assessment and collection of the whole or any part of
52 the deficiency by a signed notice in writing filed with the commissioner
53 of finance.

54 (g) Deficiency defined. For purposes of this chapter, a deficiency
55 means the amount of the tax imposed by this chapter, less (i) the amount
56 shown as the tax upon the taxpayer's return, whether the return was made

1 or the tax computed by the taxpayer or by the commissioner of finance,
2 and less, (ii) the amounts previously assessed, or collected without
3 assessment, as a deficiency and plus (iii) the amount of any rebates.
4 For the purpose of this definition, the tax imposed by this chapter and
5 the tax shown on the return shall both be determined without regard to
6 payments on account of estimated tax; and a rebate means so much of an
7 abatement, credit, refund or other repayment, whether or not erroneous,
8 made on the ground that the amounts entering into the definition of a
9 deficiency showed a balance in favor of the taxpayer.

10 (h) Exception where change or correction of sales and compensating use
11 tax liability is not reported. (1) If a taxpayer fails to comply with
12 section 11-519.1 of this chapter in not reporting a change or correction
13 of his or her sales and compensating use tax liability or in not filing
14 a copy of an amended return or report relating to his or her sales and
15 compensating use tax liability, instead of the mode and time of assess-
16 ment provided for in subdivision (b) of this section, the commissioner
17 of finance may assess a deficiency based upon such changed or corrected
18 sales and compensating use tax liability, as same relates to credits
19 claimed under this chapter by mailing to the taxpayer a notice of addi-
20 tional tax due specifying the amount of the deficiency, and such defi-
21 ciency, together with the interest, additions to tax and penalties stat-
22 ed in such notice, shall be deemed assessed on the date such notice is
23 mailed unless within thirty days after the mailing of such notice a
24 report of the state change or correction or a copy of an amended return
25 or report, where such copy was required by section 11-519.1 of this
26 chapter, is filed accompanied by a statement showing where such state
27 determination and such notice of additional tax due are erroneous.

28 (2) Such notice shall not be considered as a notice of deficiency for
29 the purposes of this section, subdivision (f) of section 11-527 of this
30 chapter, limiting credits or refunds after petition to the tax appeals
31 tribunal, or subdivision (b) of section 11-529 of this chapter, author-
32 izing the filing of a petition with the tax appeals tribunal based on a
33 notice of deficiency, nor shall such assessment or the collection there-
34 of be prohibited by the provisions of subdivision (c) of this section.

35 (3) If the taxpayer is deceased or under a legal disability, a notice
36 of additional tax due may be mailed to his or her last known address in
37 or out of the city, and such notice shall be sufficient for purposes of
38 this chapter. If the commissioner of finance has received notice that a
39 person is acting for the taxpayer in a fiduciary capacity, a copy of
40 such notice shall also be mailed to the fiduciary named in such notice.

41 § 11-522 Assessment. (a) Assessment date. The amount of tax which a
42 return shows to be due, or the amount of tax which a return would have
43 shown to be due but for a mathematical error, shall be deemed to be
44 assessed on the date of filing of the return, including any amended
45 return showing an increase of tax. In the case of a return properly
46 filed without computation of tax, the tax computed by the commissioner
47 of finance shall be deemed to be assessed on the date on which payment
48 is due. If a notice of deficiency has been mailed, the amount of the
49 deficiency shall be deemed to be assessed on the date specified in
50 subdivision (b) of section 11-521 of this chapter if no petition is both
51 served on the commissioner of finance and filed with the tax appeals
52 tribunal, or if a petition is filed, then upon the date when a decision
53 of the tax appeals tribunal establishing the amount of the deficiency
54 becomes final.

55 If an amended return or report filed pursuant to section 11-519 of
56 this chapter concedes the accuracy of a federal or New York state

1 adjustment, change or correction, any deficiency in tax under this chap-
2 ter resulting therefrom shall be deemed to be assessed on the date of
3 filing such report or amended return, and such assessment shall be time-
4 ly notwithstanding section 11-523 of this chapter.

5 If a report or amended return or report filed pursuant to section
6 11-519.1 of this chapter concedes the accuracy of a state change or
7 correction of sales and compensating use tax liability, any deficiency
8 in tax under this chapter resulting therefrom shall be deemed assessed
9 on the date of filing such report, and such assessment shall be timely
10 notwithstanding section 11-523 of this chapter.

11 If a notice of additional tax due, as prescribed in subdivision (e) of
12 section 11-521 of this chapter has been mailed, the amount of the defi-
13 ciency shall be deemed to be assessed on the date specified in such
14 subdivision unless within thirty days after the mailing of such notice a
15 report of the federal or New York state change or correction or an
16 amended return, where such return was required by section 11-519 of this
17 chapter is filed accompanied by a statement showing wherein such federal
18 or New York state determination and such notice of additional tax due
19 are erroneous.

20 If a notice of additional tax due, as prescribed in subdivision (h) of
21 section 11-521 of this chapter, has been mailed, the amount of the defi-
22 ciency shall be deemed to be assessed on the date specified in such
23 subdivision unless within thirty days after the mailing of such notice a
24 report of the state change or correction, or a copy of an amended return
25 or report, where such copy was required by section 11-519.1 of this
26 chapter, is filed accompanied by a statement showing wherein such state
27 determination and such notice of additional tax due are erroneous.

28 Any amount paid as a tax or in respect of a tax, other than amounts
29 paid as estimated income tax, shall be deemed to be assessed upon the
30 date of receipt of payment, notwithstanding any other provisions.

31 (b) Other assessment powers. If the mode or time for the assessment of
32 any tax under this chapter, including interest, additions to tax and
33 assessable penalties, is not otherwise provided for, the commissioner of
34 finance may establish the same by regulations.

35 (c) Estimated income tax. No unpaid amount of estimated tax under
36 section one hundred sixteen shall be assessed.

37 (d) Supplemental assessment. The commissioner of finance may, at any
38 time within the period prescribed for assessment, make a supplemental
39 assessment, subject to the provisions of section 11-521 of this chapter
40 where applicable, whenever it is ascertained that any assessment is
41 imperfect or incomplete in any material respect.

42 (e) Cross-reference. For assessment in case of jeopardy, see section
43 11-534 of this chapter.

44 § 11-523 Limitations on assessment. (a) General. Except as otherwise
45 provided in this section, any tax under this chapter shall be assessed
46 within three years after the return was filed, whether or not such
47 return was filed on or after the date prescribed.

48 (b) Time return deemed filed. For purposes of this section a return
49 of tax filed before the last day prescribed by law or by regulations
50 promulgated pursuant to law for the filing thereof, shall be deemed to
51 be filed on such last day.

52 (c) Exceptions. (1) Assessment at any time. The tax may be assessed
53 at any time if:

54 (A) no return is filed,

55 (B) a false or fraudulent return is filed with intent to evade tax,

1 (C) the taxpayer fails to comply with section 11-519 of this chapter
2 in not reporting a change or correction increasing or decreasing the
3 taxpayer's federal or New York state taxable income as reported on the
4 taxpayer's federal or New York state income tax return, or the execution
5 of a notice of waiver and the changes or corrections on which it is
6 based or in not reporting a change or correction which is treated in the
7 same manner as if it were a deficiency for federal or New York state
8 income tax purposes, or in not filing an amended return, or

9 (D) the taxpayer fails to file a report or amended return or report
10 required under section 11-519.1 of this chapter, in respect of a change
11 or correction of sales and compensating use tax liability, relating to
12 the purchase or use of items for which a sales or compensating use tax
13 credit against the tax imposed by this chapter was claimed.

14 (2) Extension by agreement. Where, before the expiration of the time
15 prescribed in this section for the assessment of tax, both the commis-
16 sioner of finance and the taxpayer have consented in writing to its
17 assessment after such time, the tax may be assessed at any time prior to
18 the expiration of the period agreed upon. The period so agreed upon may
19 be extended by subsequent agreements in writing made before the expira-
20 tion of the period previously agreed upon.

21 (3) Report of changed or corrected federal or New York state income.
22 If the taxpayer shall, pursuant to section 11-519 of this chapter,
23 report a change or correction or file an amended return increasing or
24 decreasing federal or New York state taxable income or report the
25 execution of a notice of waiver and the changes and corrections on which
26 it is based, or a change or correction which is treated in the same
27 manner as if it were a deficiency for federal or New York state income
28 tax purposes, the assessment, if not deemed to have been made upon the
29 filing of the report or amended return, may be made at any time within
30 two years after such report or amended return was filed. The amount of
31 such assessment of tax shall not exceed the amount of the increase in
32 city tax attributable to such federal or New York state change or
33 correction. The provisions of this paragraph shall not affect the time
34 within which or the amount for which an assessment may otherwise be
35 made.

36 (4) Deficiency attributable to net operating loss carryback. If a
37 deficiency is attributable to the application to the taxpayer of a net
38 operating loss carryback, it may be assessed at any time that a defi-
39 ciency for the taxable year of the loss may be assessed.

40 (5) Recovery of erroneous refund. An erroneous refund shall be
41 considered an underpayment of tax on the date made, and an assessment of
42 a deficiency arising out of an erroneous refund may be made at any time
43 within two years from the making of the refund, except that the assess-
44 ment may be made within five years from the making of the refund if it
45 appears that any part of the refund was induced by fraud or misrepresen-
46 tation of a material fact.

47 (6) Request for prompt assessment. If a return is required for a
48 decedent or for his or her estate during the period of administration,
49 the tax shall be assessed within eighteen months after written request
50 therefor, made after the return is filed, by the executor, administrator
51 or other person representing the estate of such decedent, but not more
52 than three years after the return was filed, except as otherwise
53 provided in this subdivision and subdivision (d) of this section.

54 (7) Report on use of certain property. Under the circumstances
55 described in paragraph two of subdivision (b) of section 11-509 of this
56 chapter, the tax may be assessed within three years after the filing of

1 a return reporting that property has been used for purposes other than
2 research and development to a greater extent than originally reported.

3 (8) Report concerning waste treatment facility. Under the circum-
4 stances described in paragraph (i) of section 11-507 of this chapter,
5 the tax may be assessed within three years after the filing of the
6 return containing the information required by such paragraph.

7 (9) Report of changed or corrected sales and compensating use tax
8 liability. If the taxpayer files a report or amended return or report
9 required under section 11-519.1 of this chapter, in respect of a change
10 or correction of sales and compensating use tax liability, the assess-
11 ment, if not deemed to have been made upon the filing of the report, may
12 be made at any time within two years after such report or amended return
13 or report was filed. The amount of such assessment of tax shall not
14 exceed the amount of the increase in city tax attributable to such state
15 change or correction. The provisions of this paragraph shall not affect
16 the time within which or the amount for which an assessment may other-
17 wise be made.

18 (d) Omission of income on return. The tax may be assessed at any time
19 within six years after the return was filed if (1) a taxpayer omits from
20 his or her city unincorporated business gross income an amount properly
21 includible therein which is in excess of twenty-five per centum of the
22 amount of city unincorporated business gross income stated in the
23 return, or (2) an estate or trust omits income from its return in an
24 amount in excess of twenty-five percent of its income determined as if
25 it were an individual.

26 For purposes of this subdivision there shall not be taken into account
27 any amount which is omitted in the return if such amount is disclosed in
28 the return, or in a statement attached to the return, in a manner
29 adequate to apprise the commissioner of finance of the nature and amount
30 of such item.

31 (e) Suspension of running of period of limitation. The running of the
32 period of limitations on assessment or collection of tax or other
33 amount, or of a transferee's liability, shall, after the mailing of a
34 notice of deficiency, be suspended for the period during which the
35 commissioner of finance is prohibited under subdivision (c) of section
36 11-521 of this chapter from making the assessment or from collecting by
37 levy.

38 § 11-524 Interest on underpayment. (a) General. If any amount of tax
39 is not paid on or before the last date prescribed in this chapter for
40 payment, interest on such amount at the underpayment rate set by the
41 commissioner of finance pursuant to section 11-537 of this chapter, or,
42 if no rate is set, at the rate of seven and one-half percent per annum
43 shall be paid for the period from such last date to the date paid,
44 whether or not any extension of time for payment was granted. Interest
45 under this subdivision shall not be paid if the amount thereof is less
46 than one dollar.

47 (b) Exception as to estimated tax. This section shall not apply to
48 any failure to pay estimated tax under section 11-512 of this chapter.

49 (c) Exception for mathematical error. No interest shall be imposed on
50 any underpayment of tax due solely to mathematical error if the taxpayer
51 files a return within the time prescribed in this chapter, including any
52 extension of time, and pays the amount of underpayment within three
53 months after the due date of such return, as it may be extended.

54 (d) Suspension of interest on deficiencies. If a waiver of
55 restrictions on assessment of a deficiency has been filed by the taxpay-
56 er, and if notice and demand by the commissioner of finance for payment

1 of such deficiency is not made within thirty days after the filing of
2 such waiver, interest shall not be imposed on such deficiency for the
3 period beginning immediately after such thirtieth day and ending with
4 the date of notice and demand.

5 (e) Tax reduced by carryback. If the amount of tax for any taxable
6 year is reduced by reason of a carryback of a net operating loss, such
7 reduction in tax shall not affect the computation of interest under this
8 section for the period ending with the filing date for the taxable year
9 in which the net operating loss arises. Such filing date shall be deter-
10 mined without regard to extensions of time to file.

11 (f) Interest treated as tax. Interest under this section shall be
12 paid upon notice and demand and shall be assessed, collected and paid in
13 the same manner as tax. Any reference in this chapter to the tax
14 imposed by this chapter shall be deemed also to refer to interest
15 imposed by this section on such tax.

16 (g) Interest on penalties or additions to tax. Interest shall be
17 imposed under subdivision (a) of this section in respect of any assessa-
18 ble penalty or addition to tax only if such assessable penalty or addi-
19 tion to tax is not paid within ten days from the date of the notice and
20 demand therefor under subdivision (b) of section 11-532 of this chapter,
21 and in such case interest shall be imposed only for the period from such
22 date of the notice and demand to the date of payment.

23 (h) Payment within ten days after notice and demand. If notice and
24 demand is made for payment of any amount under subdivision (b) of
25 section 11-532 of this chapter, and if such amount is paid within ten
26 days after the date of such notice and demand, interest under this
27 section on the amount so paid shall not be imposed for the period after
28 the date of such notice and demand.

29 (i) Limitation on assessment and collection. Interest prescribed
30 under this section may be assessed and collected at any time during the
31 period within which the tax or other amount to which such interest
32 relates may be assessed and collected, respectively.

33 (j) Interest on erroneous refund. Any portion of tax or other amount
34 which has been erroneously refunded, and which is recoverable by the
35 commissioner of finance, shall bear interest at the underpayment rate
36 set by the commissioner of finance pursuant to section 11-537 of this
37 chapter, or, if no rate is set, at the rate of seven and one-half
38 percent per annum from the date of the payment of the refund, but only
39 if it appears that any part of the refund was induced by fraud or a
40 misrepresentation of a material fact.

41 (k) Satisfaction by credits. If any portion of a tax is satisfied by
42 credit of an overpayment, then no interest shall be imposed under this
43 section on the portion of the tax so satisfied for any period during
44 which, if the credit had not been made, interest would have been allow-
45 able with respect to such overpayment.

46 § 11-525 Additions to tax and civil penalties. (a) (1) Failure to
47 file tax return. (A) In case of failure to file a tax return under this
48 chapter on or before the prescribed date, determined with regard to any
49 extension of time for filing, unless it is shown that such failure is
50 due to reasonable cause and not due to willful neglect, there shall be
51 added to the amount required to be shown as tax on such return five
52 percent of the amount of such tax if the failure is for not more than
53 one month, with an additional five percent for each additional month or
54 fraction thereof during which such failure continues, not exceeding
55 twenty-five percent in the aggregate.

1 (B) In the case of a failure to file a tax return within sixty days of
2 the date prescribed for filing of such return, determined with regard to
3 any extension of time for filing, unless it is shown that such failure
4 is due to reasonable cause and not due to willful neglect, the addition
5 to tax under subparagraph (A) of this paragraph shall not be less than
6 the lesser of one hundred dollars or one hundred percent of the amount
7 required to be shown as tax on such return.

8 (C) For purposes of this paragraph, the amount of tax required to be
9 shown on the return shall be reduced by the amount of any part of the
10 tax which is paid on or before the date prescribed for payment of the
11 tax and by the amount of any credit against the tax which may be claimed
12 upon the return.

13 (2) Failure to pay tax shown on return. In case of failure to pay the
14 amounts shown as tax on any return required to be filed under this chap-
15 ter on or before the prescribed date, determined with regard to any
16 extension of time for payment, unless it is shown that such failure is
17 due to reasonable cause and not due to willful neglect, there shall be
18 added to the amount shown as tax on such return one-half of one percent
19 of the amount of such tax if the failure is not for more than one month,
20 with an additional one-half of one percent for each additional month or
21 fraction thereof during which such failure continues, not exceeding
22 twenty-five percent in the aggregate. For the purpose of computing the
23 addition for any month, the amount of tax shown on the return shall be
24 reduced by the amount of any part of the tax which is paid on or before
25 the beginning of such month and by the amount of any credit against the
26 tax which may be claimed upon the return. If the amount of tax required
27 to be shown on a return is less than the amount shown as tax on such
28 return, this paragraph shall be applied by substituting such lower
29 amount.

30 (3) Failure to pay tax required to be shown on return. In case of
31 failure to pay any amount in respect of any tax required to be shown on
32 a return required to be filed under this chapter which is not so shown,
33 including an assessment made pursuant to subdivision (a) of section
34 11-522 of this chapter, within ten days of the date of a notice and
35 demand therefor, unless it is shown that such failure is due to reason-
36 able cause and not due to willful neglect, there shall be added to the
37 amount of tax stated in such notice and demand one-half of one percent
38 of such tax if the failure is not for more than one month, with an addi-
39 tional one-half of one percent for each additional month or fraction
40 thereof during which such failure continues, not exceeding twenty-five
41 percent in the aggregate. For the purpose of computing the addition for
42 any month, the amount of tax stated in the notice and demand shall be
43 reduced by the amount of any part of the tax which is paid before the
44 beginning of such month.

45 (4) Limitations on additions. (A) With respect to any return the
46 amount of the addition under paragraph one of this subdivision shall be
47 reduced by the amount of the addition under paragraph two of this subdivi-
48 sion for any month to which an addition applies under both paragraphs
49 one and two of this subdivision. In any case described in subparagraph
50 (B) of paragraph one of this subdivision, the amount of the addition
51 under such paragraph one shall not be reduced below the amount provided
52 in such subparagraph.

53 (B) With respect to any return, the maximum amount of the addition
54 permitted under paragraph three of this subdivision shall be reduced by
55 the amount of the addition under paragraph one of this subdivision,
56 determined without regard to subparagraph (B) of such paragraph one,

1 which is attributable to the tax for which the notice and demand is made
2 and which is not paid within ten days of such notice and demand.

3 (b) Deficiency due to negligence. (1) If any part of a deficiency is
4 due to negligence or intentional disregard of this chapter or rules or
5 regulations hereunder, but without intent to defraud, there shall be
6 added to the tax an amount equal to five percent of the deficiency.

7 (2) There shall be added to the tax, in addition to the amount deter-
8 mined under paragraph one of this subdivision, an amount equal to fifty
9 percent of the interest payable under subdivision (a) of section 11-524
10 with respect to the portion of the deficiency described in such para-
11 graph one which is attributable to the negligence or intentional disre-
12 gard referred to in such paragraph one, for the period beginning on the
13 last date prescribed by law for payment of such deficiency, determined
14 without regard to any extension, and ending on the date of the assess-
15 ment of the tax, or, if earlier, the date of the payment of the tax.

16 (3) If any payment is shown on a return made by a payor with respect
17 to dividends, patronage dividends and interest under subsection (a) of
18 section six thousand forty-two, subsection (a) of section six thousand
19 forty-four or subsection (a) of section six thousand forty-nine of the
20 internal revenue code of nineteen hundred fifty-four, respectively, and
21 the payee fails to include any portion of such payment in unincorporated
22 business gross income, as that term is defined in section 11-506, any
23 portion of a deficiency attributable to such failure shall be treated,
24 for purposes of this subdivision, as due to negligence in the absence of
25 clear and convincing evidence to the contrary. If any addition to tax is
26 imposed under this subdivision by reason of this paragraph, the amount
27 of the addition to tax imposed by paragraph one of this subdivision
28 shall be five percent of the portion of the deficiency which is attrib-
29 utable to the failure described in this paragraph.

30 (c) Failure to file declaration or underpayment of estimated tax. If
31 any taxpayer fails to file a declaration of estimated tax or fails to
32 pay all or any part of an installment of estimated tax, the taxpayer
33 shall be deemed to have made an underpayment of estimated tax. There
34 shall be added to the tax for the taxable year an amount at the under-
35 payment rate set by the commissioner of finance pursuant to section
36 11-537 of this chapter, or, if no rate is set, at the rate of seven and
37 one-half percent per annum upon the amount of the underpayment for the
38 period of the underpayment but not beyond the fifteenth day of the
39 fourth month following the close of the taxable year. The amount of the
40 underpayment shall be the excess of the amount of the installment which
41 would be required to be paid if the estimated tax were equal to ninety
42 percent of the tax shown on the return for the taxable year, or if no
43 return was filed, ninety percent of the tax for such year, over the
44 amount, if any, of the installment paid on or before the last day
45 prescribed for such payment. No underpayment shall be deemed to exist
46 with respect to a declaration or installment otherwise due on or after
47 the taxpayer's death. In any case in which there would be no underpay-
48 ment if this subdivision were applied by substituting "eighty percent"
49 for "ninety percent" where it appears in this subdivision, the addition
50 to tax under this subdivision shall be equal to seventy-five percent of
51 the amount otherwise determined under this subdivision.

52 (d) Exception to addition for underpayment of estimated tax. The addi-
53 tion to tax under subdivision (c) of this section with respect to any
54 underpayment of any installment shall not be imposed if the total amount
55 of all payments of estimated tax made on or before the last date

1 prescribed for the payment of such installment equals or exceeds which-
2 ever of the following is the lesser:

3 (1) The amount which would have been required to be paid on or before
4 such date if the estimated tax were whichever of the following is the
5 least:

6 (A) The tax shown on the return of the taxpayer for the preceding
7 taxable year, if a return showing a liability for tax was filed by the
8 taxpayer for the preceding taxable year and such preceding year was a
9 taxable year of twelve months, or

10 (B) An amount equal to the tax computed, at the rates applicable to
11 the taxable year, but otherwise on the basis of the facts shown on the
12 taxpayer's return for, and the law applicable to, the preceding taxable
13 year, or

14 (C) An amount equal to ninety percent of the tax for the taxable year
15 computed by placing on an annualized basis the unincorporated business
16 taxable income for the months in the taxable year ending before the
17 month in which the installment is required to be paid. For purposes of
18 this subparagraph, the unincorporated business taxable income shall be
19 placed on an annualized basis by:

20 (i) multiplying by twelve, or, in the case of a taxable year of less
21 than twelve months, the number of months in the taxable year, the unin-
22 corporated business taxable income for the months in the taxable year
23 ending before the month in which the installment is required to be paid,
24 and

25 (ii) dividing the resulting amount by the number of months in the
26 taxable year ending before the month in which such installment date
27 falls, or

28 (D)(i) If the base period percentage for any six consecutive months of
29 the taxable year equals or exceeds seventy percent, an amount equal to
30 ninety percent of the tax determined in the following manner:

31 (I) take the unincorporated business taxable income for all months
32 during the taxable year preceding the filing month,

33 (II) divide such amount by the base period percentage for all months
34 during the taxable year preceding the filing month,

35 (III) determine the tax on the amounts determined under subclause (II)
36 of this clause, and

37 (IV) multiply the tax determined under subclause (III) of this clause
38 by the base period percentage for the filing month and all months during
39 the taxable year preceding the filing month.

40 (ii) For purposes of clause (i) of this subparagraph:

41 (I) the base period percentage for any period of months shall be the
42 average percent which the unincorporated business taxable income for the
43 corresponding months in each of the three preceding years bears to the
44 unincorporated business taxable income for the three preceding taxable
45 years. The commissioner of finance may by regulations provide for the
46 determination of the base period percentage in the case of new unincor-
47 porated businesses and other similar circumstances, and

48 (II) the term "filing month" means the month in which the installment
49 is required to be paid;

50 (2) An amount equal to ninety percent of the tax computed, at the
51 rates applicable to the taxable year, on the basis of the actual unin-
52 corporated business taxable income for the months in the taxable year
53 ending before the month in which the installment is required to be paid.

54 (e)(1) Except as provided in paragraph two of this subdivision,
55 subparagraphs (A) and (B) of paragraph one of subdivision (d) of this
56 section shall not apply in the case of any taxpayer which had unincorpo-

1 rated business taxable income, or the portion thereof allocated within
2 the city, of one million dollars or more for any taxable year during the
3 three taxable years immediately preceding the taxable year involved.

4 (2) The amount treated as the estimated tax under subparagraphs (A)
5 and (B) of paragraph one of subdivision (d) of this section shall in no
6 event be less than seventy-five percent of the tax shown on the return
7 for the taxable year beginning in nineteen hundred eighty-three or, if
8 no return was filed, seventy-five percent of the tax for such year.

9 (f) Deficiency due to fraud. (1) If any part of a deficiency is due to
10 fraud, there shall be added to the tax an amount equal to two times of
11 the deficiency.

12 (2) The addition to tax under this subdivision shall be in lieu of any
13 other addition to tax imposed by subdivision (a) or (b) of this section.

14 (g) Additional penalty. Any taxpayer who with fraudulent intent shall
15 fail to pay any tax, or to make, render, sign or certify any return or
16 declaration of estimated tax, or to supply any information within the
17 time required by or under this chapter shall be liable to a penalty of
18 not more than one thousand dollars, in addition to any other amounts
19 required under this chapter, to be imposed, assessed and collected by
20 the commissioner of finance. The commissioner of finance shall have the
21 power, in his or her discretion, to waive, reduce or compromise any
22 penalty under this subdivision.

23 (h) Additions treated as tax. The additions to tax and penalties
24 provided by this section shall be paid upon notice and demand and shall
25 be assessed, collected and paid in the same manner as taxes, and any
26 reference in this chapter to tax or tax imposed by this chapter, shall
27 be deemed also to refer to the additions to tax and penalties provided
28 by this section. For purposes of section 11-521, this subdivision shall
29 not apply to:

30 (1) any addition to tax under subdivision (a) of this section except
31 as to that portion attributable to a deficiency;

32 (2) any addition to tax under subdivision (c) of this section; and

33 (3) any additional penalties under subdivisions (g) and (k) of this
34 section.

35 (i) Determination of deficiency. For purposes of subdivisions (b) and
36 (c) of this section, the amounts shown as the tax by the taxpayer upon
37 his or her return shall be taken into account in determining the amount
38 of the deficiency only if such return was filed on or before the last
39 day prescribed for the filing of such return, determined with regard to
40 any extension of time for such filing.

41 (j) Substantial understatement of liability. If there is a substantial
42 understatement of tax for any taxable year, there shall be added to the
43 tax an amount equal to ten percent of the amount of any underpayment
44 attributable to such understatement. For purposes of this subdivision,
45 there is a substantial understatement of tax for any taxable year if the
46 amount of the understatement for the taxable year exceeds the greater of
47 ten percent of the tax required to be shown on the return for the tax-
48 able year, or five thousand dollars. For purposes of the this subdivi-
49 sion, the term "understatement" means the excess of the amount of the
50 tax required to be shown on the return for the taxable year, over the
51 amount of the tax imposed which is shown on the return, reduced by any
52 rebate, within the meaning of subdivision (g) of section 11-521 of this
53 chapter. The amount of such understatement shall be reduced by that
54 portion of the understatement which is attributable to the tax treatment
55 of any item by the taxpayer if there is or was substantial authority for
56 such treatment, or any item with respect to which the relevant facts

1 affecting the item's tax treatment are adequately disclosed in the
2 return or in a statement attached to the return. The commissioner of
3 finance may waive all or any part of the addition to tax provided by
4 this subdivision on a showing by the taxpayer that there was reasonable
5 cause for the understatement, or part thereof, and that the taxpayer
6 acted in good faith.

7 (k) Aiding or assisting in the giving of fraudulent returns, reports,
8 statements or other documents. (1) Any person who, with the intent that
9 tax be evaded, shall, for a fee or other compensation or as an incident
10 to the performance of other services for which such person receives
11 compensation, aid or assist in, or procure, counsel, or advise the prep-
12 aration or presentation under, or in connection with any matter arising
13 under this chapter of any return, report, declaration, statement or
14 other document which is fraudulent or false as to any material matter,
15 or supply any false or fraudulent information, whether or not such
16 falsity or fraud is with the knowledge or consent of the person author-
17 ized or required to present such return, report, declaration, statement
18 or other document shall pay a penalty not exceeding ten thousand
19 dollars.

20 (2) For purposes of paragraph one of this subdivision, the term
21 "procures" includes ordering, or otherwise causing, a subordinate to do
22 an act, and knowing of, and not attempting to prevent, participation by
23 a subordinate in an act. The term "subordinate" means any other person,
24 whether or not a member, employee, or agent of the taxpayer involved,
25 over whose activities the person has direction, supervision, or control.

26 (3) For purposes of paragraph one of this subdivision, a person
27 furnishing typing, reproducing, or other mechanical assistance with
28 respect to a document shall not be treated as having aided or assisted
29 in the preparation of such document by reason of such assistance.

30 (4) The penalty imposed by this subdivision shall be in addition to
31 any other penalty provided by law.

32 (1) False or fraudulent document penalty. Any taxpayer that submits a
33 false or fraudulent document to the department shall be subject to a
34 penalty of one hundred dollars per document submitted, or five hundred
35 dollars per tax return submitted. Such penalty shall be in addition to
36 any other penalty or addition provided by law.

37 § 11-526 Overpayment. (a) General. The commissioner of finance,
38 within the applicable period of limitations, may credit an overpayment
39 of tax and interest on such overpayment against any liability in respect
40 of any tax imposed by this title, on the person who made overpayment,
41 and the balance shall be refunded. Such credit of an overpayment shall
42 be applied before such overpayment, or any portion thereof, is paid to
43 the state commissioner of taxation and finance pursuant to section one
44 hundred seventy-one-m of the tax law.

45 (b) Credits against estimated tax. The commissioner of finance may
46 prescribe regulations providing for the crediting against the estimated
47 tax for any taxable year of the amount determined to be an overpayment
48 of the tax for a preceding taxable year. If any overpayment of tax is
49 so claimed as a credit against estimated tax for the succeeding taxable
50 year, such amount shall be considered as a payment of the tax for the
51 succeeding taxable year, whether or not claimed as a credit in the
52 declaration of estimated tax for such succeeding taxable year, and no
53 claim for credit or refund of such overpayment shall be allowed for the
54 taxable year for which the overpayment arises.

1 (c) Rule where no tax liability. If there is no tax liability for a
2 period in respect of which an amount is paid as tax, such amount shall
3 be considered an overpayment.

4 (d) Assessment and collection after limitation period. If any amount
5 of income tax is assessed or collected after the expiration of the peri-
6 od of limitations properly applicable thereto, such amount shall be
7 considered an overpayment.

8 (e) Notwithstanding any provision of law in article fifty-two of the
9 civil practice law and rules to the contrary, the procedures for the
10 enforcement of money judgments shall not apply to the department of
11 finance, or to any officer or employee of the department of finance, as
12 a garnishee, with respect to any amount of money to be refunded or cred-
13 ited to a taxpayer under this chapter.

14 § 11-527 Limitation on credit or refund. (a) General. Claim for credit
15 or refund of an overpayment of tax shall be filed by the taxpayer within
16 three years from the time the return was filed or two years from the
17 time the tax was paid, whichever of such periods expires the later, or
18 if no return was filed, within two years from the time the tax was paid.
19 If the claim is filed within the three year period, the amount of the
20 credit or refund shall not exceed the portion of the tax paid within the
21 three years immediately preceding the filing of the claim plus the peri-
22 od of any extension of time for filing the return. If the claim is not
23 filed within the three year period, but is filed within the two year
24 period, the amount of the credit or refund shall not exceed the portion
25 of the tax paid during the two years immediately preceding the filing of
26 the claim. Except as otherwise provided in this section, if no claim is
27 filed, the amount of a credit or refund shall not exceed the amount
28 which would be allowable if a claim had been filed on the date the cred-
29 it or refund is allowed.

30 (b) Extension of time by agreement. If an agreement under the
31 provisions of paragraph two of subdivision (c) of section 11-523 of this
32 chapter, extending the period for assessment of income tax, is made
33 within the period prescribed in subdivision (a) of this section for the
34 filing of a claim for credit or refund the period for filing a claim for
35 credit or refund, or for making credit or refund if no claims filed,
36 shall not expire prior to six months after the expiration of the period
37 within which an assessment may be made pursuant to the agreement or any
38 extension thereof. The amount of such credit or refund shall not exceed
39 the portion of the tax paid after the execution of the agreement and
40 before the filing of the claim or the making of the credit or refund, as
41 the case may be, plus the portion of the tax paid within the period
42 which would be applicable under subdivision (a) of this section if a
43 claim had been filed on the date the agreement was executed.

44 (c) Notice of change or correction of federal or New York state taxa-
45 ble income. If a taxpayer is required by section 11-519 of this chapter
46 to report a change or correction in federal or New York state taxable
47 income reported on the taxpayer's federal or New York state income tax
48 return, or to report a change or correction which is treated in the same
49 manner as if it were an overpayment for federal or New York state income
50 tax purposes, or to file an amended return with the commissioner of
51 finance, claim for credit or refund of any resulting overpayment of tax
52 shall be filed by the taxpayer within two years from the time the notice
53 of such change or correction or such amended return was required to be
54 filed with the commissioner of finance. If the report or amended return
55 required by section 11-519 of this chapter is not filed within the nine-
56 ty day period therein specified, no interest shall be payable on any

1 claim for credit or refund of the overpayment attributable to the feder-
2 al or New York state change or correction. The amount of such credit or
3 refund shall not exceed the amount of the reduction in tax attributable
4 to such federal or New York state change, correction or items amended on
5 the taxpayer's amended federal or New York state income tax return. This
6 subdivision shall not affect the time within which or the amount for
7 which a claim for credit or refund may be filed apart from this subdivi-
8 sion.

9 (d) Overpayment attributable to net operating loss carryback. A claim
10 for credit or refund of so much of an overpayment as is attributable to
11 the application to the taxpayer of a net operating loss carryback shall
12 be filed within three years from the time the return was due for the
13 taxable year of the loss, or within the period prescribed in subdivision
14 (b) of this section in respect of such taxable year, or within the peri-
15 od prescribed in subdivision (c) of this section, where applicable in
16 respect of the taxable year to which the net operating loss is carried
17 back, whichever expires the latest.

18 (e) Failure to file claim within prescribed period. No credit or
19 refund shall be allowed or made, except as provided in subdivision (f)
20 of this section or subdivision (d) of section 11-530 of this chapter
21 after the expiration of the applicable period of limitation specified in
22 this chapter unless a claim for credit or refund is filed by the taxpay-
23 er within such period. Any later credit shall be void and any later
24 refund erroneous. No period of limitations specified in any other law
25 shall apply to the recovery by a taxpayer of moneys paid in respect of
26 taxes under this chapter.

27 (f) Effect of petition to tax appeals tribunal. If a notice of defi-
28 ciency for a taxable year has been mailed to the taxpayer under section
29 11-521 of this chapter and if the taxpayer files a timely petition with
30 the tax appeals tribunal under section 11-529 of this chapter, the tax
31 appeals tribunal may determine that the taxpayer has made an overpayment
32 for such year, whether or not it also determines a deficiency for such
33 year. No separate claim for credit or refund for such year shall be
34 filed, and no credit or refund for such year shall be allowed or made,
35 except:

36 (1) as to overpayments determined by a decision of the tax appeals
37 tribunal which has become final;

38 (2) as to any amount collected in excess of an amount computed in
39 accordance with the decision of the tax appeals tribunal which has
40 become final;

41 (3) as to any amount collected after the period of limitation upon the
42 making of levy for collection has expired; and

43 (4) as to any amount claimed as a result of a change or correction
44 described in subdivision (c) of this section.

45 (g) Limit on amount of credit or refund. The amount of overpayment
46 determined under subdivision (f) of this section shall, when the deci-
47 sion of the tax appeals tribunal has become final, be credited or
48 refunded in accordance with subdivision (a) of section 11-526 of this
49 chapter and shall not exceed the amount of tax which the tax appeals
50 tribunal determines as part of its decision was paid:

51 (1) after the mailing of the notice of deficiency, or

52 (2) within the period which would be applicable under subdivision (a),
53 (b) or (c) of this section, if on the date of the mailing of the notice
54 of deficiency a claim has been filed, whether or not filed, stating the
55 grounds upon which the tax appeals tribunal finds that there is an over-
56 payment.

1 (h) Early return. For purposes of this section, any return filed
2 before the last day prescribed for the filing thereof shall be consid-
3 ered as filed on such last day, determined without regard to any exten-
4 sion of time granted the taxpayer.

5 (i) Prepaid tax. For purposes of this section, any tax paid by the
6 taxpayer before the last day prescribed for its payment and any amount
7 paid by the taxpayer as estimated tax for a taxable year shall be deemed
8 to have been paid by the taxpayer on the fifteenth day of the fourth
9 month following the close of his or her taxable year with respect to
10 which such amount constitutes a credit or payment, except that for taxa-
11 ble years beginning on or after January first, two thousand sixteen, in
12 the case of a taxpayer classified as a partnership for federal income
13 tax purposes, such amount shall be deemed to have been paid on the
14 fifteenth day of the third month following the close of his or her taxa-
15 ble year with respect to which such amount constitutes a credit or
16 payment.

17 (j) Cross reference. For provision barring refund of overpayment cred-
18 ited against tax of a succeeding year, see subdivision (d) of section
19 11-526 of this chapter.

20 (k) Notice of change or correction of sales and compensating use tax
21 liability. If a taxpayer is required by section 11-519.1 of this chapter
22 to file a report or amended return or report in respect of a change or
23 correction of his or her sales and compensating use tax liability, claim
24 for credit or refund of any resulting overpayment of tax shall be filed
25 by the taxpayer within two years from the time such report or amended
26 return or report was required to be filed with the commissioner of
27 finance. The amount of such credit or refund shall be computed without
28 change of the allocation of income upon which the taxpayer's return, or
29 any additional assessment, was based, and shall not exceed the amount of
30 the reduction in tax attributable to such change or correction of sales
31 and compensating use tax liability.

32 This subdivision shall not affect the time within which or the amount
33 for which a claim for credit or refund may be filed apart from this
34 subdivision.

35 § 11-528 Interest on overpayment. (a) General. Notwithstanding the
36 provisions of section three-a of the general municipal law, interest
37 shall be allowed and paid as follows at the overpayment rate set by the
38 commissioner of finance pursuant to section 11-537 of this chapter, or,
39 if no rate is set, at the rate of six percent per annum upon any over-
40 payment in respect of the tax imposed by this chapter:

41 (1) from the date of the overpayment to the due date of an amount
42 against which a credit is taken; or

43 (2) from the date of the overpayment to a date, to be determined by
44 the commissioner of finance, preceding the date of a refund check by not
45 more than thirty days, whether or not such refund check is accepted by
46 the taxpayer after tender of such check to the taxpayer. The acceptance
47 of such check shall be without prejudice to any right of the taxpayer to
48 claim any additional overpayment and interest thereon.

49 (3) Late and amended returns and claims for credit or refund.
50 Notwithstanding paragraph one or two of this subdivision, in the case of
51 an overpayment claimed on a return of tax which is filed after the last
52 date prescribed for filing such return, determined with regard to exten-
53 sions, or claimed on an amended return of tax or claimed on a claim, for
54 credit or refund, no interest shall be allowed or paid for any day
55 before the date on which such return or claim is filed.

1 (4) Interest on certain refunds. To the extent provided for in regu-
2 lations promulgated by the commissioner of finance, if an item of
3 income, gain, loss, deduction or credit is changed from the taxable year
4 or period in which it is reported to the taxable year or period in which
5 it belongs and the change results in an underpayment in a taxable year
6 or period and an overpayment in some other taxable year or period, the
7 provisions of paragraph three of this subdivision with respect to an
8 overpayment shall not be applicable to the extent that the limitation in
9 such paragraph on the right to interest would result in a taxpayer not
10 being allowed interest for a length of time with respect to an overpay-
11 ment while being required to pay interest on an equivalent amount of the
12 related underpayment. However, this paragraph shall not be construed as
13 limiting or mitigating the effect of any statute of limitations or any
14 other provisions of law relating to the authority of such commissioner
15 to issue a notice of deficiency or to allow a credit or refund of an
16 overpayment.

17 (5) Amounts of less than one dollar. No interest shall be allowed or
18 paid if the amount thereof is less than one dollar.

19 (b) Advance payment of tax and payment of estimated tax. The
20 provisions of subdivisions (h) and (i) of section 11-527 of this chapter
21 applicable in determining the date of payment of tax for purposes of
22 determining the period of limitations on credit or refund, shall be
23 applicable in determining the date of payment for purposes of this
24 section.

25 (c) Refund within three months of claim for overpayment. If any over-
26 payment of tax imposed by this chapter is credited or refunded within
27 three months after the last date prescribed, or permitted by extension
28 of time, for filing the return of such tax on which such overpayment was
29 claimed or within three months after such return was filed, whichever is
30 later, or within three months after an amended return was filed claiming
31 such overpayment or within three months after a claim for credit or
32 refund was filed on which such overpayment was claimed, no interest
33 shall be allowed under this section on any such overpayment. For
34 purposes of this subdivision, any amended return or claim for credit or
35 refund filed before the last day prescribed, or permitted by extension
36 of time, for the filing of the return of tax for such year shall be
37 considered as filed on such last day.

38 (d) Refund of tax caused by carryback. For purposes of this section,
39 if any overpayment of tax imposed by this chapter results from a carry-
40 back of a net operating loss, such overpayment shall be deemed not to
41 have been made prior to the filing date for the taxable year in which
42 such net operating loss arises. Such filing date shall be determined
43 without regard to extensions of time to file. For purposes of subdivi-
44 sion (c) of this section any overpayment described herein shall be
45 treated as an overpayment for the loss year and such subdivision shall
46 be applied with respect to such overpayment by treating the return for
47 the loss year as not filed before claim for such overpayment is filed.
48 The term "loss year" means the taxable year in which such loss arises.

49 (e) No interest until return in processible form. (1) For purposes of
50 subdivisions (a) and (c) of this section, a return shall not be treated
51 as filed until it is filed in processible form.

52 (2) For purposes of paragraph one of this subdivision, a return is in
53 a processible form if:

54 (A) such return is filed on a permitted form, and

55 (B) such return contains:

1 (i) the taxpayer's name, address, and identifying number and the
2 required signatures, and

3 (ii) sufficient required information, whether on the return or on
4 required attachments, to permit the mathematical verification of tax
5 liability shown on the return.

6 (f) Cross-reference. For provision with respect to interest after
7 failure to file notice of federal or New York state change under section
8 11-519 of this chapter, see subdivision (c) of section 11-527 of this
9 chapter.

10 § 11-529 Petition to tax appeals tribunal. (a) General. The form of a
11 petition to the tax appeals tribunal, and further proceedings before the
12 tax appeals tribunal in any case initiated by the filing of a petition,
13 shall be governed by such rules as the tax appeals tribunal shall
14 prescribe. No petition shall be denied in whole or in part without
15 opportunity for a hearing on reasonable prior notice. Such hearing and
16 any appeal to the tribunal sitting en banc from the decision rendered in
17 such hearing shall be conducted in the manner and subject to the
18 requirements prescribed by the tax appeals tribunal pursuant to sections
19 one hundred sixty-eight through one hundred seventy-two of the charter
20 of the preceding municipality as it existed January first, nineteen
21 hundred ninety-four. A decision of the tax appeals tribunal shall be
22 rendered, and notice thereof shall be given, in the manner provided by
23 section one hundred seventy-one of the charter of the preceding munici-
24 pality.

25 (b) Petition for redetermination of a deficiency. Within ninety days,
26 or one hundred fifty days if the notice is addressed to a person outside
27 of the United States, after the mailing of the notice of deficiency
28 authorized by section 11-521 of this chapter, or if the commissioner of
29 finance has established a conciliation procedure pursuant to section
30 11-124 of this title and the taxpayer has requested a conciliation
31 conference in accordance therewith, within ninety days from the mailing
32 of the conciliation decision or the date of the commissioner's confirma-
33 tion of the discontinuance of the conciliation proceeding, the taxpayer
34 may file a petition with the tax appeals tribunal for a redetermination
35 of the deficiency. Such petition may also assert a claim for refund for
36 the same taxable year or years, subject to the limitations of subdivi-
37 sion (g) of section 11-527 of this chapter.

38 (c) Petition for refund. A taxpayer may file a petition with the tax
39 appeals tribunal for the amounts asserted in a claim for refund if:

40 (1) the taxpayer has filed a timely claim for refund with the commis-
41 sioner of finance,

42 (2) the taxpayer has not previously filed with the tax appeals tribu-
43 nal a timely petition under subdivision (b) of this section for the same
44 taxable year unless the petition under this subdivision relates to a
45 separate claim for credit or refund properly filed under subdivision (f)
46 of section 11-527 of this chapter, and

47 (3) either: (A) six months have expired since the claim was filed, or
48 (B) the commissioner of finance has mailed to the taxpayer, by regis-
49 tered or certified mail, a notice of disallowance of such claim in whole
50 or in part. No petition under this subdivision shall be filed more than
51 two years after the date of mailing of a notice of disallowance, unless
52 prior to the expiration of such two year period it has been extended by
53 written agreement between the taxpayer and the commissioner of finance.
54 If a taxpayer files a written waiver of the requirement that he or she
55 be mailed a notice of disallowance, the two year period prescribed by

1 this subdivision for filing a petition for refund shall begin on the
2 date such waiver is filed.

3 (4) If the commissioner of finance has established a conciliation
4 procedure pursuant to section 11-124 of this title, a taxpayer who is
5 eligible to file a petition for refund with the tax appeals tribunal
6 pursuant to this subdivision may request a conciliation conference prior
7 to filing such petition, provided the request is made within the time
8 prescribed for filing the petition. Notwithstanding anything in this
9 subdivision to the contrary, if the taxpayer has requested a concil-
10 iation conference in accordance with the procedure established pursuant
11 to section 11-124 of this title, a petition for refund may be filed no
12 later than ninety days from the mailing of the conciliation decision or
13 the date of the commissioner's confirmation of the discontinuance of the
14 conciliation proceeding.

15 (d) Assertion of deficiency after filing petition. (1) Petition for
16 redetermination of deficiency. If a taxpayer files with the tax appeals
17 tribunal a petition for redetermination of a deficiency, the tax appeals
18 tribunal shall have power to determine a greater deficiency than
19 asserted in the notice of deficiency and to determine if there should be
20 assessed any addition to tax or penalty provided in section 11-525 of
21 this chapter, if claim therefor is asserted at or before the hearing
22 under the rules of the tax appeals tribunal.

23 (2) Petition for refund. If the taxpayer files with the tax appeals
24 tribunal a petition for credit or refund for a taxable year, the tax
25 appeals tribunal may:

26 (A) determine a deficiency for such year as to any amount of deficien-
27 cy asserted at or before the hearing under rules of the tax appeals
28 tribunal, and within the period in which an assessment would be timely
29 under section 11-523 of this chapter, or

30 (B) deny so much of the amount for which credit or refund is sought in
31 the petition, as is offset by other issues pertaining to the same taxa-
32 ble year which are asserted at or before the hearing under rules of the
33 tax appeals tribunal.

34 (3) Opportunity to respond. A taxpayer shall be given a reasonable
35 opportunity to respond to any matters asserted by the commissioner of
36 finance under this subdivision.

37 (4) Restriction on further notices of deficiency. If the taxpayer
38 files a petition with the tax appeals tribunal under this section, no
39 notice of deficiency under section 11-521 of this chapter may thereafter
40 be issued by the commissioner of finance for the same taxable year,
41 except in case of fraud or with respect to a change or correction in
42 federal or New York state taxable income required to be reported under
43 section 11-519 of this chapter or with respect to a state change or
44 correction of sales and compensating use tax liability to be reported
45 under section 11-519.1 of this chapter.

46 (e) Burden of proof. In any case before the tax appeals tribunal under
47 this chapter, the burden of proof shall be upon the petitioner except
48 for the following issues, as to which the burden of proof shall be upon
49 the commissioner of finance:

50 (1) whether the petitioner has been guilty of fraud with intent to
51 evade tax;

52 (2) whether the petitioner is liable as the transferee of property of
53 a taxpayer, but not to show that the taxpayer was liable for the tax;

54 (3) whether the petitioner is liable for any increase in a deficiency
55 where such increase is asserted initially after a notice of deficiency
56 was mailed and a petition under this section filed, unless such increase

1 in deficiency is the result of a change or correction of federal or New
2 York state taxable income required to be reported under section 11-519
3 of this chapter, and of which change or correction the commissioner of
4 finance had no notice at the time he or she mailed the notice of defi-
5 ciency or unless such increase in deficiency is the result of a change
6 or correction of sales and compensating use tax liability required to be
7 reported under section 11-519.1 of this title, and of which change or
8 correction the commissioner of finance had no notice at the time he or
9 she mailed the notice of deficiency; and

10 (4) whether any person is liable for a penalty under subdivision (k)
11 of section 11-525 of this chapter.

12 (f) Evidence of related federal or state determination. Evidence of a
13 federal or state determination relating to issues raised in a case
14 before the tax appeals tribunal under this section shall be admissible,
15 under rules established by the tax appeals tribunal.

16 (g) Jurisdiction over other years. The tax appeals tribunal shall
17 consider such facts with relation to the taxes for other years as may be
18 necessary correctly to determine the tax for the taxable year, but in so
19 doing shall have no jurisdiction to determine whether or not the tax for
20 any other year has been overpaid or underpaid.

21 § 11-530 Review of tax appeals tribunal's decision. (a) General. A
22 decision of the tax appeals tribunal sitting en banc shall be subject to
23 judicial review at the instance of any taxpayer affected thereby in the
24 manner provided by law for the review of a final decision or action of
25 administrative agencies of the city. An application by a taxpayer for
26 such review must be made within four months after notice of the decision
27 is sent by certified mail, return receipt requested, to the taxpayer and
28 the commissioner of finance.

29 (b) Judicial review exclusive remedy. The review of a decision of the
30 tax appeals tribunal provided by this section shall be the exclusive
31 remedy available to any taxpayer for the judicial determination of the
32 liability of the taxpayer for the taxes imposed by this chapter.

33 (c) Assessment pending review; review bond. Irrespective of any
34 restrictions on the assessment and collection of deficiencies, the
35 commissioner of finance may assess a deficiency determined by the tax
36 appeals tribunal in a decision rendered pursuant to section one hundred
37 seventy-one of the charter of the preceding municipality as it existed
38 January first, nineteen hundred ninety-four after the expiration of the
39 period specified in subdivision (a) of this section, notwithstanding
40 that an application for judicial review in respect of such deficiency
41 has been duly made by the taxpayer, unless the taxpayer, at or before
42 the time his or her application for review is made, has paid the defi-
43 ciency, has deposited with the commissioner of finance the amount of the
44 deficiency, or has filed with the commissioner of finance a bond, which
45 may be a jeopardy bond under subdivision (h) of section 11-534 of this
46 chapter, in the amount of the portion of the deficiency, including
47 interest and other amounts, in respect of which the application for
48 review is made and all costs and charges which may accrue against such
49 taxpayer in the prosecution of the proceeding, including costs of all
50 appeals, and with surety approved by a justice of the supreme court of
51 the state of New York, conditioned upon the payment of the deficiency,
52 including interests and other amounts, as finally determined and such
53 costs and charges. If, as a result of a waiver of the restrictions on
54 the assessment and collection of a deficiency, any part of the amount
55 determined by the tax appeals tribunal is paid after the filing of the

1 review bond, such bond shall, at the request of the taxpayer, be propor-
2 tionately reduced.

3 (d) Credit, refund or abatement after review. If the amount of a defi-
4 ciency determined by the tax appeals tribunal is disallowed in whole or
5 in part by the court of review, the amount so disallowed shall be cred-
6 ited, or refunded to the taxpayer, without the making of claim therefor,
7 or, if payment has not been made, shall be abated.

8 (e) Date of finality of tax appeals tribunal's decision. A decision of
9 the tax appeals tribunal shall become final upon the expiration of the
10 period specified in subdivision (a) of this section for making an appli-
11 cation for review, if no such application has been duly made within such
12 time, or if such application has been duly made, upon expiration of the
13 time for all further judicial review, or upon the rendering by the tax
14 appeals tribunal of a decision in accordance with the mandate of the
15 court on review. Notwithstanding the provisions of this subdivision,
16 for the purpose of making an application for review, the decision of the
17 tax appeals tribunal shall be deemed final on the date the notice of
18 decision is sent by certified mail to the taxpayer and the commissioner
19 of finance.

20 § 11-531 Mailing rules; holidays; miscellaneous. (a) Timely mailing.
21 (1) If any return, declaration of estimated tax, claim, statement,
22 notice, petition, or other document required to be filed, or any payment
23 required to be made, within a prescribed period or on or before a
24 prescribed date under authority of any provision of this chapter is,
25 after such period or such date, delivered by the United States mail to
26 the commissioner of finance, tax appeals tribunal, bureau, office, offi-
27 cer or person with which or with whom such document is required to be
28 filed, or to which or to whom such payment is required to be made, the
29 date of the United States postmark stamped on the envelope shall be
30 deemed to be the date of delivery. This subdivision shall apply only if
31 the postmark date falls within the prescribed period or on or before the
32 prescribed date for the filing of such document, or for making the
33 payment, including any extension granted for such filing or payment, and
34 only if such document or payment was deposited in the mail, postage
35 prepaid, properly addressed to the commissioner of finance, tax appeals
36 tribunal, bureau, office, officer or person with which or with whom the
37 document is required to be filed or to which or to whom such payment is
38 required to be made. If any document is sent by United States registered
39 mail, such registration shall be prima facie evidence that such document
40 was delivered to the commissioner of finance, tax appeals tribunal,
41 bureau, office, officer or person to which or to whom addressed. To the
42 extent that the commissioner of finance or, where relevant, the tax
43 appeals tribunal shall prescribe by regulation, certified mail may be
44 used in lieu of registered mail under this section. Except as provided
45 in paragraph two of this subdivision, this subdivision shall apply in
46 the case of postmarks not made by the United States postal service only
47 if and to the extent provided by regulations of the commissioner of
48 finance or, where relevant, the tax appeals tribunal.

49 (2) (A) Any reference in paragraph one of this subdivision to the
50 United States mail shall be treated as including a reference to any
51 delivery service designated by the secretary of the treasury of the
52 United States pursuant to section seventy-five hundred two of the inter-
53 nal revenue code and any reference in paragraph one of this subdivision
54 to a United States postmark shall be treated as including a reference to
55 any date recorded or marked in the manner described in section seventy-
56 five hundred two of the internal revenue code by a designated delivery

1 service. If the commissioner of finance finds that any delivery service
2 designated by such secretary is inadequate for the needs of the city,
3 the commissioner may withdraw such designation for purposes of this
4 title. The commissioner may also designate additional delivery services
5 meeting the criteria of section seventy-five hundred two of the internal
6 revenue code for purposes of this title, or may withdraw any such designa-
7 tion if the commissioner of finance finds that a delivery service so
8 designated is inadequate for the needs of the city. Any reference in
9 paragraph one of this subdivision to the United States mail shall be
10 treated as including a reference to any delivery service designated by
11 the commissioner of finance and any reference in paragraph one of this
12 subdivision to a United States postmark shall be treated as including a
13 reference to any date recorded or marked in the manner described in
14 section seventy-five hundred two of the internal revenue code by a
15 delivery service designated by the commissioner of finance. Notwith-
16 standing the provisions of this paragraph, any withdrawal of designation
17 or additional designation by the commissioner of finance shall not be
18 effective for purposes of service upon the tax appeals tribunal, unless
19 and until such withdrawal of designation or additional designation is
20 ratified by the president of the tax appeals tribunal.

21 (B) Any equivalent of registered or certified mail designated by the
22 United States secretary of the treasury, or as may be designated by the
23 commissioner of finance pursuant to the same criteria used by such
24 secretary for such designations pursuant to section seventy-five hundred
25 two of the internal revenue code, shall be included within the meaning
26 of registered or certified mail as used in paragraph one of this subdivi-
27 sion. If the commissioner of finance finds that any equivalent of
28 registered or certified mail designated by such secretary or the commis-
29 sioner of finance is inadequate for the needs of the city, the commis-
30 sioner of finance may withdraw such designation for purposes of this
31 title. Notwithstanding the provisions of this paragraph, any withdrawal
32 of designation or additional designation by the commissioner of finance
33 shall not be effective for purposes of service upon the tax appeals
34 tribunal, unless and until such withdrawal of designation or additional
35 designation is ratified by the president of the tax appeals tribunal.

36 (b) Last known address. For purposes of this chapter, a taxpayer's
37 last known address shall be given in the last return filed by the
38 taxpayer, unless subsequently to the filing of such return the taxpayer
39 shall have notified the commissioner of finance of a change of address.

40 (c) Last day a Saturday, Sunday or legal holiday. When the last day
41 prescribed under authority of this chapter, including any extension of
42 time, for performing any act falls on Saturday, Sunday, or a legal holi-
43 day in the state of New York, the performance of such act shall be
44 considered timely if it is performed on the next succeeding day which is
45 not a Saturday, Sunday or legal holiday.

46 (d) Certificate: unfiled return. For purposes of this chapter and
47 sections one hundred sixty-eight through one hundred seventy-two of the
48 charter of the preceding municipality, the certificate of the commis-
49 sioner of finance to the effect that a tax has not been paid, that a
50 return or declaration of estimated tax has not been filed, or that
51 information has not been supplied, as required by or under the
52 provisions of this title, shall be prima facie evidence that such tax
53 has not been paid, that such return or declaration has not been filed,
54 or that such information has not been supplied.

55 § 11-532 Collection, levy and liens. (a) Collection procedures. The
56 taxes imposed by this chapter shall be collected by the commissioner of

1 finance, and the commissioner may establish the mode or time for the
2 collection of any amount due it under this chapter if not otherwise
3 specified. The commissioner of finance shall, upon request, give a
4 receipt for any sum collected under this chapter. The commissioner of
5 finance may authorize banks or trust companies which are depositories or
6 financial agents of the city to receive and give a receipt for any tax
7 imposed under this chapter in such manner, at such times, and under such
8 conditions as the commissioner of finance may prescribe; and the commis-
9 sioner of finance shall prescribe the manner, times and conditions under
10 which the receipt of such tax by such banks and trust companies is to be
11 treated as payment of such tax to the commissioner of finance.

12 (b) Notice and demand for tax. The commissioner of finance shall as
13 soon as practicable give notice to each person liable for any amount of
14 tax, addition to tax, penalty or interest, which has been assessed but
15 remains unpaid, stating the amount and demanding payment thereof. Such
16 notice shall be left at the dwelling or usual place of business of such
17 person or shall be sent by mail to such person's last known address.
18 Except where the commissioner of finance determines that collection
19 would be jeopardized by delay, if any tax is assessed prior to the last
20 date, including any date fixed by extension, prescribed for payment of
21 such tax, payment of such tax shall not be demanded until after such
22 date.

23 (c) Issuance of warrant after notice and demand. If any person liable
24 under this chapter for the payment of any tax, addition to tax, penalty
25 or interest neglects or refuses to pay the same within the ten days
26 after notice and demand herefor is given to such person under subdivi-
27 sion (b) of this section, the commissioner of finance may within six
28 years after the date of such assessment issue a warrant directed to the
29 sheriff of any county of the state, or to any officer or employee of the
30 department of finance, commanding such person to levy upon and sell such
31 person's real and personal property for the payment of the amount
32 assessed, with the cost of executing the warrant, and to return such
33 warrant to the commissioner of finance and pay to the commissioner the
34 money collected by virtue thereof within sixty days after the receipt of
35 the warrant. If the commissioner of finance finds that the collection
36 of the tax or other amount is in jeopardy, notice and demand for immedi-
37 ate payment of such tax may be made by the commissioner of finance and
38 upon failure or refusal to pay such tax or other amount the commissioner
39 of finance may issue a warrant without regard to the ten-day period
40 provided in this subdivision.

41 (d) Copy of warrant to be filed and lien to be created. Any sheriff
42 or officer or employee who receives a warrant under subdivision (c) of
43 this section shall within five days thereafter file a copy with the
44 clerk of the appropriate county. The clerk shall thereupon enter in the
45 judgment docket, in the column for judgment debtors, the name of the
46 taxpayer mentioned in the warrant, and in appropriate columns the tax or
47 other amounts for which the warrant is issued and the date when such
48 copy is filed; and such amount shall thereupon be a binding lien upon
49 the real, personal and other property of the taxpayer.

50 (e) Judgment. When a warrant has been filed with the county clerk the
51 commissioner of finance shall, on behalf of the city, be deemed to have
52 obtained judgment against the taxpayer for the tax or other amounts.

53 (f) Execution. The sheriff or officer or employee shall thereupon
54 proceed upon the judgment in all respects, with like effect, and in the
55 same manner prescribed by law in respect to executions issued against
56 property upon judgments of a court of record, and a sheriff shall be

1 entitled to the same fees for the sheriff's services in executing the
2 warrant, to be collected in the same manner. An officer or employee of
3 the department of finance may proceed in any county or counties of this
4 state and shall have all the powers of execution conferred by law upon
5 sheriffs, but shall be entitled to no fee or compensation in excess of
6 actual expenses paid in connection with the execution of the warrant.

7 (g) Taxpayer not a resident of this state. Where a notice and demand
8 under subdivision (b) of this section shall have been given to a taxpay-
9 er who is not then a resident of this state, and it appears to the
10 commissioner of finance that it is not practicable to find in this state
11 property of the taxpayer sufficient to pay the entire balance of tax or
12 other amount owing by such taxpayer who is not then a resident of this
13 state, the commissioner of finance may, in accordance with subdivision
14 (c) of this section, issue a warrant directed to an officer or employee
15 of the department of finance, a copy of which warrant shall be mailed by
16 certified or registered mail to the taxpayer at the taxpayer's last
17 known address, subject to the rules for mailing provided in subdivision
18 (a) of section 11-521 of this chapter. Such warrant shall command the
19 officer or employee to proceed in Richmond county, and such officer or
20 employee shall, within five days after receipt of the warrant, file the
21 warrant and obtain a judgment in accordance with this section. Thereup-
22 on the commissioner of finance may authorize the institution of any
23 action or proceeding to collect or enforce the judgment in any place and
24 by any procedure that a civil judgment of the supreme court of the state
25 of New York could be collected or enforced. The commissioner of finance
26 may also, in the commissioner's discretion, designate agents or retain
27 counsel for the purpose of collecting, outside the state of New York,
28 any unpaid taxes, additions to tax, penalties or interest which have
29 been assessed under this chapter against taxpayers who are not residents
30 of this state, may fix the compensation of such agents and counsel to be
31 paid out of money appropriated or otherwise lawfully available for
32 payment thereof, and may require of them bonds or other security for the
33 faithful performance of their duties, in such form and in such amount as
34 the commissioner of finance shall deem proper and sufficient.

35 (h) Action by city for recovery of taxes. Action may be brought by
36 the corporation counsel of the city at the instance of the commissioner
37 of finance as agent and trustee for the city to recover the amount of
38 any unpaid taxes, additions to tax, penalties or interest which have
39 been assessed under this chapter within six years prior to the date the
40 action is commenced.

41 (i) Release of lien or vacating warrant. The commissioner of finance,
42 if he or she finds that the interests of the city will not thereby be
43 jeopardized, and upon such conditions as the commissioner may require,
44 may release any property from the lien of any warrant or vacate such
45 warrant for unpaid taxes, additions to tax, penalties and interest filed
46 pursuant to subdivision (d) or (g) of this section, and such release or
47 vacating of the warrant may be recorded in the office of any recording
48 officer in which such warrant has been filed. The clerk shall thereupon
49 cancel and discharge as of the original date of docketing the vacated
50 warrant.

51 § 11-533 Transferees. (a) General. The liability, at law or in equity,
52 of a transferee of property of a taxpayer for any tax, additions to tax,
53 penalty or interest due the commissioner of finance under this chapter,
54 shall be assessed, paid, and collected in the same manner and subject to
55 the same provisions and limitations as in the case of the tax to which
56 the liability relates, except that the period of limitations for assess-

1 ment against the transferee shall be extended by one year for each
2 successive transfer, in order, from the original taxpayer to the trans-
3 feree involved, but not by more than three years in the aggregate. The
4 term "transferee" includes donee, heir, legatee, devisee and distribu-
5 tee.

6 (b) Exceptions. (1) If before the expiration of the period of limi-
7 tations for assessment of liability of the transferee, a claim has been
8 filed by the commissioner of finance in any court against the original
9 taxpayer or the last preceding transferee based upon the liability of
10 the original taxpayer, then the period of limitation for assessment of
11 liability of the transferee shall in no event expire prior to one year
12 after such claim has been finally allowed, disallowed or otherwise
13 disposed of.

14 (2) If, before the expiration of the time prescribed in subdivision
15 (a) of this section or the immediately preceding paragraph of this
16 subdivision for the assessment of the liability, the commissioner of
17 finance and the transferee have both consented in writing to its assess-
18 ment after such time, the liability may be assessed at any time prior to
19 the expiration of the period agreed upon. The period so agreed upon may
20 be extended by subsequent agreements in writing made before the expira-
21 tion of the period previously agreed upon. For the purpose of determin-
22 ing the period of limitation on credit or refund to the transferee of
23 overpayments of tax made by such transferee or overpayments of tax made
24 by the transferor as to which the transferee is legally entitled to
25 credit or refund, such agreement and any extension thereof shall be
26 deemed an agreement and extension thereof referred to in subdivision (b)
27 of section 11-527 of this chapter. If the agreement is executed after
28 the expiration of the period of limitation for assessment against the
29 original taxpayer, then in applying the limitations under subdivision
30 (b) of section 11-527 of this chapter on the amount of the credit or
31 refund, the periods specified in subdivision (a) of section 11-527 of
32 this chapter shall be increased by the period from the date of such
33 expiration to the date of agreement.

34 (c) Deceased transferor. If any person is deceased, the period of
35 limitation for assessment against such person shall be the period that
36 would be in effect if such person had lived.

37 (d) Evidence. Notwithstanding the provisions of subdivision (e) of
38 section 11-537 of this chapter the commissioner of finance shall use his
39 or her powers to make available to the transferee evidence necessary to
40 enable the transferee to determine the liability of the original taxpay-
41 er and of any preceding transferees, but without undue hardship to the
42 original taxpayer or preceding transferee. See subdivision (e) of
43 section 11-529 of this chapter for rules as to burden of proof.

44 § 11-534 Jeopardy assessment. (a) Authority for making. If the commis-
45 sioner of finance believes that the assessment or collection of a defi-
46 ciency will be jeopardized by delay, the commissioner shall, notwith-
47 standing the provision of sections 11-521 and 11-536 of this chapter,
48 and immediately assess such deficiency, together with all interest,
49 penalties and additions to tax provided for by law, and notice and
50 demand shall be made by the commissioner of finance for the payment
51 thereof.

52 (b) Notice of deficiency. If the jeopardy assessment is made before
53 any notice in respect to the tax to which the jeopardy assessment
54 relates has been mailed under section 11-521 of this chapter, then the
55 commissioner of finance shall mail a notice under such section within
56 sixty days after the making of the assessment.

1 (c) Amount assessable before decision of tax appeals tribunal. The
2 jeopardy assessment may be made in respect of a deficiency greater or
3 less than that of which notice is mailed to the taxpayer and whether or
4 not the taxpayer has heretofore filed a petition with the tax appeals
5 tribunal. The commissioner of finance may, at any time before the tax
6 appeals tribunal renders its decision, abate such assessment, or any
7 unpaid portion thereof, to the extent that the commissioner believes the
8 assessment to be excessive in amount. The tax appeals tribunal may in
9 its decision redetermine the entire amount of the deficiency and of all
10 amounts assessed at the same time in connection therewith.

11 (d) Amount assessable after decision of tax appeals tribunal. If the
12 jeopardy assessment is made after the decision of the tax appeals tribu-
13 nal is rendered, such assessment may be made only in respect of the
14 deficiency determined by the tax appeals tribunal in its decision.

15 (e) Expiration of right to assess. A jeopardy assessment may not be
16 made after the decision of the tax appeals tribunal has become final or
17 after the taxpayer has made an application for review of the decision of
18 the tax appeals tribunal.

19 (f) Collection of unpaid amounts. When a petition has been filed with
20 the tax appeals tribunal and when the amount which should have been
21 assessed has been determined by a decision of the tax appeals tribunal
22 which has become final, then any unpaid portion, the collection of which
23 has been stayed by bond, shall be collected as part of the tax upon
24 notice and demand from the commissioner of finance, and any remaining
25 portion of the assessment shall be abated. If the amount already
26 collected exceeds the amount determined as the amount which should have
27 been assessed, such excess shall be credited or refunded to the taxpayer
28 as provided in section 11-526 of this chapter without the filing of
29 claim therefor. If the amount determined as the amount which should have
30 been assessed is greater than the amount actually assessed, then the
31 difference shall be assessed and shall be collected as part of the tax
32 upon notice and demand from the commissioner of finance.

33 (g) Abatement if jeopardy does not exist. The commissioner of finance
34 may abate the jeopardy assessment if the commissioner finds that jeopar-
35 dy does not exist. Such abatement may not be made after a decision of
36 the tax appeals tribunal in respect of the deficiency has been rendered
37 or, if no petition is filed with the tax appeals tribunal, after the
38 expiration of the period for filing such petition. The period of limita-
39 tion on the making of assessments and levy or a proceeding for
40 collection, in respect of any deficiency, shall be determined as if the
41 jeopardy assessment so abated had not been made, except that the running
42 of such period shall in any event be suspended for the period from the
43 date of such jeopardy assessment until the expiration of the tenth day
44 after the day on which such jeopardy assessment is abated.

45 (h) Bond to stay collection. The collection of the whole or any amount
46 of any jeopardy assessment may be stayed by filing with the commissioner
47 of finance, within such time as may be fixed by regulation, a bond in an
48 amount equal to the amount as to which the stay is desired, conditioned
49 upon the payment of the amount, together with interest thereon, the
50 collection of which is stayed at the time at which, but for the making
51 of the jeopardy assessment, such amount would be due. Upon the filing of
52 the bond the collection of so much of the amount assessed as is covered
53 by the bond shall be stayed. The taxpayer shall have the right to waive
54 such stay at any time in respect of the whole or any part of the amount
55 covered by the bond, and if as a result of such waiver any part of the
56 amount covered by the bond is paid, then the bond shall at the request

1 of the taxpayer, be proportionately reduced. If any portion of the
2 jeopardy assessment is abated, or if a notice or deficiency under
3 section 11-521 of this chapter is mailed to the taxpayer in a lesser
4 amount, the bond shall, at the request of the taxpayer, be proportion-
5 ately reduced.

6 (i) Petition to tax appeals tribunal. If the bond is given before the
7 taxpayer has filed his or her petition under section 11-529 of this
8 chapter, the bond shall contain a further condition that if a petition
9 is not filed within the period provided in such section, then the amount
10 the collection of which is stayed by the bond, will be paid on notice
11 and demand at any time after the expiration of such period, together
12 with interest thereon from the date of the jeopardy notice and demand to
13 the date of notice and demand under this subdivision. The bond shall be
14 conditioned upon the payment of so much of such assessment, collection
15 of which is stayed by the bond, as is not abated by a decision of the
16 tax appeals tribunal which has become final. If the tax appeals tribunal
17 determines that the amount assessed is greater than the amount which
18 should have been assessed, then the bond shall, at the request of the
19 taxpayer, be proportionately reduced when the decision of the tax
20 appeals tribunal is rendered.

21 (j) Stay of sale of seized property pending tax appeals tribunal deci-
22 sion. Where a jeopardy assessment is made, the property seized for the
23 collection of the tax shall not be sold:

24 (1) if subdivision (b) of this section is applicable, prior to the
25 issuance of the notice of deficiency and the expiration of the time
26 provided in section 11-529 of this chapter for filing a petition with
27 the tax appeals tribunal, and

28 (2) if a petition is filed with the tax appeals tribunal, whether
29 before or after the making of such jeopardy assessment, prior to the
30 expiration of the period during which the assessment of the deficiency
31 would be prohibited if subdivision (a) of this section were not applica-
32 ble.

33 Such property may be sold if the taxpayer consents to the sale, or if
34 the commissioner of finance determines that the expenses of conservation
35 and maintenance will greatly reduce the net proceeds, or if the property
36 is perishable.

37 (k) Interest. For the purpose of subdivision (a) of section 11-524 of
38 this chapter, the last date prescribed for payment shall be determined
39 without regard to any notice and demand for payment issued under this
40 section prior to the last date otherwise prescribed for such payment.

41 (l) Early termination of taxable year. If the commissioner of finance
42 finds that a taxpayer designs quickly to depart from this state or to
43 remove his or her property therefrom, or to conceal himself or herself
44 or his or her property therein, or to do any other act tending to preju-
45 dice or to render wholly or partly ineffectual proceedings to collect
46 the income tax for the current or the preceding taxable year unless such
47 proceedings be brought without delay, the commissioner of finance shall
48 declare the taxable period for such taxpayer immediately terminated, and
49 shall cause notice of such finding and declaration to be given to the
50 taxpayer, together with a demand for immediate payment of the tax for
51 the taxable period so declared terminated and of the tax for the preced-
52 ing taxable year or so much of such tax as is unpaid, whether or not the
53 time otherwise allowed by law for filing return and paying the tax has
54 expired; and such taxes shall thereupon become immediately due and paya-
55 ble. In any proceeding brought to enforce payment of taxes made due and
56 payable by virtue of the provisions of this subdivision, the finding of

1 the commissioner of finance, whether made after notice to the taxpayer
2 or not, shall be for all purposes presumptive evidence of jeopardy.

3 (m) Reopening of taxable period. Notwithstanding the termination of
4 the taxable period of the taxpayer by the commissioner of finance as
5 provided in subdivision (l) of this section, the commissioner of finance
6 may reopen such taxable period each time the taxpayer is found by the
7 commissioner of finance to have received income, within the current
8 taxable year, since the termination of such period. A taxable period so
9 terminated by the commissioner of finance may be reopened by the taxpay-
10 er if the taxpayer files with the commissioner of finance a true and
11 accurate return of taxable income and credits allowed under this chapter
12 for taxable period, together with such other information as the commis-
13 sioner of finance may by regulations prescribe.

14 (n) Furnishing of bond where taxable year is closed by the commis-
15 sioner of finance. Payment of taxes shall not be enforced by any proceedings
16 under the provisions of subdivision (l) of this section prior to the
17 expiration of the time otherwise allowed for paying such taxes if the
18 taxpayer furnishes, under regulations prescribed by the commissioner of
19 finance, a bond to insure the timely making of returns with respect to,
20 and payment of, such taxes or any taxes under this chapter for prior
21 years.

22 § 11-535 Criminal penalties; cross-reference. For criminal penalties,
23 see chapter forty of this title.

24 § 11-536 Armed forces relief provisions. (a) Time to be disregarded.
25 In the case of an individual serving in the armed forces of the United
26 States or serving in support of such armed forces, in an area designated
27 by the president of the United States by executive order as a "combat
28 zone" at any time during the period designated by the president by exec-
29 utive order as the period of combatant activities in such zone, or
30 hospitalized outside the state as a result of injury received while
31 serving in such an area during such time, the period of service in such
32 area, plus the period of continuous hospitalization outside the state
33 attributable to such injury, and the next one hundred eighty days there-
34 after, shall be disregarded in determining, under this chapter, in
35 respect of the tax liability, including any interest, penalty, or addi-
36 tion to the tax, of such individual:

37 (1) Whether any of the following acts was performed within the time
38 prescribed therefor:

39 (A) filing any return of tax;

40 (B) payment of any tax or any installment thereof or of any other
41 liability to the commissioner of finance, in respect thereof;

42 (C) filing a petition with the tax appeals tribunal for credit or
43 refund or for redetermination of a deficiency, or application for review
44 of a decision rendered by the tax appeals tribunal;

45 (D) allowance of a credit or refund of tax;

46 (E) filing a claim for credit or refund of tax;

47 (F) assessment of tax;

48 (G) giving or making any notice or demand for the payment of any tax,
49 or with respect to any liability to the commissioner of finance in
50 respect of tax;

51 (H) collection, by the commissioner of finance, by levy or otherwise
52 of the amount of any liability in respect of tax;

53 (I) bringing suit by the city, or any officer, on its behalf, in
54 respect of any liability in respect of tax; and

1 (J) any other act required or permitted under this chapter or speci-
2 fied in regulations prescribed under this section by the commissioner of
3 finance.

4 (2) The amount of any credit or refund (including interest).

5 (b) Action taken before ascertainment of right to benefits. The
6 assessment or collection of the tax imposed by this chapter or of any
7 liability to the commissioner of finance in respect of such tax, or any
8 action or proceeding by or on behalf of the commissioner of finance in
9 connection therewith, may be made, taken, begun, or prosecuted in
10 accordance with law, without regard to the provisions of subdivision (a)
11 of this section, unless prior to such assessment, collection, action, or
12 proceeding it is ascertained that the person concerned is entitled to
13 the benefit of subdivision (a) of this section.

14 (c) Members of armed forces dying in action. In the case of any person
15 who dies during an induction period while in active service as a member
16 of the armed forces of the United States, if such death occurred while
17 serving in a combat zone during a period of combatant activities in such
18 zone, as described in subdivision (a) of this section, or as a result of
19 wounds, disease or injury incurred while so serving, the tax imposed by
20 this chapter shall not apply with respect to the taxable year in which
21 falls the date of such person's death, or with respect to any prior
22 taxable year ending on or after the first day he or she so served in a
23 combat zone, and no returns shall be required in behalf of such person
24 or such person's estate for such year; and the tax for any such taxable
25 year which is unpaid at the date of his or her death, including inter-
26 est, additions to tax and penalties, if any, shall not be assessed and
27 if assessed, the assessment shall be abated and, if collected, shall be
28 refunded to the legal representative of such person's estate if one has
29 been appointed and has qualified, or, if no legal representative has
30 been appointed or has qualified, to such person's surviving spouse.

31 § 11-537 General powers of commissioner of finance. (a) General. The
32 commissioner of finance shall administer and enforce the tax imposed by
33 this chapter and the commissioner is authorized to make such rules and
34 regulations, and to require such facts and information to be reported,
35 as the commissioner may deem necessary to enforce the provision of this
36 chapter; and the commissioner may delegate his or her powers and func-
37 tions under all parts of this chapter to one of the commissioner's depu-
38 ties or to any employee or employees of the commissioner's department.

39 (b) Examination of books and witnesses. The commissioner of finance
40 for the purpose of ascertaining the correctness of any return, or for
41 the purpose of making an estimate of tax of any person, shall have power
42 to examine or to cause to have examined, by any agent or representative
43 designated by the commissioner for that purpose, any books, papers,
44 records or memoranda bearing upon the matters required to be included in
45 the return, and may require the attendance of the person rendering the
46 return or any officer or employee of such person, or the attendance of
47 any other person having knowledge in the premises, and may take testimo-
48 ny and require proof material for the commissioner's information, with
49 power to administer oaths to such person or persons.

50 (c) Abatement authority. The commissioner of finance, of his or her
51 own motion, may abate any small unpaid balance of an assessment of tax
52 under this part, or any liability in respect thereof, if the commis-
53 sioner of finance determines under uniform rules prescribed by the
54 commissioner that the administration and collection costs involved would
55 not warrant collection of the amount due. The commissioner may also
56 abate, of his or her own motion, the unpaid portion of the assessment of

1 any tax or any liability in respect thereof, which is excessive in
2 amount, or is assessed after the expiration of the period of limitation
3 properly applicable thereto, or is erroneously or illegally assessed.
4 No claim for abatement under this subdivision shall be filed by a
5 taxpayer.

6 (d) Special refund authority. Where no questions of fact or law are
7 involved and it appears from the records of the commissioner of finance
8 that any moneys have been erroneously or illegally collected from any
9 taxpayer or other person, or paid by such taxpayer or other person under
10 a mistake of facts, pursuant to the provisions of this chapter, the
11 commissioner of finance at any time, without regard to any period of
12 limitations, shall have the power, upon making a record of his or her
13 reasons therefor in writing, to cause such moneys so paid and being
14 erroneously and illegally held to be refunded.

15 (e) Cooperation with the United States, this state and other states.
16 Notwithstanding the provisions of section 11-538 of this chapter, the
17 commissioner of finance may permit the secretary of the treasury of the
18 United States or the secretary's delegates, or the proper officer of
19 this or any other state imposing an income tax upon the incomes of indi-
20 viduals, or the authorized representative of any such officer, to
21 inspect any return filed under this chapter or may furnish to such offi-
22 cer or his or her authorized representative an abstract of any such
23 return or supply such officer with information concerning an item
24 contained in any such return, or disclosed by any investigation of tax
25 liability under this chapter, but such permission shall be granted or
26 such information furnished to such officer or such officer's represen-
27 tative only if the laws of the United States or of such state, as the
28 case may be, grant substantially similar privileges to the commissioner
29 of finance and such information is to be used for tax purposes only; and
30 provided further the commissioner of finance may furnish to the secre-
31 tary of the treasury of the United States or the secretary's delegates
32 or to the tax commission of the state of New York or its delegates such
33 returns filed under this chapter and other tax information, as he or she
34 may consider proper for use in court actions or proceedings under the
35 internal revenue code or the tax law of the state of New York, whether
36 civil or criminal, where a written request therefor has been made to the
37 commissioner of finance by the secretary of the treasury or by such tax
38 commission or by their delegates, provided the laws of the United States
39 or the laws of the state of New York grant substantially similar powers
40 to the secretary of the treasury of the United States or the secretary's
41 delegates or to such tax commission or its delegates. Where the commis-
42 sioner of finance has so authorized use of returns or other information
43 in such actions or proceedings, officers and employees of the department
44 of finance may testify in such actions or proceedings in respect to such
45 returns or other information.

46 (f) (1) Authority to set interest rates. The commissioner of finance
47 shall set the overpayment and underpayment rates of interest to be paid
48 pursuant to sections 11-524, 11-525 and 11-528 of this chapter, but if
49 no such rate or rates of interest are set, such overpayment rate shall
50 be deemed to be set at six percent per annum and such underpayment rate
51 shall be deemed to be set at seven and one-half percent per annum. Such
52 overpayment and underpayment rates shall be the rates prescribed in
53 paragraph two of this subdivision, but the underpayment rate shall not
54 be less than seven and one-half percent per annum. Any such rates set by
55 the commissioner of finance shall apply to taxes, or any portion there-
56 of, which remain or become due or overpaid on or after the date on which

1 such rates become effective and shall apply only with respect to inter-
2 est computed or computable for periods or portions of periods occurring
3 in the period during which such rates are in effect.

4 (2) General rule. (A) Overpayment rate. The overpayment rate set under
5 this subdivision shall be the sum of (i) the federal short-term rate as
6 provided under paragraph three of this subdivision, plus (ii) two
7 percentage points.

8 (B) Underpayment rate. The underpayment rate set under this subdivi-
9 sion shall be the sum of (i) the federal short-term rate as provided
10 under paragraph three of this subdivision, plus (ii) seven percentage
11 points.

12 (3) Federal short-term rate. For purposes of this subdivision:

13 (A) The federal short-term rate for any month shall be the federal
14 short-term rate determined by the United States secretary of the treas-
15 ury during such month in accordance with subsection (d) of section
16 twelve hundred seventy-four of the internal revenue code for use in
17 connection with section six thousand six hundred twenty-one of the
18 internal revenue code. Any such rate shall be rounded to the nearest
19 full percent, or, if a multiple of one-half of one percent, such rate
20 shall be increased to the next highest full percent.

21 (B) Period during which rate applies.

22 (i) In general. Except as provided in clause (ii) of this subpara-
23 graph, the federal short-term rate for the first month in each calendar
24 quarter shall apply during the first calendar quarter beginning after
25 such month.

26 (ii) Special rule for the month of September, nineteen hundred eight-
27 y-nine. The federal short-term rate for the month of April, nineteen
28 hundred eighty-nine shall apply with respect to setting the overpayment
29 and underpayment rates for the month of September, nineteen hundred
30 eighty-nine.

31 (4) Publication of interest rates. The commissioner of finance shall
32 cause to be published in the City Record, and give other appropriate
33 general notice of, the interest rates to be set under this subdivision
34 no later than twenty days preceding the first day of the calendar quar-
35 ter during which such interest rates apply. The setting and publication
36 of such interest rates shall not be included within paragraph (a) of
37 subdivision five of section one thousand forty-one of the city charter
38 of the preceding municipality as it existed January first, nineteen
39 hundred ninety-four relating to the definition of a rule.

40 (5) Cross-reference. For provisions relating to the power of the
41 commissioner of finance to abate small amounts of interest, see subdivi-
42 sion (c) of this section.

43 (g) In computing the amount of any interest required to be paid under
44 this chapter by the commissioner of finance or by the taxpayer, or any
45 other amount determined by reference to such amount of interest, such
46 interest and such amount shall be compounded daily. The provisions of
47 this subdivision shall not apply for purposes of computing the amount of
48 any addition to tax for failure to pay estimated tax under subdivision
49 (c) of section 11-525 of this chapter.

50 § 11-538 Secrecy requirement and the penalties for violation. 1.
51 Except in accordance with proper judicial order or as otherwise provided
52 by law, it shall be unlawful for the commissioner of finance, the
53 department of finance of the city, any officer or employee of the
54 department of finance of the city, any person engaged or retained by
55 such department on an independent contract basis, any depository to
56 which any return may be delivered as provided in subdivision four of

1 this section, any officer or employee of such depository, the tax
2 appeals tribunal, any commissioner or employee of such tribunal, or any
3 person who, pursuant to this section, is permitted to inspect any report
4 or return or to whom a copy, an abstract or a portion of any report or
5 return is furnished, or to whom any information contained in any report
6 or return is furnished, to divulge or make known in any manner the
7 amount of income or any particulars set forth or disclosed in any report
8 or return required under this chapter. The officers charged with the
9 custody of such reports and returns shall not be required to produce any
10 of them or evidence of anything contained in them in any action or
11 proceeding in any court, except on behalf of the city in an action or
12 proceeding under the provisions of this chapter or in any other action
13 or proceeding involving the collection of a tax due under this chapter
14 to which the city is a party or a claimant, or on behalf of any party to
15 any action or proceeding under the provisions of this chapter when the
16 reports, returns or facts shown thereby are directly involved in such
17 action or proceeding, in any of which events the court may require the
18 production of, and may admit in evidence, so much of said reports,
19 returns or of the facts shown thereby, as are pertinent to the action or
20 proceeding and no more. Nothing herein shall be construed to prohibit
21 the delivery to a taxpayer or to the taxpayer's duly authorized repre-
22 sentative of a certified copy of any return or report filed in
23 connection with his or her tax or to prohibit the publication of statis-
24 tics so classified as to prevent the identification of particular
25 reports or returns and the items thereof, or the inspection by the
26 corporation counsel or other legal representatives of the city of the
27 report or return of any taxpayer who shall bring action to set aside or
28 review the tax based thereon, or against whom an action or proceeding
29 under this chapter has been recommended by the commissioner of finance
30 or the corporation counsel or has been instituted, or the inspection of
31 the reports or returns required under this chapter by the duly desig-
32 nated officers or employees of the city for purposes of an audit under
33 this chapter or an audit authorized by the enacting of this chapter.
34 Reports and returns shall be preserved for three years and thereafter
35 until the commissioner of finance orders them to be destroyed.

36 2. Any officer or employee of the city or the state who willfully
37 violates the provisions of subdivision one of this section shall be
38 dismissed from office and be incapable of holding any public office in
39 the city or the state for a period of five years thereafter.

40 3. Cross-reference: For criminal penalties, see chapter forty of this
41 title.

42 4. Notwithstanding the provisions of subdivision one of this section,
43 the commissioner of finance, in his or her discretion, may require or
44 permit any or all persons liable for any tax imposed by this chapter, to
45 make payments on account of estimated tax and payment of any tax, penal-
46 ty or interest imposed by this chapter to banks, banking houses or trust
47 companies designated by the commissioner of finance and to file declara-
48 tions of estimated tax and reports and returns with such banks, banking
49 houses or trust companies as agents of the commissioner of finance, in
50 lieu of making any such payment directly to the commissioner of finance.
51 However, the commissioner of finance shall designate only such banks,
52 banking houses or trust companies as are depositories or financial
53 agents of the city.

54 5. This section shall be deemed a state statute for purposes of para-
55 graph (a) of subdivision two of section eighty-seven of the public offi-
56 cers law.

1 6. Notwithstanding anything in subdivision one of this section to the
2 contrary, if a taxpayer has petitioned the tax appeals tribunal for
3 administrative review as provided in section one hundred seventy of the
4 charter of the preceding municipality as it existed January first, nine-
5 teen hundred ninety-four, the commissioner of finance shall be author-
6 ized to present to the tribunal any report or return of such taxpayer,
7 or any information contained therein or relating thereto, which may be
8 material or relevant to the proceeding before the tribunal. The tax
9 appeals tribunal shall be authorized to publish a copy or a summary of
10 any decision rendered pursuant to section one hundred seventy-one of the
11 charter of the preceding municipality as it existed January first, nine-
12 teen hundred ninety-four.

13 7. Notwithstanding anything in subdivision one of this section, the
14 commissioner of finance may disclose to a taxpayer or a taxpayer's
15 related member, as defined in subdivision (e) of section 11-506 of this
16 chapter, information relating to any royalty paid, incurred or received
17 by such taxpayer or related member to or from the other, including the
18 treatment of such payments by the taxpayer or the related member in any
19 report or return transmitted to the commissioner of finance under this
20 title.

21 § 11-539 Inconsistencies with other laws. If any provision of this
22 chapter is inconsistent with, in conflict with, or contrary to any other
23 provision of law, such provision of this chapter shall prevail over such
24 other provision and such other provision shall be deemed to have been
25 amended, superseded or repealed to the extent of such inconsistency,
26 conflict or contrariety.

27 § 11-540 Disposition of revenues. All revenues resulting from the
28 imposition of the taxes under this chapter shall be paid into the treas-
29 ury of the city and shall be credited to and deposited in the general
30 fund of the city, but no part of such revenues may be expended unless
31 appropriated in the annual budget of the city.

32 CHAPTER 6
33 CITY BUSINESS
34 TAXES
35 SUBCHAPTER 1
36 GENERAL PROVISIONS

37 § 11-601 Definitions. When used in subchapters one through five:

38 1. "Taxpayer" means any corporation, association or other entity or
39 individual subject to tax under this chapter;

40 2. "State", "the state" or "this state" means the state of New York;

41 3. "Tax law", "insurance law", "private housing finance law", "envi-
42 ronmental conservation law", "public housing law", "state finance law",
43 "general municipal law", "public service law", "workers' compensation
44 law", "business corporation law", "civil practice law and rules", "crim-
45 inal procedure law", and "banking law" refer to laws of the state;

46 4. "Superintendent of insurance", and "commissioner of health" refer
47 to officials of the state;

48 5. "Commissioner of finance" means the commissioner of finance of the
49 city;

50 6. "Department of finance" means the department of finance of the
51 city;

52 7. "Domestic corporation" means a corporation organized under the laws
53 of the state; and

1 8. "Tax appeals tribunal" means the tax appeals tribunal established
2 by section one hundred sixty-eight of the charter of the preceding muni-
3 cipality as it existed January first, nineteen hundred ninety-four.

4 9. "REIT" means a real estate investment trust as defined in section
5 eight hundred fifty-six of the internal revenue code.

6 10. "RIC" means a regulated investment company as defined in section
7 eight hundred fifty-one of the internal revenue code.

8 11. "Captive REIT" means a REIT (a) that is not regularly traded on an
9 established securities market, and (b) more than fifty percent of the
10 voting stock of which is owned or controlled, directly or indirectly, by
11 a single corporation that is not exempt from federal income tax and is
12 not a REIT. Any voting stock in a REIT that is held in a segregated
13 asset account of a life insurance corporation, as described in section
14 eight hundred seventeen of the internal revenue code, shall not be taken
15 into account for purposes of determining whether a REIT is a captive
16 REIT.

17 12. "Captive RIC" means a RIC (a) that is not regularly traded on an
18 established securities market, and (b) more than fifty percent of the
19 voting stock of which is owned or controlled, directly or indirectly, by
20 a single corporation that is not exempt from federal income tax and is
21 not a RIC. Any voting stock in a RIC that is held in a segregated asset
22 account of a life insurance corporation, as described in section eight
23 hundred seventeen of the internal revenue code, shall not be taken into
24 account for purposes of determining whether a RIC is a captive RIC.

25 13. Unless a different meaning is clearly required, any term used in
26 this chapter shall have the same meaning as when used in a comparable
27 context in the laws of the United States relating to federal income
28 taxes, and any reference to the laws of the United States shall mean the
29 provisions of the internal revenue code of nineteen hundred fifty-four,
30 and amendments thereto, and other provisions of the laws of the United
31 States relating to federal income taxes, as the same are included in the
32 appendix to this chapter. The quotation of the aforesaid laws of the
33 United States is intended to make them a part of any appropriate chapter
34 and to avoid constitutional uncertainties which might result if such
35 laws were merely incorporated by reference. The quotation of a
36 provision of the federal internal revenue code or of any other law of
37 the United States shall not necessarily mean that it is applicable to or
38 has relevance to any of the chapters.

39 SUBCHAPTER 2
40 GENERAL CORPORATION TAX

41 § 11-602 Definitions. When used in this subchapter:

42 1. (a) "Corporation" includes (1) an association within the meaning of
43 paragraph three of subsection (a) of section seventy-seven hundred one
44 of the internal revenue code, including a limited liability company, (2)
45 a joint-stock company or association, (3) a publicly traded partnership
46 treated as a corporation for purposes of the internal revenue code
47 pursuant to section seventy-seven hundred four thereof and (4) any busi-
48 ness conducted by a trustee or trustees wherein interest or ownership is
49 evidenced by certificate or other written instrument;

50 (b) (1) Notwithstanding paragraph (a) of this subdivision, an unincor-
51 porated organization that (i) is described in subparagraph one or three
52 of such paragraph (a) and (ii) was subject to the provisions of chapter
53 five of this title for its taxable year beginning in nineteen hundred
54 ninety-five, may make a one-time election not to be treated as a corpo-

1 ration and, instead, to continue to be subject to the provisions of
2 chapter five of this title for its taxable years beginning in nineteen
3 hundred ninety-six and thereafter. Such election shall be made on the
4 return prescribed pursuant to such chapter five for such electing organ-
5 ization's taxable year beginning in nineteen hundred ninety-six, which
6 shall be filed on or before the due date, determined with regard to
7 extensions, for filing such return.

8 (2) An election under this paragraph shall continue to be in effect
9 until revoked by the unincorporated organization. An election under this
10 paragraph shall be revoked by the filing of a return under this subchap-
11 ter for the first taxable year with respect to which such revocation is
12 to be effective, which return shall be filed on or before the due date,
13 determined with regard to extensions, for filing such return. In no
14 event shall such election or revocation be for a part of a taxable year.

15 (c) Notwithstanding paragraph (a) of this subdivision, a corporation
16 shall not include an entity classified as a partnership for federal
17 income tax purposes.

18 2. "Subsidiary" means a corporation of which over fifty per centum of
19 the number of shares of stock entitling the holders thereof to vote for
20 the election of directors or trustees is owned by the taxpayer;

21 3. "Subsidiary capital" means investments in the stock of subsidiaries
22 and any indebtedness from subsidiaries, exclusive of accounts receivable
23 acquired in the ordinary course of trade or business for services
24 rendered or for sales of property held primarily for sale to customers,
25 whether or not evidenced by written instrument, on which interest is not
26 claimed and deducted by the subsidiary for purposes of taxation under
27 this subchapter or subchapter three of this chapter, provided, however,
28 that, in the discretion of the commissioner of finance, there shall be
29 deducted from subsidiary capital any liabilities which are directly or
30 indirectly attributable to subsidiary capital;

31 4. "Investment capital" means investments in stocks, bonds and other
32 securities, corporate and governmental, not held for sale to customers
33 in the regular course of business, exclusive of subsidiary capital and
34 stock issued by the taxpayer, provided, however, that, in the discretion
35 of the commissioner of finance, there shall be deducted from investment
36 capital any liabilities which are directly or indirectly attributable to
37 investment capital; and provided, further, that investment capital shall
38 not include any such investments the income from which is excluded from
39 entire net income pursuant to the provisions of paragraph (c-1) of
40 subdivision eight of this section, and that investment capital shall be
41 computed without regard to any liabilities directly or indirectly
42 attributable to such investments, but only if air carriers organized in
43 the United States and operating in the foreign country or countries in
44 which the taxpayer has its major base of operations and in which it is
45 organized, resident or headquartered, if not in the same country as its
46 major base of operations, are not subject to any tax based on or meas-
47 ured by capital imposed by such foreign country or countries or any
48 political subdivision thereof, or if taxed are provided an exemption,
49 equivalent to that provided for herein, from any tax based on or meas-
50 ured by capital imposed by such foreign country or countries and from
51 any such tax imposed by any political subdivision thereof;

52 5. "Investment income" means income, including capital gains in excess
53 of capital losses, from investment capital to the extent included in
54 computing entire net income, less, (a) in the discretion of the commis-
55 sioner of finance, any deductions allowable in computing entire net
56 income which are directly or indirectly attributable to investment capi-

1 tal or investment income, and (b) such portion of any net operating loss
2 deduction allowable in computing entire net income, as the investment
3 income, before such deduction, bears to entire net income, before such
4 deduction, provided, however, that in no case shall investment income
5 exceed entire net income;

6 6. (a) "Business capital" means all assets, other than subsidiary
7 capital, investment capital and stock issued by the taxpayer, less
8 liabilities not deducted from subsidiary or investment capital except
9 that cash on hand and on deposit shall be treated as investment capital
10 or as business capital as the taxpayer may elect;

11 (b) Provided, however, "business capital" shall not include assets to
12 the extent employed for the purpose of generating income which is
13 excluded from entire net income pursuant to the provisions of paragraph
14 (c-1) of subdivision eight of this section and shall be computed without
15 regard to liabilities directly or indirectly attributable to such
16 assets, but only if air carriers organized in the United States and
17 operating in the foreign country or countries in which the taxpayer has
18 its major base of operations and in which it is organized, resident or
19 headquartered, if not in the same country as its major base of oper-
20 ations, are not subject to any tax based on or measured by capital
21 imposed by such foreign country or countries or any political subdivi-
22 sion thereof, or if taxed, are provided an exemption, equivalent to that
23 provided for herein, from any tax based on or measured by capital
24 imposed by such foreign country or countries and from any such tax
25 imposed by any political subdivision thereof.

26 7. "Business income" means entire net income minus investment income;

27 8. "Entire net income" means total net income from all sources, which
28 shall be presumably the same as the entire taxable income, but not
29 alternative minimum taxable income,

30 (i) which the taxpayer is required to report to the United States
31 treasury department, or

32 (ii) which the taxpayer would have been required to report to the
33 United States treasury department if it had not made an election under
34 subchapter s of chapter one of the internal revenue code, or

35 (iii) which the taxpayer, in the case of a corporation which is exempt
36 from federal income tax, other than the tax on unrelated business taxa-
37 ble income imposed under section five hundred eleven of the internal
38 revenue code, but which is subject to tax under this subchapter, would
39 have been required to report to the United States treasury department
40 but for such exemption, or

41 (iv) which the taxpayer would have been required to report to the
42 United States treasury department if no election had been made to treat
43 the taxpayer as a qualified subchapter s subsidiary under paragraph
44 three of subsection (b) of section thirteen hundred sixty-one of the
45 internal revenue code, except as provided in this paragraph, and subject
46 to any modification required by paragraphs (d) and (e) of subdivision
47 three of section 11-604 of this subchapter.

48 (a) Entire net income shall not include:

49 (1) income, gains and losses from subsidiary capital which do not
50 include the amount of a recovery in respect of any war loss;

51 (2) fifty percent of dividends other than from subsidiaries, except
52 that entire net income shall include one hundred percent of dividends on
53 shares of stock with respect to which a dividend deduction is disallowed
54 by subsection (c) of section two hundred forty-six of the internal
55 revenue code;

1 (2-a) any amounts treated as dividends pursuant to section seventy-
2 eight of the internal revenue code and not otherwise deductible under
3 subparagraphs one and two of this paragraph;

4 (3) bona fide gifts;

5 (4) income and deductions with respect to amounts received from school
6 districts and from corporations and associations, organized and operated
7 exclusively for religious, charitable or educational purposes, no part
8 of the net earnings of which inures to the benefit of any private share-
9 holder or individual, for the operation of school buses;

10 (5) any refund or credit of a tax imposed under this chapter, or
11 imposed by article nine or nine-A or thirty-two of the tax law as such
12 article was in effect on December thirty-first, two thousand fourteen,
13 for which tax no exclusion or deduction was allowed in determining the
14 taxpayer's entire net income under this subchapter or subchapter three
15 of this chapter for any prior year;

16 (6) in the case of a taxpayer who is separately or as a partner of a
17 partnership doing an insurance business as a member of the New York
18 insurance exchange described in section six thousand two hundred one of
19 the insurance law, any item of income, gain, loss or deduction of such
20 business which is the taxpayer's distributive or pro rata share for
21 federal income tax purposes or which the taxpayer is required to take
22 into account separately for federal income tax purposes;

23 (7) that portion of wages and salaries paid or incurred for the taxa-
24 ble year for which a deduction is not allowed pursuant to the provisions
25 of section two hundred eighty C of the internal revenue code;

26 (8) for taxable years beginning after December thirty-first, nineteen
27 hundred eighty-one, except with respect to property which is a qualified
28 mass commuting vehicle described in subparagraph (D) of paragraph eight
29 of subsection (f) of section one hundred sixty-eight of the internal
30 revenue code, relating to qualified mass commuting vehicles, and proper-
31 ty of a taxpayer principally engaged in the conduct of an aviation,
32 steamboat, ferry or navigation business, or two or more of such busi-
33 nesses, which is placed in service before taxable years beginning in
34 nineteen hundred eighty-nine, any amount which is included in the
35 taxpayer's federal taxable income solely as a result of an election made
36 pursuant to the provisions of such paragraph eight as it was in effect
37 for agreements entered into prior to January first, nineteen hundred
38 eighty-four;

39 (9) for taxable years beginning after December thirty-first, nineteen
40 hundred eighty-one, except with respect to property which is a qualified
41 mass commuting vehicle described in subparagraph (D) of paragraph eight
42 of subsection (f) of section one hundred sixty-eight of the internal
43 revenue code, relating to qualified mass commuting vehicles, and proper-
44 ty of a taxpayer principally engaged in the conduct of an aviation,
45 steamboat, ferry or navigation business, or two or more of such busi-
46 nesses, which is placed in service before taxable years beginning in
47 nineteen hundred eighty-nine, any amount which the taxpayer could have
48 excluded from federal taxable income had it not made the election
49 provided for in such paragraph eight as it was in effect for agreements
50 entered into prior to January first, nineteen hundred eighty-four;

51 (10) the amount deductible pursuant to paragraph (j) of this subdivi-
52 sion;

53 (11) upon the disposition of property to which paragraph (j) of this
54 subdivision applies, the amount, if any, by which the aggregate of the
55 amounts described in subparagraph eleven of paragraph (b) of this subdivi-
56 sion attributable to such property exceeds the aggregate of the

1 amounts described in paragraph (j) of this subdivision attributable to
2 such property;

3 (12) for taxable years ending after September tenth, two thousand one,
4 the amount deductible pursuant to paragraph (k) of this subdivision;

5 (13) the amount deductible pursuant to paragraph (o) of this subdivi-
6 sion;

7 (14) any amount excepted, for purposes of subsection (a) of section
8 one hundred eighteen of the internal revenue code, from the term
9 "contribution to the capital of the taxpayer" by paragraph two of
10 subsection (b) of section one hundred eighteen of the internal revenue
11 code;

12 (15) the amount of any gain added back to determine entire net income
13 in a previous taxable year pursuant to subparagraph nineteen of para-
14 graph (b) of this subdivision that is included in federal gross income
15 for the taxable year; and

16 (16) the amount of any grant received through either the COVID-19
17 pandemic small business recovery grant program, pursuant to section
18 sixteen-ff of the New York state urban development corporation act, or
19 the small business resilience grant program administered by the depart-
20 ment of small business services, to the extent the amount of either such
21 grant is included in federal taxable income.

22 (a-1) Notwithstanding any other provision of this subchapter, for
23 taxable years beginning on or after August first, two thousand two, in
24 the case of a taxpayer that is a partner in a partnership subject to the
25 tax imposed by chapter eleven of this title as a utility, as defined in
26 subdivision six of section 11-1101 of such chapter, entire net income
27 shall not include the taxpayer's distributive or pro rata share for
28 federal income tax purposes of any item of income, gain, loss or
29 deduction of such partnership, or any item of income, gain, loss or
30 deduction of such partnership that the taxpayer is required to take into
31 account separately for federal income tax purposes.

32 (b) Entire net income shall be determined without the exclusion,
33 deduction or credit of:

34 (1) the amount of any specific exemption or credit allowed in any law
35 of the United States imposing any tax on or measured by the income of
36 any corporation,

37 (2) any part of any income from dividends or interest on any kind of
38 stock, securities, or indebtedness, except as provided in clauses one
39 and two of paragraph (a) of this subdivision,

40 (3) taxes on or measured by profits or income paid or accrued to the
41 United States, any of its possessions or to any foreign country, includ-
42 ing taxes in lieu of any of the foregoing taxes otherwise generally
43 imposed by any foreign country or by any possession of the United
44 States, or taxes on or measured by profited or income paid or accrued to
45 the state or any subdivision thereof, including taxes paid or accrued
46 under article nine, nine-A, thirteen-A, twenty-four-A, or twenty-four-B
47 of the tax law or under article thirty-two of the tax law as such arti-
48 cle was in effect on December thirty-first, two thousand fourteen,

49 (3-a) taxes on or measured by profits or income, or which include
50 profits or income as a measure, paid or accrued to any other state of
51 the United States, or any political subdivision thereof, or to the
52 District of Columbia, including taxes expressly in lieu of any of the
53 foregoing taxes otherwise generally imposed by any other state of the
54 United States, or any political subdivision thereof, or the District of
55 Columbia;

56 (4) taxes imposed under this chapter,

1 (4-a) (A) the entire amount allowable as an exclusion or deduction for
2 stock transfer taxes imposed by article twelve of the tax law in deter-
3 mining the entire taxable income which the taxpayer is required to
4 report to the United States treasury department but only to the extent
5 that such taxes are incurred and paid in market making transactions, and

6 (B) the amount allowed as an exclusion or deduction for sales and use
7 taxes imposed by section eleven hundred seven of the tax law in deter-
8 mining the entire taxable income which the taxpayer is required to
9 report to the United States treasury department but only such portion of
10 such exclusion or deduction which is not in excess of the amount of the
11 credit allowed pursuant to subdivision twelve of section 11-604 of this
12 subchapter,

13 (4-b) the amount allowed as an exclusion or a deduction imposed by the
14 tax law in determining the entire taxable income which the taxpayer is
15 required to report to the United States treasury department but only
16 such portion of such exclusion or deduction which is not in excess of
17 the amount of the credit allowed pursuant to subdivision thirteen of
18 section 11-604 of this subchapter,

19 (4-c) the amount allowed as an exclusion or a deduction imposed by the
20 tax law in determining the entire taxable income which the taxpayer is
21 required to report to the United States treasury department but only
22 such portion of such exclusion or deduction which is not in excess of
23 the amount of the credit allowed pursuant to subdivision fourteen of
24 section 11-604 of this subchapter,

25 (4-d) the amount allowed as an exclusion or deduction for sales and
26 use taxes imposed by section eleven hundred seven of the tax law in
27 determining the entire taxable income which the taxpayer is required to
28 report to the United States Treasury Department, but only such portion
29 of such exclusion or deduction which is not in excess of the amount of
30 the credit allowed pursuant to subdivision fifteen of section 11-604 of
31 this chapter,

32 (4-g) The amount allowed as an exclusion or deduction for sales and
33 use taxes imposed by section eleven hundred seven of the tax law, or for
34 any interest imposed in connection therewith, in determining the entire
35 taxable income which the taxpayer is required to report to the United
36 States treasury department but only such portion of such exclusion or
37 deduction which is not in excess of the amount of the credit allowed
38 pursuant to subdivision seventeen-a of section 11-604 of this subchap-
39 ter.

40 (6) in the discretion of the commissioner of finance, any amount of
41 interest directly or indirectly and any other amount directly or indi-
42 rectly attributable as a carrying charge or otherwise to subsidiary
43 capital or to income, gains or losses from subsidiary capital,

44 (7) any amount by reason of the granting, issuing or assuming of a
45 restricted stock option, as defined in the internal revenue code of
46 nineteen hundred fifty-four, or by reason of the transfer of the share
47 of stock upon the exercise of the option, unless such share is disposed
48 of by the grantee of the option within two years from the date of the
49 granting of the option or within six months after the transfer of such
50 share to the grantee,

51 (8) in the case of a taxpayer who is separately or as a partner of a
52 partnership doing an insurance business as a member of the New York
53 insurance exchange described in section six thousand two hundred one of
54 the insurance law, such taxpayer's distributive or pro rata share of the
55 allocated entire net income of such business as determined under
56 sections fifteen hundred three and fifteen hundred four of the tax law,

1 provided however, in the event such allocated entire net income is a
2 loss, such taxpayer's distributive or pro rata share of such loss shall
3 not be subtracted from federal taxable income in computing entire net
4 income under this subdivision,

5 (9) for taxable years beginning after December thirty-first, nineteen
6 hundred eighty-one, except with respect to property which is a qualified
7 mass commuting vehicle described in subparagraph (D) of paragraph eight
8 of subsection (f) of section one hundred sixty-eight of the internal
9 revenue code, relating to qualified mass commuting vehicles, and proper-
10 ty of a taxpayer principally engaged in the conduct of an aviation,
11 steamboat, ferry or navigation business, or two or more of such busi-
12 nesses, which is placed in service before taxable years beginning in
13 nineteen hundred eighty-nine, any amount which the taxpayer claimed as a
14 deduction in computing its federal taxable income solely as a result of
15 an election made pursuant to the provisions of such paragraph eight as
16 it was in effect for agreements entered into prior to January first,
17 nineteen hundred eighty-four,

18 (10) for taxable years beginning after December thirty-first, nineteen
19 hundred eighty-one, except with respect to property which is a qualified
20 mass commuting vehicle described in subparagraph (D) of paragraph eight
21 of subsection (f) of section one hundred sixty-eight of the internal
22 revenue code, relating to qualified mass commuting vehicles, and proper-
23 ty of a taxpayer principally engaged in the conduct of an aviation,
24 steamboat, ferry or navigation business, or two or more of such busi-
25 nesses, which is placed in service before taxable years beginning in
26 nineteen hundred eighty-nine, any amount which the taxpayer would have
27 been required to include in the computation of its federal taxable
28 income had it not made the election permitted pursuant to such paragraph
29 eight as it was in effect for agreements entered into prior to January
30 first, nineteen hundred eighty-four,

31 (11) in the case of property placed in service in taxable years begin-
32 ning before nineteen hundred ninety-four, for taxable years beginning
33 after December thirty-first, nineteen hundred eighty-one, except with
34 respect to property subject to the provisions of section two hundred
35 eighty-F of the internal revenue code, property subject to the
36 provisions of section one hundred sixty-eight of the internal revenue
37 code which is placed in service in this state in taxable years beginning
38 after December thirty-first, nineteen hundred eighty-four and property
39 of a taxpayer principally engaged in the conduct of an aviation, steam-
40 boat, ferry or navigation business, or two or more of such businesses,
41 which is placed in service before taxable years beginning in nineteen
42 hundred eighty-nine, the amount allowable as a deduction determined
43 under section one hundred sixty-eight of the internal revenue code,

44 (12) upon the disposition of property to which paragraph (j) of this
45 subdivision applies, the amount, if any, by which the aggregate of the
46 amounts described in such paragraph (j) attributable to such property
47 exceeds the aggregate of the amounts described in subparagraph eleven of
48 this paragraph attributable to such property,

49 (13) for taxable years ending after September tenth, two thousand one,
50 in the case of qualified property described in paragraph two of
51 subsection k of section one hundred sixty-eight of the internal revenue
52 code, other than qualified resurgence zone property described in para-
53 graph (m) of this subdivision, and other than qualified New York Liberty
54 Zone property described in paragraph two of subsection b of section
55 fourteen hundred L of the internal revenue code, without regard to
56 clause (i) of subparagraph (C) of such paragraph, the amount allowable

1 as a deduction under section one hundred sixty-seven of the internal
2 revenue code,

3 (14) for taxable years beginning on or after January first, two thou-
4 sand four, in the case of a taxpayer that is not an eligible farmer as
5 defined in subsection (n) of section six hundred six of the tax law, the
6 amount allowable as a deduction under sections one hundred seventy-nine,
7 one hundred sixty-seven and one hundred sixty-eight of the internal
8 revenue code with respect to a sport utility vehicle that is not a
9 passenger automobile as defined in paragraph five of subsection (d) of
10 section two hundred eighty F of the internal revenue code,

11 (15) the amount of any deduction allowed pursuant to section one
12 hundred ninety-nine of the internal revenue code,

13 (16) the amount of any federal deduction for taxes imposed under arti-
14 cle twenty-three of the tax law,

15 (17) the amount of any federal deduction that would have been allowed
16 pursuant to subparagraph (A) of paragraph one of subdivision (a) of
17 section two hundred fifty of the internal revenue code if the taxpayer
18 had not made an election under subchapter s of chapter one of the inter-
19 nal revenue code,

20 (18) for taxable years beginning in two thousand nineteen and two
21 thousand twenty, the amount of the increase in the federal interest
22 deduction allowed pursuant to paragraph ten of subdivision (j) of
23 section one hundred sixty-three of the internal revenue code, and

24 (19) the amount of any gain excluded from federal gross income for the
25 taxable year by subparagraph (A) of paragraph (1) of subsection (a) of
26 section one thousand four hundred Z-two of the internal revenue code.

27 (c) Entire net income shall include income within and without the
28 United States;

29 (c-1)(1) Notwithstanding any other provision of this subchapter, in
30 the case of a taxpayer which is a foreign air carrier holding a foreign
31 air carrier permit issued by the United States department of transporta-
32 tion pursuant to section four hundred two of the federal aviation act of
33 nineteen hundred fifty-eight, as amended, and which is qualified under
34 subparagraph two of this paragraph, entire net income shall not include,
35 and shall be computed without the deduction of, amounts directly or
36 indirectly attributable to, (i) any income derived from the interna-
37 tional operation of aircraft as described in and subject to the
38 provisions of section eight hundred eighty-three of the internal revenue
39 code, (ii) income without the United States which is derived from the
40 operation of aircraft, and (iii) income without the United States which
41 is of a type described in subdivision (a) of section eight hundred
42 eighty-one of the internal revenue code except that it is derived from
43 sources without the United States. Entire net income shall include
44 income described in clauses (i), (ii) and (iii) of this subparagraph in
45 the case of taxpayers not described in this subparagraph.

46 (2) A taxpayer is qualified under this subparagraph if air carriers
47 organized in the United States and operating in the foreign country or
48 countries in which the taxpayer has its major base of operations and in
49 which it is organized, resident or headquartered, if not in the same
50 country as its major base of operations, are not subject to any income
51 tax or other tax based on or measured by income or receipts imposed by
52 such foreign country or countries or any political subdivision thereof,
53 or if so subject to such tax, are provided an exemption from such tax
54 equivalent to that provided for in this paragraph.

55 (d) The commissioner of finance may, whenever necessary in order prop-
56 erly to reflect the entire net income of any taxpayer, determine the

1 year or period in which any item of income or deduction shall be
2 included, without regard to the method of accounting employed by the
3 taxpayer;

4 (e) The entire net income of any bridge commission created by act of
5 congress to construct a bridge across an international boundary means
6 its gross income less the expense of maintaining and operating its prop-
7 erties, the annual interest upon its bonds and other obligations, and
8 the annual charge for the retirement of such bonds or obligations at
9 maturity;

10 (f) A net operating loss deduction shall be allowed which shall be the
11 same as the net operating loss deduction allowed under section one
12 hundred seventy-two of the internal revenue code or which would have
13 been allowed if the taxpayer had not made an election under subchapter s
14 of chapter one of the internal revenue code, except that in every
15 instance where such deduction is allowed under this subchapter:

16 (1) any net operating loss included in determining such deduction
17 shall be adjusted to reflect the inclusions and exclusions from entire
18 net income pursuant to paragraphs (a), (b), (g) and (h) of this subdivi-
19 sion,

20 (2) such deductions shall not include any net operating loss sustained
21 during any taxable year in which the taxpayer was not subject to the tax
22 imposed by this subchapter,

23 (3) such deduction shall not exceed the deduction for the taxable year
24 allowed under section one hundred seventy-two of the internal revenue
25 code, or the deduction for the taxable year which would have been
26 allowed if the taxpayer had not made an election under subchapter s of
27 chapter one of the internal revenue code,

28 (4) any net operating loss for a taxable year beginning in nineteen
29 hundred eighty-one shall be computed without regard to the deduction
30 allowed with respect to recovery property under section one hundred
31 sixty-eight of the internal revenue code; in lieu of such deduction, a
32 taxpayer shall be allowed for such taxable year with respect to such
33 property the depreciation deduction allowable under section one hundred
34 sixty-seven of such code as such section was in full force and effect on
35 December thirty-first, nineteen hundred eighty, and

36 (5) the net operating loss deduction allowed under section one hundred
37 seventy-two of the internal revenue code shall for purposes of this
38 paragraph be determined as if the taxpayer had elected under such
39 section to relinquish the entire carryback period with respect to net
40 operating losses, except with respect to the first ten thousand dollars
41 of each of such losses, sustained during taxable years ending after June
42 thirtieth, nineteen hundred eighty-nine.

43 (6) Notwithstanding any other provision of this subchapter to the
44 contrary, for taxable years beginning before January first, two thousand
45 twenty-one, any amendment to section one hundred seventy-two of the
46 internal revenue code made after March first, two thousand twenty shall
47 not apply to this subchapter.

48 (g) At the election of the taxpayer, a deduction shall be allowed for
49 expenditures paid or incurred during the taxable year for the
50 construction, reconstruction, erection or improvement of industrial
51 waste treatment facilities and air pollution control facilities.

52 (1)(A) The term "industrial waste treatment facilities" shall mean
53 facilities for the treatment, neutralization or stabilization of indus-
54 trial waste, as the term "industrial waste" is defined in section
55 17-0105 of the environmental conservation law, from a point immediately
56 preceding the point of such treatment, neutralization or stabilization

1 to the point of disposal, including the necessary pumping and transmit-
2 ting facilities, but excluding such facilities installed for the primary
3 purpose of salvaging materials which are usable in the manufacturing
4 process or are marketable.

5 (B) The term "air pollution control facilities" shall mean facilities
6 which remove, reduce, or render less noxious air contaminants emitted
7 from an air contamination source, as the terms "air contaminant" and
8 "air contamination source" are defined in section 19-0107 of the envi-
9 ronmental conservation law, from a point immediately preceding the point
10 of such removal, reduction or rendering to the point of discharge of
11 air, meeting emission standards as established by the air pollution
12 control board, but excluding such facilities installed for the primary
13 purpose of salvaging materials which are usable in the manufacturing
14 process or are marketable and excluding those facilities which rely for
15 their efficacy on dilution, dispersion or assimilation of air contam-
16 inants in the ambient air after emission.

17 (2) However, such deduction shall be allowed only (A) with respect to
18 tangible property which is depreciable, pursuant to section one hundred
19 sixty-seven of the internal revenue code, having a situs in the city and
20 used in the taxpayer's trade or business, the construction, recon-
21 struction, erection or improvement of which, in the case of industrial
22 waste treatment facilities, is initiated on or after January first,
23 nineteen hundred sixty-six, and only for expenditures paid or incurred
24 prior to January first, nineteen hundred seventy-two, or which, in the
25 case of air pollution control facilities, is initiated on or after Janu-
26 ary first, nineteen hundred sixty-six, and

27 (B) on condition that such facilities have been certified by the state
28 commissioner of environmental conservation or the state commissioner's
29 designated representative, in the same manner as provided for in section
30 17-0707 or 19-0309 of the environmental conservation law, as applicable,
31 as complying with applicable provisions of the environmental conserva-
32 tion law, the state sanitary code and regulations, permits or orders
33 issued pursuant thereto, and

34 (C) on condition that entire net income for the taxable year and all
35 succeeding taxable years be computed without any deductions for such
36 expenditures or for depreciation of the same property other than the
37 deductions allowed by this paragraph except to the extent that the basis
38 of the property may be attributable to factors other than such expendi-
39 tures, or in case a deduction is allowable pursuant to this paragraph
40 for only a part of such expenditures, on condition that any deduction
41 allowed for federal income tax purposes for such expenditures or for
42 depreciation of the same property be proportionately reduced in comput-
43 ing entire net income for the taxable year and all succeeding taxable
44 years, and

45 (D) where the election provided for in paragraph (d) of subdivision
46 three of section 11-604 of this subchapter has not been exercised in
47 respect to the same property.

48 (3)(A) If expenditures in respect to an industrial waste treatment
49 facility or an air pollution control facility have been deducted as
50 provided herein and if within ten years from the end of the taxable year
51 in which such deduction was allowed such property or any part thereof is
52 used for the primary purpose of salvaging materials which are usable in
53 the manufacturing process or are marketable, the taxpayer shall report
54 such change of use in its report for the first taxable year during which
55 it occurs, and the commissioner of finance may recompute the tax for the
56 year or years for which such deduction was allowed and any carryback or

1 carryover year, and may assess any additional tax resulting from such
2 recomputation within the time fixed by paragraph (h) of subdivision
3 three of section 11-674 of this chapter.

4 (B) If a deduction is allowed as herein provided for expenditures paid
5 or incurred during any taxable year on the basis of a temporary certifi-
6 cate of compliance issued pursuant to the environmental conservation
7 law and if the taxpayer fails to obtain a permanent certificate of
8 compliance upon completion of the facilities with respect to which such
9 temporary certificate was issued, the taxpayer shall report such failure
10 in its report for the taxable year during which such facilities are
11 completed, and the commissioner of finance may recompute the tax for the
12 year or years for which such deduction was allowed and any carryback or
13 carryover year, and may assess any additional tax resulting from such
14 recomputation within the time fixed by paragraph (h) of subdivision
15 three of section 11-674 of this chapter.

16 (4) In any taxable year when property is sold or otherwise disposed
17 of, with respect to which a deduction has been allowed pursuant to this
18 paragraph, such deduction shall be disregarded in computing gain or
19 loss, and the gain or loss on the sale or other disposition of such
20 property shall be the gain or loss entering into the computation of
21 entire taxable income which the taxpayer is required to report to the
22 United States treasury for such taxable year;

23 (h) With respect to gain derived from the sale or other disposition of
24 any property acquired prior to January first, nineteen hundred sixty-
25 six; which had a federal adjusted basis on such date, or on the date of
26 its sale or other disposition prior to January first, nineteen hundred
27 sixty-six, lower than its fair market value on January first, nineteen
28 hundred sixty-six or the date of its sale or other disposition prior
29 thereto, except property described in subsections one and four of
30 section twelve hundred twenty-one of the internal revenue code, there
31 shall be deducted from entire net income, the difference between (1) the
32 amount of the taxpayer's federal taxable income, and (2) the amount of
33 the taxpayer's federal taxable income, if smaller than the amount
34 described in subparagraph one of this paragraph computed as if the
35 federal adjusted basis of each such property on the sale or other dispo-
36 sition of which gain was derived, on the date of the sale or other
37 disposition had been equal to either (A) its fair market value on Janu-
38 ary first, nineteen hundred sixty-six or the date of its sale or other
39 disposition prior to January first, nineteen hundred sixty-six, plus or
40 minus all adjustments to basis made with respect to such property for
41 federal income tax purposes for periods on and after January first,
42 nineteen hundred sixty-six or (B) the amount realized from its sale or
43 disposition, whichever is lower; provided, however, that the total
44 modification provided by this paragraph shall not exceed the amount of
45 the taxpayer's net gain from the sale or other disposition of all such
46 property.

47 (i) If the period covered by a report under this subchapter is other
48 than the period covered by the report of the United States treasury
49 department, entire net income shall be determined by multiplying the
50 federal taxable income, as adjusted pursuant to the provisions of this
51 subchapter, by the number of calendar months or major parts thereof
52 covered by the report under this subchapter and dividing by the number
53 of calendar months or major parts thereof covered by the report to such
54 department.

55 If it shall appear that such method of determining entire net income
56 does not properly reflect the taxpayer's income during the period

1 covered by the report under this subchapter, the commissioner of finance
2 shall be authorized in his or her discretion to determine such entire
3 net income solely on the basis of the taxpayer's income during the peri-
4 od covered by its report under this subchapter.

5 (j) In the case of property placed in service in taxable years begin-
6 ning before nineteen hundred ninety-four, for taxable years beginning
7 after December thirty-first, nineteen hundred eighty-one, except with
8 respect to property subject to the provisions of section two hundred
9 eighty-F of the internal revenue code and property subject to the
10 provisions of section one hundred sixty-eight of the internal revenue
11 code which is placed in service in this state in taxable years beginning
12 after December thirty-first, nineteen hundred eighty-four, and provided
13 a deduction has not been excluded from entire net income pursuant to
14 subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall
15 be allowed with respect to property which is subject to the provisions
16 of section one hundred sixty-eight of the internal revenue code the
17 depreciation deduction allowable under section one hundred sixty-seven
18 of the internal revenue code as such section would have applied to prop-
19 erty placed in service on December thirty-first, nineteen hundred
20 eighty. This paragraph shall not apply to property of a taxpayer princi-
21 pally engaged in the conduct of an aviation, steamboat, ferry or naviga-
22 tion business, or two or more of such businesses, which is placed in
23 service before taxable years beginning in nineteen hundred eighty-nine.

24 (k) for taxable years ending after September tenth, two thousand one,
25 in the case of qualified property described in paragraph two of
26 subsection k of section one hundred sixty-eight of the internal revenue
27 code, other than qualified resurgence zone property described in para-
28 graph (m) of this subdivision, and other than qualified New York Liberty
29 Zone property described in paragraph two of subsection b of section
30 fourteen hundred L of the internal revenue code, without regard to
31 clause (i) of subparagraph (C) of such paragraph, the depreciation
32 deduction allowable under section one hundred sixty-seven as such
33 section would have applied to such property had it been acquired by the
34 taxpayer on September tenth, two thousand one, provided, however, that
35 for taxable years beginning on or after January first, two thousand
36 four, in the case of a passenger motor vehicle or a sport utility vehi-
37 cle subject to the provisions of paragraph (o) of this subdivision, the
38 limitation under clause (i) of subparagraph (A) of paragraph one of
39 subdivision (a) of section two hundred eighty-F of the internal revenue
40 code applicable to the amount allowed as a deduction under this para-
41 graph shall be determined as of the date such vehicle was placed in
42 service and not as of September tenth, two thousand one.

43 (l) for taxable years ending after September tenth, two thousand one,
44 upon the disposition of property to which paragraph (k) of this subdivi-
45 sion applies, the amount of any gain or loss includible in entire net
46 income shall be adjusted to reflect the inclusions and exclusions from
47 entire net income pursuant to subparagraph twelve of paragraph (a) and
48 subparagraph thirteen of paragraph (b) of this subdivision attributable
49 to such property.

50 (m) for purposes of this paragraph and paragraph (l) of this subdivi-
51 sion, qualified resurgence zone property shall mean qualified property
52 described in paragraph two of subsection k of section one hundred
53 sixty-eight of the internal revenue code substantially all of the use of
54 which is in the resurgence zone, as defined in this paragraph, and is in
55 the active conduct of a trade or business by the taxpayer in such zone,
56 and the original use of which in the resurgence zone commences with the

1 taxpayer after September tenth, two thousand one. The resurgence zone
2 shall mean the area of New York county bounded on the south by a line
3 running from the intersection of the Hudson River with the Holland
4 Tunnel, and running thence east to Canal Street, then running along the
5 centerline of Canal Street to the intersection of the Bowery and Canal
6 Street, running thence in a southeasterly direction diagonally across
7 Manhattan Bridge Plaza, to the Manhattan Bridge, and thence along the
8 centerline of the Manhattan Bridge to the point where the centerline of
9 the Manhattan Bridge would intersect with the easterly bank of the East
10 River, and bounded on the north by a line running from the intersection
11 of the Hudson River with the Holland Tunnel and running thence north
12 along West Avenue to the intersection of Clarkson Street then running
13 east along the centerline of Clarkson Street to the intersection of
14 Washington Avenue, then running south along the centerline of Washington
15 Avenue to the intersection of West Houston Street, then east along the
16 centerline of West Houston Street, then at the intersection of the
17 Avenue of the Americas continuing east along the centerline of East
18 Houston Street to the easterly bank of the East River.

19 (n) Related members expense add back.

20 (1) Definitions. (A) Related member. "Related member" means a related
21 person as defined in subparagraph (c) of paragraph three of subsection
22 (b) of section four hundred sixty-five of the internal revenue code,
23 except that "fifty percent" shall be substituted for "ten percent".

24 (B) Effective rate of tax. "Effective rate of tax" means, as to any
25 city, the maximum statutory rate of tax imposed by the city on or meas-
26 ured by a related member's net income multiplied by the apportionment
27 percentage, if any, applicable to the related member under the laws of
28 said jurisdiction. For purposes of this definition, the effective rate
29 of tax as to any city is zero where the related member's net income tax
30 liability in said city is reported on a combined or consolidated return
31 including both the taxpayer and the related member where the reported
32 transactions between the taxpayer and the related member are eliminated
33 or offset. Also, for purposes of this definition, when computing the
34 effective rate of tax for a city in which a related member's net income
35 is eliminated or offset by a credit or similar adjustment that is
36 dependent upon the related member either maintaining or managing intan-
37 gible property or collecting interest income in that city, the maximum
38 statutory rate of tax imposed by said city shall be decreased to reflect
39 the statutory rate of tax that applies to the related member as effec-
40 tively reduced by such credit or similar adjustment.

41 (C) Royalty payments. Royalty payments are payments directly connected
42 to the acquisition, use, maintenance or management, ownership, sale,
43 exchange, or any other disposition of licenses, trademarks, copyrights,
44 trade names, trade dress, service marks, mask works, trade secrets,
45 patents and any other similar types of intangible assets as determined
46 by the commissioner of finance, and include amounts allowable as inter-
47 est deductions under section one hundred sixty-three of the internal
48 revenue code to the extent such amounts are directly or indirectly for,
49 related to or in connection with the acquisition, use, maintenance or
50 management, ownership, sale, exchange or disposition of such intangible
51 assets.

52 (D) Valid business purpose. A valid business purpose is one or more
53 business purposes, other than the avoidance or reduction of taxation,
54 which alone or in combination constitute the primary motivation for some
55 business activity or transaction, which activity or transaction changes
56 in a meaningful way, apart from tax effects, the economic position of

1 the taxpayer. The economic position of the taxpayer includes an increase
2 in the market share of the taxpayer, or the entry by the taxpayer into
3 new business markets.

4 (2) Royalty expense add backs. (A) For the purpose of computing entire
5 net income or other applicable taxable basis, a taxpayer must add back
6 royalty payments directly or indirectly paid, accrued, or incurred in
7 connection with one or more direct or indirect transactions with one or
8 more related members during the taxable year to the extent deductible in
9 calculating federal taxable income.

10 (B) (i) The adjustment required in this paragraph shall not apply to
11 the portion of the royalty payment that the taxpayer establishes, by
12 clear and convincing evidence of the type and in the form specified by
13 the commissioner of finance, meets all of the following requirements:

14 (I) the related member was subject to tax in this city or another city
15 within the United States or a foreign nation or some combination thereof
16 on a tax base that included the royalty payment paid, accrued or
17 incurred by the taxpayer; (II) the related member during the same tax-
18 able year directly or indirectly paid, accrued or incurred such portion
19 to a person that is not a related member; and (III) the transaction
20 giving rise to the royalty payment between the taxpayer and the related
21 member was undertaken for a valid business purpose.

22 (ii) The adjustment required in this paragraph shall not apply if the
23 taxpayer establishes, by clear and convincing evidence of the type and
24 in the form specified by the commissioner of finance, that: (I) the
25 related member was subject to tax on or measured by its net income in
26 this city or another city within the United States, or some combination
27 thereof; (II) the tax base for said tax included the royalty payment
28 paid, accrued or incurred by the taxpayer; and (III) the aggregate
29 effective rate of tax applied to the related member in those jurisdic-
30 tions is no less than eighty percent of the statutory rate of tax that
31 applied to the taxpayer under section 11-604 of this subchapter for the
32 taxable year.

33 (iii) The adjustment required in this paragraph shall not apply if the
34 taxpayer establishes, by clear and convincing evidence of the type and
35 in the form specified by the commissioner of finance, that: (I) the
36 royalty payment was paid, accrued or incurred to a related member organ-
37 ized under the laws of a country other than the United States; (II) the
38 related member's income from the transaction was subject to a comprehen-
39 sive income tax treaty between such country and the United States; (III)
40 the related member was subject to tax in a foreign nation on a tax base
41 that included the royalty payment paid, accrued or incurred by the
42 taxpayer; (IV) the related member's income from the transaction was
43 taxed in such country at an effective rate of tax at least equal to that
44 imposed by this city; and (V) the royalty payment was paid, accrued or
45 incurred pursuant to a transaction that was undertaken for a valid busi-
46 ness purpose and using terms that reflect an arm's length relationship.

47 (iv) The adjustment required in this paragraph shall not apply if the
48 taxpayer and the commissioner of finance agree in writing to the appli-
49 cation or use of alternative adjustments or computations. The commis-
50 sioner of finance may, in his or her discretion, agree to the applica-
51 tion or use of alternative adjustments or computations when he or she
52 concludes that in the absence of such agreement the income of the
53 taxpayer would not be properly reflected.

54 (o) For taxable years beginning on or after January first, two thou-
55 sand four, in the case of a taxpayer that is not an eligible farmer as
56 defined in subsection (n) of section six hundred six of the tax law, the

1 deductions allowable under sections one hundred seventy-nine, one
2 hundred sixty-seven and one hundred sixty-eight of the internal revenue
3 code with respect to a sport utility vehicle that is not a passenger
4 automobile as defined in paragraph five of subsection (d) of section two
5 hundred eighty-F of the internal revenue code, determined as if such
6 sport utility vehicle were a passenger automobile as defined in such
7 paragraph five. For purposes of paragraph (k) and subparagraph thirteen
8 of paragraph (b) of this subdivision, the terms qualified resurgence
9 zone property and qualified New York Liberty Zone property described in
10 paragraph two of subsection b of section fourteen hundred-L of the
11 internal revenue code shall not include any sport utility vehicle that
12 is not a passenger automobile as defined in paragraph five of subsection
13 (d) of section two hundred eighty-F of the internal revenue code.

14 (p) Upon the disposition of property to which paragraph (o) of this
15 subdivision applies, the amount of any gain or loss includible in entire
16 net income shall be adjusted to reflect the inclusions and exclusions
17 from entire net income pursuant to subparagraph thirteen of paragraph
18 (a) and subparagraph fourteen of paragraph (b) of this subdivision
19 attributable to such property.

20 9. (a) The term "calendar year" means a period of twelve calendar
21 months, or any shorter period beginning on the date the taxpayer becomes
22 subject to the tax imposed by this subchapter, ending on the thirty-
23 first day of December, provided the taxpayer keeps its books on the
24 basis of such period or on the basis of any period ending on any day
25 other than the last day of a calendar month, or provided the taxpayer
26 does not keep books, and includes, in case the taxpayer changes the
27 period on the basis of which it keeps its books from a fiscal year to a
28 calendar year, the period from the close of its last old fiscal year up
29 to and including the following December thirty-first.

30 (b) The term "fiscal year" means a period of twelve calendar months,
31 or any shorter period beginning on the date the taxpayer becomes subject
32 to the tax imposed by this subchapter, ending on the last day of any
33 month other than December, provided the taxpayer keeps its books on the
34 basis of such period, and includes, in case the taxpayer changes the
35 period on the basis of which it keeps its books from a calendar year to
36 a fiscal year or from one fiscal year to another fiscal year, the period
37 from the close of its last old calendar or fiscal year up to the date
38 designated as the close of its new fiscal year.

39 10. The term "tangible personal property" means corporeal personal
40 property, such as machinery, tools, implements, goods, wares and
41 merchandise, and does not mean money, deposits in banks, shares of
42 stock, bonds, notes, credits or evidence of an interest property and
43 evidences of debt.

44 § 11-603 Imposition of tax; exemptions. 1. For the privilege of doing
45 business, or of employing capital, or of owning or leasing property in
46 the city in a corporate or organized capacity, or of maintaining an
47 office in the city, for all or any part of each of its fiscal or calen-
48 dar years, every domestic or foreign corporation, except corporations
49 specified in subdivision four of this section, shall annually pay a tax,
50 upon the basis of its entire net income, or upon such other basis as may
51 be applicable as provided by this section, for such fiscal or calendar
52 year or part thereof, on a report which shall be filed, except as
53 provided by this section, on or before the fifteenth day of March next
54 succeeding the close of each such year, or, in the case of a taxpayer
55 which reports on the basis of a fiscal year, within two and one-half

1 months after the close of such fiscal year, and shall be paid as
2 provided by this section.

3 2. A corporation shall not be deemed to be doing business, employing
4 capital, owning or leasing property, or maintaining an office in the
5 city, for the purposes of this subchapter, by reason of (a) the mainte-
6 nance of cash balances with banks or trust companies in the city, or (b)
7 the ownership of shares of stock or securities kept in the city, if kept
8 in a safe deposit box, safe, vault or other receptacle rented for the
9 purpose, or if pledged as collateral security, or if deposited with one
10 or more banks or trust companies, or brokers who are members of a recog-
11 nized security exchange, in safekeeping or custody accounts, or (c) the
12 taking of any action by any such bank or trust company or broker, which
13 is incidental to the rendering of safekeeping or custodian service to
14 such corporation, or (d) the maintenance of an office in the city by one
15 or more officers or directors of the corporation who are not employees
16 of the corporation if the corporation otherwise is not doing business in
17 the city, and does not employ capital or own or lease property in the
18 city, or (e) the keeping of books or records of a corporation in the
19 city if such books or records are not kept by employees of such corpo-
20 ration and such corporation does not otherwise do business, employ capi-
21 tal, own or lease property or maintain an office in the city, or (f) any
22 combination of the activities described in this subdivision.

23 2-a. An alien corporation shall not be deemed to be doing business,
24 employing capital, owning or leasing property, or maintaining an office
25 in the city, for the purposes of this subchapter, if its activities in
26 the city are limited solely to (a) investing or trading in stocks and
27 securities for its own account within the meaning of clause (ii) of
28 subparagraph (A) of paragraph (2) of subsection (b) of section eight
29 hundred sixty-four of the internal revenue code or (b) investing or
30 trading in commodities for its own account within the meaning of clause
31 (ii) of subparagraph (B) of paragraph (2) of subsection (b) of section
32 eight hundred sixty-four of the internal revenue code or (c) any combi-
33 nation of activities described in paragraphs (a) and (b) of this subdivi-
34 sion. For purposes of this subdivision, an alien corporation is a
35 corporation organized under the laws of a country, or any political
36 subdivision thereof, other than the United States.

37 3. Any receiver, referee, trustee, assignee or other fiduciary, or
38 any officer or agent appointed by any court, who conducts the business
39 of any corporation, shall be subject to the tax imposed by this subchap-
40 ter in the same manner and to the same extent as if the business were
41 conducted by the agents or officers of such corporation. A dissolved
42 corporation which continues to conduct business shall also be subject to
43 the tax imposed by this subchapter.

44 4. (a) Corporations subject to tax under subchapter three of this
45 chapter or under chapter eleven of this title, any trust company organ-
46 ized under a law of this state all of the stock of which is owned by not
47 less than twenty savings banks organized under a law of this state, bank
48 holding companies filing a combined return in accordance with subdivi-
49 sion (f) of section 11-646 of this chapter, a captive REIT or a captive
50 RIC filing a combined return under subdivision (f) of section 11-646 of
51 this chapter, housing companies organized and operating pursuant to the
52 provisions of article two of the private housing finance law, housing
53 development fund companies organized pursuant to the provisions of arti-
54 cle eleven of the private housing finance law, corporations described in
55 section three of the tax law, a corporation principally engaged in the
56 operation of marine vessels whose activities in the city are limited

1 exclusively to the use of property in interstate or foreign commerce,
2 provided, however, such a corporation will not be subject to tax under
3 this subchapter solely because it maintains an office in the city, or
4 employs capital in the city, in connection with such use of property, a
5 corporation principally engaged in the conduct of a ferry business and
6 operating between any of the boroughs of the city under a lease granted
7 by the city and a corporation principally engaged in the conduct of an
8 aviation, steamboat, ferry or navigation business, or two or more of
9 such businesses, all of the capital stock of which is owned by a munici-
10 pal corporation of this state, shall not be subject to tax under this
11 subchapter; provided, however, that any corporation, other than (1) a
12 utility corporation subject to the supervision of the state department
13 of public service, and (2) for taxable years beginning on or after
14 August first, two thousand two, a utility as defined in subdivision six
15 of section 11-1101 of this title, which is subject to tax under chapter
16 eleven of this title as a vendor of utility services shall be subject to
17 tax under this subchapter, but in computing the tax imposed by this
18 section pursuant to the provisions of clause one of subparagraph (a) of
19 paragraph A of subdivision one of section 11-604 of this subchapter,
20 business income allocated to the city pursuant to paragraph (a) of
21 subdivision three of such section shall be reduced by the percentage
22 which such corporation's gross operating income subject to tax under
23 chapter eleven of this title is of its gross operating income.

24 (b) The term "gross operating income", when used in paragraph (a) of
25 this subdivision, means receipts received in or by reason of any trans-
26 action had and consummated in the city, including cash, credits and
27 property of any kind or nature, whether or not such transaction is made
28 for profit, without any deduction therefrom on account of the cost of
29 the property sold, the cost of materials used, labor or other services,
30 delivery costs or any other costs whatsoever, interest or discount paid
31 or any other expenses whatsoever.

32 (c) If it shall appear to the commissioner of finance that the appli-
33 cation of the proviso of paragraph (a) of this subdivision, does not
34 fairly and equitably reflect the portion of the taxpayer's business
35 income allocable to the city which is attributable to its city activ-
36 ities which are not taxable under chapter eleven of this title, the
37 commissioner may prescribe other means or methods of determining such
38 portion, including the use of the books and records of the taxpayer, if
39 the commissioner finds that such means or methods used in keeping them
40 fairly and equitably reflect such portion.

41 5. The tax imposed by subdivision one of this section, with the
42 modifications provided by subdivision six of this section, is imposed
43 for each calendar or fiscal year beginning with calendar or fiscal years
44 ending in or with the calendar year nineteen hundred sixty-six.

45 6. (a) The tax for any taxable year ending prior to December thirty-
46 first, nineteen hundred sixty-six shall be an amount equal to the tax
47 imposed by subdivision one of this section for such taxable year, multi-
48 plied by the number of months, or major portions thereof, in such taxa-
49 ble year which occur after December thirty-first, nineteen hundred
50 sixty-five and divided by the number of months, or major portions there-
51 of, in such taxable year.

52 (b) In lieu of the method of computation of tax prescribed in para-
53 graph (a) of this subdivision, if the taxpayer maintained adequate
54 records for the portion of any taxable year ending prior to December
55 thirty-first, nineteen hundred sixty-six, which portion falls within the
56 calendar year nineteen hundred sixty-six, it may elect to compute the

1 tax for such taxable year by determining entire net income on the basis
2 of the entire taxable income which it would have reported for federal
3 income tax purposes had it filed a federal income tax return for a taxa-
4 ble year beginning January first, nineteen hundred sixty-six and ending
5 with the close of its actual taxable year and such taxable year begin-
6 ning January first, nineteen hundred sixty-six, shall be deemed to be
7 the period covered by its report, except that in computing such tax any
8 portion of a capital loss which results from a capital loss carryover
9 and any net operating loss deduction, as modified pursuant to paragraph
10 (f) of subdivision eight of section 11-602 of this subchapter, shall be
11 reduced by the same part of such portion of such capital loss or of such
12 net operating loss deduction, as the case may be, as the number of
13 months, or major portions thereof, in the taxable year occurring before
14 January first, nineteen hundred sixty-six is of the number of months, or
15 major portions thereof, in such taxable year.

16 7. For any taxable year of a real estate investment trust as defined
17 in section eight hundred fifty-six of the internal revenue code in which
18 such trust is subject to federal income taxation under section eight
19 hundred fifty-seven of such code, such trust shall be subject to a tax
20 computed under either clause one of subparagraph (a) of paragraph A of
21 subdivision one of section 11-604 of this subchapter with respect to its
22 entire net income, or clause four of such subparagraph, whichever is
23 greater, and shall not be subject to any tax under subchapter three of
24 this chapter, except for a captive REIT required to file a combined
25 return under subdivision (f) of section 11-646 of this chapter. In the
26 case of such a real estate investment trust, including a captive REIT as
27 defined in section 11-601 of this chapter, the term "entire net income"
28 means "real estate investment trust taxable income" as defined in para-
29 graph two of subdivision (b) of section eight hundred fifty-seven, as
30 modified by section eight hundred fifty-eight, of the internal revenue
31 code plus the amount taxable under paragraph three of subdivision (b) of
32 section eight hundred fifty-seven of such code, subject to the modifica-
33 tion required by subdivision eight of section 11-602 of this subchapter,
34 other than the modification required by clause two of paragraph (a) and
35 by paragraph (f) thereof, including the modifications required by para-
36 graphs (d) and (e) of subdivision three of section 11-604 of this
37 subchapter.

38 8. For any taxable year beginning on or after January first, nineteen
39 hundred eighty-one of a regulated investment company, as defined in
40 section eight hundred fifty-one of the internal revenue code, in which
41 such company is subject to federal income taxation under section eight
42 hundred fifty-two of such code, such company shall be subject to a tax
43 computed under clause one or four of subparagraph (a) of paragraph E of
44 subdivision one of section 11-604 of this subchapter, whichever is
45 greater, and such company shall not be subject to any tax under subchap-
46 ter three of this chapter. The term "entire net income" used in subdivi-
47 sion one of this section means "investment company taxable income" as
48 defined in paragraph two of subdivision (b) of section eight hundred
49 fifty-two, as modified by section eight hundred fifty-five, of the
50 internal revenue code plus the amount taxable under paragraph three of
51 subdivision (b) of section eight hundred fifty-two of such code subject
52 to the modifications required by subdivision eight of section 11-602 of
53 this subchapter, other than the modification required by clause two of
54 paragraph (a) and by paragraph (f) of such subdivision, including the
55 modification required by paragraphs (d) and (e) of subdivision three of
56 section 11-604 of this subchapter.

1 9. For any taxable year beginning on or after January first, nineteen
2 hundred eighty-seven, an organization described in paragraph two or
3 twenty-five of subdivision (c) of section five hundred one of the inter-
4 nal revenue code of nineteen hundred eighty-six shall be exempt from all
5 taxes imposed by this chapter.

6 § 11-604 Computation of tax. 1. A. For taxable years beginning on or
7 after January first, nineteen hundred seventy-one and ending on or
8 before December thirty-first, nineteen hundred seventy-four, and for
9 taxable years beginning on or after January first, nineteen hundred
10 seventy-six, the tax imposed by subdivision one of section 11-603 of
11 this subchapter shall be, in the case of each taxpayer: (a) a tax (1)
12 computed at the rate of six and seven-tenths per centum of its entire
13 net income, or the portion of such entire net income allocated within
14 the city as provided in this section, subject to any modification
15 required by paragraphs (d) and (e) of subdivision three of this section,
16 or (2) computed at one mill for each dollar of its total business and
17 investment capital, or the portion thereof allocated within the city, as
18 provided in this section, except that in the case of a cooperative hous-
19 ing corporation as defined in the internal revenue code, or in the case
20 of a housing company organized and operating pursuant to the provisions
21 of article four of the private housing finance law, the applicable rates
22 shall be one-quarter of one mill, or (3) computed at the rate of six and
23 seven-tenths per centum on thirty per centum of the taxpayer's entire
24 net income plus salaries and other compensation paid to the taxpayer's
25 elected or appointed officers and to every stockholder owning in excess
26 of five per centum of its issued capital stock minus fifteen thousand
27 dollars, except as provided in this section, and any net loss for the
28 reported year, or on the portion of any such sum allocated within the
29 city as provided in this section for the allocation of entire net
30 income, subject to any modification required by paragraphs (d) and (e)
31 of subdivision three of this section, or (4) twenty-five dollars, which-
32 ever is greatest, plus (b) a tax computed at the rate of one-half mill
33 for each dollar of the portion of its subsidiary capital allocated with-
34 in the city as provided in this section. In the case of a taxpayer
35 which is not subject to tax for an entire year, the exemption allowed in
36 clause three of subparagraph (a) of this paragraph shall be prorated
37 according to the period such taxpayer was subject to tax.

38 B. For taxable years beginning on or after January first, nineteen
39 hundred seventy-five and before January first nineteen hundred seventy-
40 seven, the tax imposed by subdivision one of section 11-603 of this
41 subchapter shall be, in the case of each taxpayer: (a) a tax (1)
42 computed at the rate of ten and five one-hundredths per centum of its
43 entire net income, or the portion of such entire net income allocated
44 within the city as provided in this paragraph, subject to any modifica-
45 tion required by paragraphs (d) and (e) of subdivision three of this
46 section, or (2) computed at one and one-half mills for each dollar of
47 its total business and investment capital, or the portion thereof allo-
48 cated within the city, as provided in this paragraph, except that in the
49 case of a cooperative housing corporation as defined in the internal
50 revenue code, or in the case of a housing company organized and operat-
51 ing pursuant to the provisions of article four of the private housing
52 finance law, the applicable rate shall be four-tenths of one mill, or
53 (3) computed at the rate of ten and five one-hundredths per centum on
54 thirty per centum of the taxpayer's entire net income plus salaries and
55 other compensation paid to the taxpayer's elected or appointed officers
56 and to every stockholder owning in excess of five per centum of its

1 issued capital stock minus fifteen thousand dollars, except as provided
2 in this paragraph, and any net loss for the reported year, or on the
3 portion of any such sum allocated within the city as provided in this
4 paragraph for the allocation of entire net income, subject to any
5 modification required by paragraphs (d) and (e) of subdivision three of
6 this section, or (4) one hundred twenty-five dollars, whichever is
7 greatest, plus (b) a tax computed at the rate of three-quarters of a
8 mill for each dollar of the portion of its subsidiary capital allocated
9 within the city as provided in this paragraph. In the case of a taxpay-
10 er which is not subject to tax for an entire year, the exemption allowed
11 in clause three of subparagraph (a) of this paragraph shall be prorated
12 according to the period such taxpayer was subject to tax.

13 C. For each taxable year beginning in nineteen hundred seventy-four
14 and ending in nineteen hundred seventy-five, two tentative taxes shall
15 be computed, the first as provided in paragraph A and the second as
16 provided in paragraph B of this subdivision, and the tax for each such
17 year shall be the sum of that proportion of each tentative tax which the
18 number of days in nineteen hundred seventy-four and the number of days
19 in nineteen hundred seventy-five, respectively, bears to the number of
20 days in the entire taxable year.

21 D. For taxable years beginning on or after January first, nineteen
22 hundred seventy-seven and before January first, nineteen hundred seven-
23 ty-eight, the tax imposed by subdivision one of section 11-603 of this
24 subchapter shall be, in the case of each taxpayer: (a) a tax (1)
25 computed at the rate of nine and one-half per centum of its entire net
26 income, or the portion of such entire net income allocated within the
27 city as provided in this paragraph, subject to any modification required
28 by paragraphs (d) and (e) of subdivision three of this section, or (2)
29 computed at one and one-half mills for each dollar of its total business
30 and investment capital, or the portion thereof allocated within the
31 city, as provided in this paragraph, except that in the case of a coop-
32 erative housing corporation as defined in the internal revenue code, the
33 applicable rate shall be four-tenths of one mill, or (3) computed at the
34 rate of nine and one-half per centum on thirty per centum of the taxpay-
35 er's entire net income plus salaries and other compensation paid to the
36 taxpayer's elected or appointed officers and to every stockholder owning
37 in excess of five per centum of its issued capital stock minus fifteen
38 thousand dollars, except as provided in this paragraph, and any net loss
39 for the reported year, or on the portion of any such sum allocated with-
40 in the city as provided in this paragraph for the allocation of entire
41 net income, subject to any modification required by paragraphs (d) and
42 (e) of subdivision three of this section, or (4) one hundred twenty-five
43 dollars, whichever is greatest, plus (b) a tax computed at the rate of
44 three-quarters of a mill for each dollar of the portion of its subsid-
45 iary capital allocated within the city as provided in this paragraph. In
46 the case of a taxpayer which is not subject to tax for an entire year,
47 the exemption allowed in clause three of subparagraph (a) of this para-
48 graph shall be prorated according to the period such taxpayer was
49 subject to tax.

50 E. For taxable years beginning on or after January first, nineteen
51 hundred seventy-eight but before January first, two thousand twenty-sev-
52 en, the tax imposed by subdivision one of section 11-603 of this
53 subchapter shall be, in the case of each taxpayer:

54 (a) whichever of the following amounts is the greatest:

55 (1) an amount computed, for taxable years beginning before nineteen
56 hundred eighty-seven, at the rate of nine per centum, and for taxable

1 years beginning after nineteen hundred eighty-six, at the rate of eight
 2 and eighty-five one-hundredths per centum, of its entire net income or
 3 the portion of such entire net income allocated within the city as
 4 provided in this paragraph, subject to any modification required by
 5 paragraphs (d) and (e) of subdivision three of this section,

6 (2) an amount computed at one and one-half mills for each dollar of
 7 its total business and investment capital, or the portion thereof allo-
 8 cated within the city, as provided in this paragraph, except that in the
 9 case of a cooperative housing corporation as defined in the internal
 10 revenue code, the applicable rate shall be four-tenths of one mill,

11 (3) an amount computed, for taxable years beginning before nineteen
 12 hundred eighty-seven, at the rate of nine per centum, and for taxable
 13 years beginning after nineteen hundred eighty-six, at the rate of eight
 14 and eighty-five one-hundredths per centum, on thirty per centum of the
 15 taxpayer's entire net income plus salaries and other compensation paid
 16 to the taxpayer's elected or appointed officers and to every stockholder
 17 owning in excess of five per centum of its issued capital stock minus
 18 fifteen thousand dollars, subject to proration as provided in this para-
 19 graph, and any net loss for the reported year, or on the portion of any
 20 such sum allocated within the city as provided in this paragraph for the
 21 allocation of entire net income, subject to any modification required by
 22 paragraphs (d) and (e) of subdivision three of this section, provided,
 23 however, that for taxable years beginning on or after July first, nine-
 24 teen hundred ninety-six, the provisions of paragraph H of this subdivi-
 25 sion shall apply for purposes of the computation under this clause, or

26 (4) for taxable years ending on or before June thirtieth, nineteen
 27 hundred eighty-nine, one hundred twenty-five dollars, for taxable years
 28 ending after June thirtieth, nineteen hundred eighty-nine and beginning
 29 before two thousand nine, three hundred dollars, and for taxable years
 30 beginning after two thousand eight:

31 If city	Fixed dollar
32 receipts are:	minimum tax is:
33 Not more than \$100,000	\$25
34 More than \$100,000 but not over \$250,000	\$75
35 More than \$250,000 but not over \$500,000	\$175
36 More than \$500,000 but not over \$1,000,000	\$500
37 More than \$1,000,000 but not over \$5,000,000	\$1,500
38 More than \$5,000,000 but not over \$25,000,000	\$3,500
39 Over \$25,000,000	\$5,000

40 For purposes of this clause, city receipts are the receipts computed in
 41 accordance with subparagraph two of paragraph (a) of subdivision three
 42 of this section for the taxable year. For taxable years beginning after
 43 two thousand eight, if the taxable year is less than twelve months,
 44 the amount prescribed by this clause shall be reduced by twenty-five
 45 percent if the period for which the taxpayer is subject to tax is more
 46 than six months but not more than nine months and by fifty percent if
 47 the period for which the taxpayer is subject to tax is not more than six
 48 months. If the taxable year is less than twelve months, the amount of
 49 city receipts for purposes of this clause is determined by divid-
 50 ing the amount of the receipts for the taxable year by the number of
 51 months in the taxable year and multiplying the result by twelve plus;

1 (b) an amount computed at the rate of three-quarters of a mill for
2 each dollar of the portion of its subsidiary capital allocated within
3 the city as provided in this paragraph.

4 In the case of a taxpayer which is not subject to tax for an entire
5 year, the exemption allowed in clause three of subparagraph (a) of this
6 paragraph shall be prorated according to the period such taxpayer was
7 subject to tax. Provided, however, that this paragraph shall not apply
8 to taxable years beginning after December thirty-first, two thousand
9 twenty-six. For the taxable years specified in this subparagraph, the
10 tax imposed by subdivision one of section 11-603 of this subchapter
11 shall be, in the case of each taxpayer, determined as specified in para-
12 graph A of this subdivision, provided, however, that the provisions of
13 paragraphs G and H of this subdivision shall apply for purposes of the
14 computation under clause three of subparagraph (a) of such paragraph.

15 F. Notwithstanding any other provision of this subdivision to the
16 contrary, for taxable years beginning after nineteen hundred eighty-sev-
17 en and before two thousand nine the amount of tax computed on the basis
18 of the taxpayer's total business and investment capital, or the portion
19 thereof allocated within the city, shall in no event exceed three
20 hundred fifty thousand dollars and for taxable years beginning after two
21 thousand eight the amount of tax computed on the basis of the taxpayer's
22 total business and investment capital, or the portion thereof allocated
23 within the city, shall in no event exceed one million dollars.

24 G. In the case of a foreign air carrier described in subparagraph one
25 of paragraph (c-1) of subdivision eight of section 11-602 of this
26 subchapter, there shall be excluded from the computation of the tax
27 under clause three of subparagraph (a) of paragraph E of this subdivi-
28 sion salaries and other compensation described therein which are direct-
29 ly attributable to the generation of income excluded from entire net
30 income for the taxable year pursuant to the provisions of paragraph
31 (c-1) of subdivision eight of section 11-602 of this subchapter.

32 H. For taxable years beginning on or after July first, nineteen
33 hundred ninety-six, the computation under clause three of subparagraph
34 (a) of paragraph E of this subdivision shall be subject to the following
35 modifications:

36 (a) (1) For taxable years beginning on or after July first, nineteen
37 hundred ninety-six but before July first, nineteen hundred ninety-eight,
38 only seventy-five percent of the total salaries and other compensation
39 paid to the taxpayer's elected or appointed officers shall be added to
40 the entire net income entering into such computation; for taxable years
41 beginning on or after July first, nineteen hundred ninety-eight but
42 before July first, nineteen hundred ninety-nine, only fifty percent of
43 such salaries and other compensation shall be added to such entire net
44 income; and for taxable years beginning on or after July first, nineteen
45 hundred ninety-nine, no part of such salaries and other compensation
46 shall be added to such entire net income.

47 (2) Notwithstanding anything in clause one of this subparagraph to the
48 contrary, the full amount of the salary or other compensation paid to
49 any such elected or appointed officer shall be added to entire net
50 income as provided in clause three of subparagraph (a) of paragraph E of
51 this subdivision if such officer was, at any time during the taxable
52 year, a stockholder owning more than five percent of taxpayer's issued
53 capital stock.

54 (b) For taxable years beginning on or after July first, nineteen
55 hundred ninety-seven but before July first, nineteen hundred ninety-
56 eight, the fixed dollar amount entering into the computation under

1 clause three of subparagraph (a) of paragraph E of this subdivision
2 shall be thirty thousand dollars instead of fifteen thousand dollars;
3 and for taxable years beginning on or after July first, nineteen hundred
4 ninety-eight, such fixed dollar amount shall be forty thousand dollars.

5 (c) For taxable years beginning on or after January first, two thou-
6 sand seven and before January first, two thousand eight the per centum
7 entering into the computation under clause three of subparagraph (a) of
8 paragraph E of this subdivision shall be twenty-six and one-fourth per
9 centum instead of thirty per centum, for taxable years beginning on or
10 after January first, two thousand eight and before January first, two
11 thousand nine such per centum shall be twenty-two and one-half per
12 centum, for taxable years beginning on or after January first, two thou-
13 sand nine and before January first, two thousand ten such per centum
14 shall be eighteen and three-fourths per centum and for taxable years
15 beginning on or after January first, two thousand ten such per centum
16 shall be fifteen per centum.

17 I. Notwithstanding any provision of this subdivision to the contrary,
18 for taxable years beginning on or after January first, two thousand
19 seven for any corporation that:

20 (a) has a business allocation percentage for the taxable year, as
21 determined under paragraph (a) of subdivision three of this section, of
22 one hundred percent;

23 (b) has no investment capital or income at any time during the taxable
24 year;

25 (c) has no subsidiary capital or income at any time during the taxable
26 year; and

27 (d) has gross income, as defined in section sixty-one of the internal
28 revenue code, less than two hundred fifty thousand dollars for the taxa-
29 ble year:

30 the tax imposed by subdivision one of section 11-603 of this subchap-
31 ter shall be the greater of the tax on entire net income computed under
32 clause one of subparagraph (a) of paragraph E of this subdivision and
33 the fixed dollar minimum tax specified in clause four of subparagraph
34 (a) of paragraph E of this subdivision.

35 For purposes of this paragraph, for taxable years beginning before
36 January first, two thousand fifteen, any corporation for which an
37 election under subsection (a) of section six hundred sixty of the tax
38 law is not in effect for the taxable year may elect to treat as entire
39 net income the sum of:

40 (i) entire net income as determined under section two hundred eight of
41 the tax law; and

42 (ii) any deductions taken for the taxable year in computing federal
43 taxable income for Staten Island city taxes paid or accrued under this
44 chapter.

45 2. The amount of subsidiary capital, investment capital and business
46 capital shall each be determined by taking the average value of the
47 gross assets included therein, less liabilities deductible therefrom
48 pursuant to the provisions of subdivisions three, four and six of
49 section 11-602 of this subchapter, and, if the period covered by the
50 report is other than a period of twelve calendar months, by multiplying
51 such value by the number of calendar months or major parts thereof
52 included in such period, and dividing the product thus obtained by
53 twelve. For purposes of this subdivision, real property and marketable
54 securities shall be valued at fair market value and the value of
55 personal property other than marketable securities shall be the value

1 thereof shown on the books and records of the taxpayer in accordance
2 with generally accepted accounting principles.

3 3. The portion of the entire net income of a taxpayer to be allocated
4 within the city shall be determined as follows:

5 (a) multiply its business income by a business allocation percentage
6 to be determined by:

7 (1) ascertaining the percentage which the average value of the taxpay-
8 er's real and tangible personal property, whether owned or rented to it,
9 within the city during the period covered by its report bears to the
10 average value of all the taxpayer's real and tangible personal property,
11 whether owned or rented to it, wherever situated during such period. For
12 the purpose of this subparagraph, the term "value of the taxpayer's real
13 and tangible personal property" shall mean the adjusted bases of such
14 properties for federal income tax purposes, except that in the case of
15 rented property such value shall mean the product of (A) eight and (B)
16 the gross rents payable for the rental of such property during the taxa-
17 ble year; provided, however, that the taxpayer may make a one-time,
18 revocable election, pursuant to regulations promulgated by the commis-
19 sioner of finance to use fair market value as the value of all of its
20 real and tangible personal property, provided that such election is made
21 on or before the due date for filing a report under section 11-605 of
22 this subchapter for the taxpayer's first taxable year commencing on or
23 after January first, nineteen hundred eighty-eight and provided that
24 such election shall not apply to any taxable year with respect to which
25 the taxpayer is included on a combined report unless each of the taxpay-
26 ers included on such report has made such an election which remains in
27 effect for such year;

28 (2) ascertaining the percentage which the receipts of the taxpayer,
29 computed on the cash or accrual basis according to the method of
30 accounting used in the computation of its entire net income, arising
31 during such period from:

32 (A) except as otherwise provided in subparagraph nine of this para-
33 graph, sales of its tangible personal property where shipments are made
34 to points within the city;

35 (B) services performed within the city, provided, however, that (i) in
36 the case of a taxpayer engaged in the business of publishing newspapers
37 or periodicals, receipts arising from sales of advertising contained in
38 such newspapers and periodicals shall be deemed to arise from services
39 performed within the city to the extent that such newspapers and period-
40 icals are delivered to points within the city, (ii) receipts received
41 from an investment company arising from the sale of management, adminis-
42 tration or distribution services to such investment company shall be
43 deemed to arise from services performed within the city to the extent
44 set forth in subparagraph five of this paragraph, (iii) in the case of
45 taxpayers principally engaged in the activity of air freight forwarding
46 acting as principal and like indirect air carriage, receipts arising
47 from such activity shall be deemed to arise from services performed
48 within the city as follows: one hundred percent of such receipts if both
49 the pickup and delivery associated with such receipts are made in the
50 city and fifty percent of such receipts if either the pickup or delivery
51 associated with such receipts is made in the city, (iv) for taxable
52 years beginning on or after January first, two thousand two, in the case
53 of a taxpayer engaged in the business of publishing newspapers or peri-
54 odicals, or broadcasting radio or television programs, whether through
55 the public airwaves or by cable, direct or indirect satellite trans-
56 mission, or any other means of transmission, receipts arising from sales

1 of subscriptions, advertising or broadcasting shall be deemed to arise
2 from services performed within the city to the extent provided in
3 subparagraph nine of this paragraph, and (v) for taxable years beginning
4 after two thousand eight, in the case of a taxpayer which is a regis-
5 tered securities or commodities broker or dealer, the receipts specified
6 in subparagraph ten of this paragraph shall be deemed to arise from
7 services performed within the city to the extent set forth in such
8 subparagraph ten;

9 (C) rentals from property situated and royalties from the use of
10 patents or copyrights, within the city;

11 (D) all other business receipts earned within the city, bear to the
12 total amount of the taxpayer's receipts, similarly computed, arising
13 during such period from all sales of its tangible personal property,
14 services, rentals, royalties and all other business transactions, wheth-
15 er within or without the city; and

16 (E) notwithstanding any other provision of this paragraph, net global
17 intangible low-taxed income shall be included in the receipts fraction
18 as provided in this clause. Receipts constituting net global intangible
19 low-taxed income shall not be included in the numerator of the receipts
20 fraction. Receipts constituting net global intangible low-taxed income
21 shall be included in the denominator of the receipts fraction. For
22 purposes of this clause, the term "net global intangible low-taxed
23 income" means the amount that would have been required to be included in
24 the taxpayer's federal gross income pursuant to subsection (a) of
25 section nine hundred fifty-one-A of the internal revenue code less the
26 amount of the deduction that would have been allowed under clause (i) of
27 subparagraph (B) of paragraph one of subdivision (a) of section two
28 hundred fifty of such code if the taxpayer had not made an election
29 under subchapter s of chapter one of the internal revenue code;

30 (3) ascertaining the percentage of the total wages, salaries and other
31 personal service compensation, similarly computed, during such period of
32 employees within the city, except general executive officers, to the
33 total wages, salaries and other personal service compensation, similarly
34 computed, during such period of all the taxpayer's employees within and
35 without the city, except general executive officers; and

36 (4) adding together the percentages so determined and dividing the
37 result by the number of percentages; provided, however, that for taxable
38 years beginning on or after July first, nineteen hundred ninety-six, a
39 taxpayer that is a "manufacturing corporation," as defined in subpara-
40 graph eight of this paragraph, may determine its business allocation
41 percentage as provided in such subparagraph eight; and provided,
42 further, however, that for taxable years beginning before July first,
43 nineteen hundred ninety-six, if the taxpayer does not have a regular
44 place of business outside the city other than a statutory office, the
45 business allocation percentage shall be one hundred per centum.

46 (5) Rules for receipts from certain services to investment companies.

47 (A) For purposes of subclause (ii) of clause (B) of subparagraph two of
48 this paragraph, the portion of receipts received from an investment
49 company arising from the sale of management, administration or distrib-
50 ution services to such investment company determined in accordance with
51 clause (B) of this subparagraph shall be deemed to arise from services
52 performed within the city, such portion referred to as the Staten Island
53 city portion.

54 (B) The Staten Island city portion shall be the product of (a) the
55 total of such receipts from the sale of such services and (b) a frac-
56 tion. The numerator of that fraction is the sum of the monthly percent-

1 ages, as defined, determined for each month of the investment company's
2 taxable year for federal income tax purposes which taxable year ends
3 within the taxable year of the taxpayer, but excluding any month during
4 which the investment company had no outstanding shares. The monthly
5 percentage for each such month is determined by dividing (a) the number
6 of shares in the investment company which are owned on the last day of
7 the month by shareholders which are domiciled in the city by (b) the
8 total number of shares in the investment company outstanding on that
9 date. The denominator of the fraction is the number of such monthly
10 percentages.

11 (C) (i) For purposes of this subparagraph, the term "domicile", in the
12 case of an individual, shall have the meaning ascribed to it under chap-
13 ter seventeen of this title; an estate or trust is domiciled in the city
14 if it is a city resident estate or trust as defined in paragraph three
15 of subdivision (b) of section 11-1705 of the code of the preceding muni-
16 cipality; a business entity is domiciled in the city if the location of
17 the actual seat of management or control is in the city. It shall be
18 presumed that the domicile of a shareholder, with respect to any month,
19 is his, her or its mailing address on the records of the investment
20 company as of the last day of such month.

21 (ii) For purposes of this subparagraph, the term "investment company"
22 means a regulated investment company, as defined in section eight
23 hundred fifty-one of the internal revenue code, and a partnership to
24 which subdivision (a) of section seven thousand seven hundred four of
25 the internal revenue code applies, by virtue of paragraph three of
26 subdivision (c) of section seven thousand seven hundred four of such
27 code, and that meets the requirements of subdivision (b) of section
28 eight hundred fifty-one of such code. The provisions of this subpara-
29 graph shall be applied to the taxable year for federal income tax
30 purposes of the business entity that is asserted to constitute an
31 investment company that ends within the taxable year of the taxpayer.

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

36 (iv) For purposes of this subparagraph, the term "management services"
37 means the rendering of investment advice to an investment company,
38 making determinations as to when sales and purchases of securities are
39 to be made on behalf of an investment company, or the selling or
40 purchasing of securities constituting assets of an investment company,
41 and related activities, but only where such activity or activities are
42 performed pursuant to a contract with the investment company entered
43 into pursuant to subdivision (a) of section fifteen of the federal
44 investment company act of nineteen hundred forty, as amended.

45 (v) For purposes of this subparagraph, the term "distribution
46 services" means the services of advertising, servicing investor
47 accounts, including redemptions, marketing shares or selling shares of
48 an investment company, but, in the case of advertising, servicing inves-
49 tor accounts, including redemptions, or marketing shares, only where
50 such service is performed by a person who is, or was, in the case of a
51 closed end company, also engaged in the service of selling such shares.
52 In the case of an open end company, such service of selling shares must
53 be performed pursuant to a contract entered into pursuant to subdivision
54 (b) of section fifteen of the federal investment company act of nineteen
55 hundred forty, as amended.

1 (vi) For purposes of this subparagraph, the term "administration
2 services" includes (1) clerical, accounting, bookkeeping, data process-
3 ing, internal auditing, legal and tax services performed for an invest-
4 ment company but only (2) if the provider of such service or services
5 during the taxable year in which such service or services are sold also
6 sells management or distribution services, as defined in this paragraph,
7 to such investment company.

8 (6) (A) Provided, further, however, that a taxpayer principally
9 engaged in the conduct of aviation, other than as provided in clause (C)
10 of this subparagraph, shall, notwithstanding subparagraphs one through
11 five of this paragraph, determine the portion of entire net income to be
12 allocated within the city by multiplying its business income by a busi-
13 ness allocation percentage which is equal to the arithmetic average of
14 the following three percentages:

15 (i) the percentage determined by dividing aircraft arrivals and depar-
16 tures within the city by the taxpayer during the period covered by its
17 report by the total aircraft arrivals and departures within and without
18 the city during such period; provided, however, arrivals and departures
19 solely for maintenance or repair, refueling, where no debarkation or
20 embarkation of traffic occurs, arrivals and departures of ferry and
21 personnel training flights or arrivals and departures in the event of
22 emergency situations shall not be included in computing such arrival and
23 departure percentage; provided, further, the commissioner of finance may
24 also exempt from such percentage aircraft arrivals and departures of all
25 non-revenue flights including flights involving the transportation of
26 officers or employees receiving air transportation to perform mainte-
27 nance or repair services or where such officers or employees are trans-
28 ported in conjunction with an emergency situation or the investigation
29 of an air disaster, other than on a scheduled flight; provided, however,
30 that arrivals and departures of flights transporting officers and
31 employees receiving air transportation for purposes other than specified
32 above, without regard to remuneration, shall be included in computing
33 such arrival and departure percentage;

34 (ii) the percentage determined by dividing the revenue tons handled by
35 the taxpayer at airports within the city during such period by the total
36 revenue tons handled by it at airports within and without the city
37 during such period; and

38 (iii) the percentage determined by dividing the taxpayer's originating
39 revenue within the city for such period by its total originating revenue
40 within and without the city for such period.

41 (B) As used herein, the term "aircraft arrivals and departures" means
42 the number of landings and takeoffs of the aircraft of the taxpayer and
43 the number of air pickups and deliveries by the aircraft of such taxpay-
44 er; the term "originating revenue" means revenue to the taxpayer from
45 the transportation of revenue passengers and revenue property first
46 received by the taxpayer either as originating or connecting traffic at
47 airports; and the term "revenue tons handled" by the taxpayer at
48 airports means the weight in tons of revenue passengers, at two hundred
49 pounds per passenger, and revenue cargo first received either as origi-
50 nating or connecting traffic or finally discharged by the taxpayer at
51 airports;

52 (C) A foreign air carrier described in subparagraph one of paragraph
53 (c-1) of subdivision eight of section 11-602 of this subchapter shall
54 determine its business allocation percentage pursuant to the provisions
55 of subparagraphs one through four of this paragraph, except that the
56 numerators and denominators involved in such computation shall exclude

1 property to the extent employed in generating income excluded from
2 entire net income pursuant to the provisions of paragraph (c-1) of
3 subdivision eight of section 11-602 of this subchapter, exclude such
4 receipts as are excluded from entire net income for the taxable year
5 pursuant to the provisions of paragraph (c-1) of subdivision eight of
6 section 11-602 of this subchapter, and exclude wages, salaries or other
7 personal service compensation which are directly attributable to the
8 generation of income excluded from entire net income for the taxable
9 year pursuant to the provisions of paragraph (c-1) of subdivision eight
10 of section 11-602 of this subchapter.

11 (7) Provided, further, however, that a taxpayer principally engaged in
12 the operation of vessels shall, notwithstanding subparagraphs one
13 through six of this paragraph, determine the portion of entire net
14 income to be allocated within the city by multiplying its business
15 income by a business allocation percentage determined by dividing the
16 aggregate number of working days of the vessels it owns or leases in
17 territorial waters of the city during the period covered by its report
18 by the aggregate number of working days of all the vessels it owns or
19 leases during such period.

20 (8) (A) For taxable years beginning on or after July first, nineteen
21 hundred ninety-six and before January first, two thousand eleven, a
22 manufacturing corporation may elect to determine its business allocation
23 percentage by adding together the percentages determined under subpara-
24 graphs one, two and three of this paragraph and an additional percentage
25 equal to the percentage determined under subparagraph two of this para-
26 graph, and dividing the result by the number of percentages so added
27 together.

28 (B) An election under this subparagraph must be made on a timely
29 filed, determined with regard to extensions granted, original report for
30 the taxable year. Once made for a taxable year, such election shall be
31 irrevocable for that taxable year. A separate election must be made for
32 each taxable year. A manufacturing corporation that has failed to make
33 an election as provided in this clause shall be required to determine
34 its business allocation percentage without regard to the provisions of
35 this subparagraph. Notwithstanding anything in this clause to the
36 contrary, the commissioner of finance may permit a manufacturing corpo-
37 ration to make or revoke an election under this subparagraph, upon such
38 terms and conditions as the commissioner may prescribe, where the
39 commissioner determines that such permission should be granted in the
40 interests of fairness and equity due to a change in circumstances
41 resulting from an audit adjustment.

42 (C) As used in this subparagraph, the term "manufacturing corporation"
43 means a corporation primarily engaged in the manufacturing and sale
44 thereof of tangible personal property; and the term "manufacturing"
45 includes the process, including the assembly process, (i) of working raw
46 materials into wares suitable for use or (ii) which gives new shapes,
47 new qualities or new combinations to matter which already has gone
48 through some artificial process, by the use of machinery, tools, appli-
49 ances and other similar equipment. A corporation shall be deemed to be
50 primarily engaged in the activities described in the provisions of this
51 subparagraph if more than fifty percent of its gross receipts for the
52 taxable year are attributable to such activities.

53 (D) Notwithstanding anything to the contrary, if a taxpayer that is
54 otherwise eligible to make the election authorized by this subparagraph
55 is required or permitted to make a report on a combined basis with one
56 or more other corporations pursuant to subdivision four of section

1 11-605 of this chapter, the taxpayer shall be permitted to make an
2 election under this subparagraph only if such taxpayer and such other
3 corporation or corporations would be a manufacturing corporation if they
4 were treated as a single corporation. In making such determination,
5 intercorporate transactions shall be eliminated. Where such election has
6 been made by the taxpayer for a taxable year, each of the other corpo-
7 rations included in the combined report shall also be deemed to have
8 made a proper election under this subparagraph for such taxable year.

9 (9) Special rules for publishers and broadcasters. (A) Notwithstanding
10 anything in subparagraph two of this paragraph to the contrary and
11 except as provided in clause (C) of this subparagraph, in the case of a
12 taxpayer engaged in the business of publishing newspapers or period-
13 icals, there shall be allocated to the city, for purposes of subpara-
14 graph two of this paragraph, the gross sales or charges for services
15 arising from sales of advertising contained in such newspapers or peri-
16 odicals, to the extent that such newspapers or periodicals are delivered
17 to points within the city.

18 (B) Notwithstanding anything in subparagraph two of this paragraph to
19 the contrary and except as provided in clause (C) of this subparagraph,
20 in the case of a taxpayer engaged in the business of broadcasting radio
21 or television programs, whether through the public airwaves or by cable,
22 direct or indirect satellite transmission, or any other means of trans-
23 mission, there shall be allocated to the city, for purposes of subpara-
24 graph two of this paragraph, a portion of the gross sales or charges for
25 services arising from the broadcasting of such programs and of commer-
26 cial messages in connection therewith, such portion to be determined
27 according to the number of listeners or viewers within and without the
28 city.

29 (C) Notwithstanding anything in clause (A) or (B) of this subparagraph
30 to the contrary, in the case of a taxpayer engaged in the business of
31 publishing newspapers or periodicals, or broadcasting radio or tele-
32 vision programs, whether through the public airwaves or by cable, direct
33 or indirect satellite transmission, or any other means of transmission,
34 there shall be allocated to the city, for purposes of subparagraph two
35 of this paragraph, the gross sales or charges to subscribers located in
36 the city for subscriptions to such newspapers, periodicals, or program
37 services. For purposes of this clause, a subscriber shall be deemed
38 located in the city if, in the case of newspapers and periodicals, the
39 mailing address for the subscription is within the city and, in the case
40 of program services, the billing address for the subscription is within
41 the city. For purposes of this clause, "subscriber" shall mean a member
42 of the general public who receives such newspapers, periodicals or
43 program services and does not further distribute them.

44 (10) Notwithstanding subparagraphs one through five of this paragraph,
45 but subject to subparagraph eight of this paragraph, the business allo-
46 cation percentage, to the extent that it is computed by reference to the
47 percentages determined under subparagraphs one, two and three of this
48 paragraph, shall be computed in the manner set forth in this subpara-
49 graph.

50 (A) For taxable years beginning in two thousand nine, the business
51 allocation percentage shall be determined by adding together the follow-
52 ing percentages:

53 (i) the product of thirty percent and the percentage determined under
54 subparagraph one of this paragraph,

55 (ii) the product of forty percent and the percentage determined under
56 subparagraph two of this paragraph, and

1 (iii) the product of thirty percent and the percentage determined
2 under subparagraph three of this paragraph.

3 (B) For taxable years beginning in two thousand ten, the business
4 allocation percentage shall be determined by adding together the follow-
5 ing percentages:

6 (i) the product of twenty-seven percent and the percentage determined
7 under subparagraph one of this paragraph,

8 (ii) the product of forty-six percent and the percentage determined
9 under subparagraph two of this paragraph, and

10 (iii) the product of twenty-seven percent and the percentage deter-
11 mined under subparagraph three of this paragraph.

12 (C) For taxable years beginning in two thousand eleven, the business
13 allocation percentage shall be determined by adding together the follow-
14 ing percentages:

15 (i) the product of twenty-three and one-half percent and the percent-
16 age determined under subparagraph one of this paragraph,

17 (ii) the product of fifty-three percent and the percentage determined
18 under subparagraph two of this paragraph, and

19 (iii) the product of twenty-three and one-half percent and the
20 percentage determined under subparagraph three of this paragraph.

21 (D) For taxable years beginning in two thousand twelve, the business
22 allocation percentage shall be determined by adding together the follow-
23 ing percentages:

24 (i) the product of twenty percent and the percentage determined under
25 subparagraph one of this paragraph,

26 (ii) the product of sixty percent and the percentage determined under
27 subparagraph two of this paragraph, and

28 (iii) the product of twenty percent and the percentage determined
29 under subparagraph three of this paragraph.

30 (E) For taxable years beginning in two thousand thirteen, the business
31 allocation percentage shall be determined by adding together the follow-
32 ing percentages:

33 (i) the product of sixteen and one-half percent and the percentage
34 determined under subparagraph one of this paragraph,

35 (ii) the product of sixty-seven percent and the percentage determined
36 under subparagraph two of this paragraph, and

37 (iii) the product of sixteen and one-half percent and the percentage
38 determined under subparagraph three of this paragraph.

39 (F) For taxable years beginning in two thousand fourteen, the business
40 allocation percentage shall be determined by adding together the follow-
41 ing percentages:

42 (i) the product of thirteen and one-half percent and the percentage
43 determined under subparagraph one of this paragraph,

44 (ii) the product of seventy-three percent and the percentage deter-
45 mined under subparagraph two of this paragraph, and

46 (iii) the product of thirteen and one-half percent and the percentage
47 determined under subparagraph three of this paragraph.

48 (G) For taxable years beginning in two thousand fifteen, the business
49 allocation percentage shall be determined by adding together the follow-
50 ing percentages:

51 (i) the product of ten percent and the percentage determined under
52 subparagraph one of this paragraph,

53 (ii) the product of eighty percent and the percentage determined under
54 subparagraph two of this paragraph, and

55 (iii) the product of ten percent and the percentage determined under
56 subparagraph three of this paragraph.

1 (H) For taxable years beginning in two thousand sixteen, the business
2 allocation percentage shall be determined by adding together the follow-
3 ing percentages:

4 (i) the product of six and one-half percent and the percentage deter-
5 mined under subparagraph one of this paragraph,

6 (ii) the product of eighty-seven percent and the percentage determined
7 under subparagraph two of this paragraph, and

8 (iii) the product of six and one-half percent and the percentage
9 determined under subparagraph three of this paragraph.

10 (I) For taxable years beginning in two thousand seventeen, the busi-
11 ness allocation percentage shall be determined by adding together the
12 following percentages:

13 (i) the product of three and one-half percent and the percentage
14 determined under subparagraph one of this paragraph,

15 (ii) the product of ninety-three percent and the percentage determined
16 under subparagraph two of this paragraph, and

17 (iii) the product of three and one-half percent and the percentage
18 determined under subparagraph three of this paragraph.

19 (J) For taxable years beginning after two thousand seventeen, the
20 business allocation percentage shall be the percentage determined under
21 subparagraph two of this paragraph.

22 (K) The commissioner shall promulgate rules necessary to implement the
23 provisions of this subparagraph under such circumstances where any of
24 the percentages to be determined under subparagraph one, two or three of
25 this paragraph cannot be determined because the taxpayer has no proper-
26 ty, receipts or wages within or without the city.

27 (11) (A) In the case of a taxpayer which is a registered securities or
28 commodities broker or dealer, the receipts specified in items (i)
29 through (vii) of this clause shall be deemed to arise from services
30 performed within the city to the extent set forth in each of such items.

31 (i) Receipts constituting brokerage commissions derived from the
32 execution of securities or commodities purchase or sales orders for the
33 accounts of customers shall be deemed to arise from services performed
34 at the mailing address in the records of the taxpayer of the customer
35 who is responsible for paying such commissions.

36 (ii) Receipts constituting margin interest earned on behalf of broker-
37 age accounts shall be deemed to arise from services performed at the
38 mailing address in the records of the taxpayer of the customer who is
39 responsible for paying such margin interest.

40 (iii) Gross income, including any accrued interest or dividends, from
41 principal transactions for the purchase or sale of stocks, bonds,
42 foreign exchange and other securities or commodities, including futures
43 and forward contracts, options and other types of securities or commod-
44 ities derivatives contracts, shall be deemed to arise from services
45 performed within the city either (I) to the extent that production cred-
46 its are awarded to branches, offices or employees of the taxpayer within
47 the city as a result of such principal transactions or (II) if the
48 taxpayer so elects, to the extent that the gross proceeds from such
49 principal transactions, determined without deduction for any cost
50 incurred by the taxpayer to acquire the securities or commodities, are
51 generated from sales of securities or commodities to customers within
52 the city based upon the mailing addresses of such customers in the
53 records of the taxpayer. For purposes of subitem (II) of this item, the
54 taxpayer shall separately calculate such gross income from principal
55 transactions by type of security or commodity. For purposes of this
56 item, gross income from principal transactions shall be determined after

1 the deduction of any cost incurred by the taxpayer to acquire the secu-
2 rities or commodities. For purposes of this subparagraph, the term
3 "production credits" means credits granted pursuant to the internal
4 accounting system used by the taxpayer to measure the amount of revenue
5 that should be awarded to a particular branch or office or employee of
6 the taxpayer which is based, at least in part, on the branch's, the
7 office's or the employee's particular activities. Upon request, the
8 taxpayer shall be required to furnish a detailed explanation of such
9 internal accounting system to the department.

10 (iv) (I) Receipts constituting fees earned by the taxpayer for advi-
11 sory services to a customer in connection with the underwriting of secu-
12 rities for such customer, such customer being the entity which is
13 contemplating issuing or is issuing securities, or fees earned by the
14 taxpayer for managing an underwriting shall be deemed to arise from
15 services performed at the mailing address in the records of the taxpayer
16 of such customer who is responsible for paying such fees.

17 (II) Receipts constituting the primary spread or selling concession
18 from underwritten securities shall be deemed to arise from services
19 performed within the city to the extent that production credits are
20 awarded to branches, offices or employees of the taxpayer within the
21 city as a result of the sale of the underwritten securities.

22 (III) The term "primary spread" means the difference between the price
23 paid by the taxpayer to the issuer of the securities being marketed and
24 the price received from the subsequent sale of the underwritten securi-
25 ties at the initial public offering price, less any selling concession
26 and any fees paid to the taxpayer for advisory services or any manager's
27 fees, if such fees are not paid by the customer to the taxpayer sepa-
28 rately. The term "public offering price" means the price agreed upon by
29 the taxpayer and the issuer at which the securities are to be offered to
30 the public. The term "selling concession" means the amount paid to the
31 taxpayer for participating in the underwriting of a security where the
32 taxpayer is not the lead underwriter.

33 (v) Receipts constituting interest earned by the taxpayer on loans and
34 advances made by the taxpayer to a corporation affiliated with the
35 taxpayer but with which the taxpayer is not permitted or required to
36 file a combined report pursuant to subdivision four of section 11-605 of
37 this subchapter shall be deemed to arise from services performed at the
38 principal place of business of such affiliated corporation.

39 (vi) Receipts constituting account maintenance fees shall be deemed to
40 arise from services performed at the mailing address in the records of
41 the taxpayer of the customer who is responsible for paying such account
42 maintenance fees.

43 (vii) Receipts constituting fees for management or advisory services,
44 including fees for advisory services in relation to merger or acquisi-
45 tion activities but excluding fees paid for services described in item
46 (ii) of clause (B) of subparagraph two of this paragraph, shall be
47 deemed to arise from services performed at the mailing address in the
48 records of the taxpayer of the customer who is responsible for paying
49 such fees.

50 (B) For purposes of this subparagraph, the term "securities" shall
51 have the same meaning as in paragraph two of subdivision (c) of section
52 four hundred seventy-five of the internal revenue code and the term
53 "commodities" shall have the same meaning as in paragraph two of subdi-
54 vision (e) of section four hundred seventy-five of the internal revenue
55 code. The term "registered securities or commodities broker or dealer"
56 means a broker or dealer registered as such by the securities and

1 exchange commission or the commodities futures trading commission, and
2 shall include an over-the-counter derivatives dealer as defined under
3 regulations of the securities and exchange commission at title 17, part
4 240, section 3b-12 of the code of federal regulations (17 CFR
5 240.3b-12).

6 (C) If the taxpayer receives any of the receipts enumerated in clause
7 (A) of this subparagraph as a result of a securities correspondent
8 relationship such taxpayer has with another registered securities or
9 commodities broker or dealer with the taxpayer acting in this relation-
10 ship as the clearing firm, such receipts shall be deemed to arise from
11 services performed within the city to the extent set forth in each of
12 the items of clause (A) of this subparagraph. The amount of such
13 receipts shall exclude the amount the taxpayer is required to pay to the
14 correspondent firm for such correspondent relationship. If the taxpayer
15 receives any of the receipts enumerated in clause (A) of this subpara-
16 graph as a result of a securities correspondent relationship such
17 taxpayer has with another registered securities or commodities broker or
18 dealer with the taxpayer acting in this relationship as the introducing
19 firm, such receipts shall be deemed to arise from services performed
20 within the city to the extent set forth in each of the items of clause
21 (A) of this subparagraph.

22 (D) If, for purposes of item (i) or (ii), subitem (I) of item (iv), or
23 item (vi), or (vii) of clause (A) of this subparagraph, the taxpayer is
24 unable from its records to determine the mailing address of the custom-
25 er, the receipts enumerated in any of such items shall be deemed to
26 arise from services performed at the branch or office of the taxpayer
27 that generates the transaction for the customer that generated such
28 receipts.

29 (b) multiply its investment income by an investment allocation
30 percentage to be determined by:

31 (1) multiplying the amount of its investment capital invested in each
32 stock, bond or other security, other than governmental securities,
33 during the period covered by its report by the issuer's allocation
34 percentage of the issuer or obligor thereof.

35 (i) In the case of an issuer or obligor subject to tax under this
36 subchapter, subchapter three-A or subchapter four of this chapter, or
37 subject to tax as a utility corporation under chapter eleven of this
38 title, the issuer's allocation percentage shall be the percentage of the
39 appropriate measure, which is required to be allocated within the city
40 on the report or reports, if any, required of the issuer or obligor
41 under this title for the preceding year. The "appropriate measure" shall
42 be defined as: in the case of an issuer or obligor subject to this
43 subchapter or subchapter three-A, entire capital; in the case of an
44 issuer or obligor subject to subchapter four of this chapter, issued
45 capital stock; in the case of an issuer or obligor subject to chapter
46 eleven of this title as a utility corporation, gross income.

47 (ii) In the case of an issuer or obligor subject to tax under part
48 four of subchapter three of this chapter, the issuer's allocation
49 percentage shall be determined as follows:

50 (A) In the case of a banking corporation described in paragraphs one
51 through eight of subdivision (a) of section 11-640 of this chapter which
52 is organized under the laws of the United States, this state or any
53 other state of the United States, the issuer's allocation percentage
54 shall be its alternative entire net income allocation percentage, as
55 defined in subdivision (c) of section 11-642 of this chapter, for the
56 preceding year. In the case of such a banking corporation whose alterna-

1 tive entire net income for the preceding year is derived exclusively
2 from business carried on within the city, its issuer's allocation
3 percentage shall be one hundred percent.

4 (B) In the case of a banking corporation described in paragraph two of
5 subdivision (a) of section 11-640 of this chapter which is organized
6 under the laws of a country other than the United States, the issuer's
7 allocation percentage shall be determined by dividing (I) the amount
8 described in clause (i) of subparagraph (A) of paragraph two of subdivi-
9 sion (a) of section 11-642 of this chapter with respect to such issuer
10 or obligor for the preceding year, by (II) the gross income of such
11 issuer or obligor from all sources within and without the United States,
12 for such preceding year, whether or not included in alternative entire
13 net income for such year.

14 (C) In the case of an issuer or obligor described in paragraph nine of
15 subdivision (a) or in paragraph two of subdivision (d) of section 11-640
16 of this chapter, the issuer's allocation percentage shall be determined
17 by dividing the portion of the entire capital of the issuer or obligor
18 allocable to the city for the preceding year by the entire capital,
19 wherever located, of the issuer or obligor for the preceding year.

20 (iii) Provided, however, that if a report or reports for the preceding
21 year are not filed, or if filed do not contain information which would
22 permit the determination of such issuer's allocation percentage, then
23 the issuer's allocation percentage to be used shall, at the discretion
24 of the commissioner of finance, be either (A) the issuer's allocation
25 percentage derived from the most recently filed report or reports of the
26 issuer or obligor or (B) a percentage calculated, by the commissioner of
27 finance, reasonably to indicate the degree of economic presence in the
28 city of the issuer or obligor during the preceding year.

29 (2) adding together the sum so obtained, and

30 (3) dividing the result so obtained by the total of its investment
31 capital invested during such period in stocks, bonds and other securi-
32 ties; provided, however, that in case any investment capital is invested
33 in any stock, bond or other security during only a portion of the period
34 covered by the report, only such portion of such capital shall be taken
35 into account; and provided further, that if a taxpayer's investment
36 allocation percentage is zero, interest received on bank accounts shall
37 be multiplied by its business allocation percentage; and

38 (c) add the products so obtained.

39 (d) Except as provided in subparagraph three of this paragraph or in
40 paragraph (e) of this subdivision, at the election of the taxpayer there
41 shall be deducted from the portion of its entire net income allocated
42 within the city either or both of the items set forth in subparagraphs
43 one and two of this paragraph, except that only one of such deductions
44 shall be allowed with respect to any one item of property.

45 (1) Depreciation with respect to any property such as described in
46 subparagraph three of this paragraph, not exceeding twice the depreci-
47 ation allowed with respect to the same property for federal income tax
48 purposes. Such deduction shall be allowed only upon condition that
49 entire net income be computed without any deduction for the depreciation
50 of the same property, and the total of all deductions allowed in any
51 taxable year or years with respect to the depreciation of any such prop-
52 erty shall not exceed its cost or other basis.

53 (2) Expenditures paid or incurred during the taxable year for the
54 construction, reconstruction, erection or acquisition of any property
55 such as described in subparagraph three of this paragraph which is used
56 or to be used for purposes of research and development in the exper-

1 imental or laboratory sense. Such purposes shall not be deemed to
2 include the ordinary testing or inspection of materials or products for
3 quality control, efficiency surveys, management studies, consumer
4 surveys, advertising, promotions or research in connection with liter-
5 ary, historical or similar projects. Such deduction shall be allowed
6 only on condition that entire net income for the taxable year and all
7 succeeding taxable years be computed without the deduction of any such
8 expenditures and without any deduction for depreciation of the same
9 property, except to the extent that its basis may be attributable to
10 factors other than such expenditures, or in case a deduction is allow-
11 able pursuant to this subparagraph for only a part of such expenditures,
12 on condition that any deduction allowed for federal income tax purposes
13 on account of such expenditures or on account of depreciation of the
14 same property be proportionately reduced in computing entire net income
15 for the taxable year and all succeeding taxable years. With respect to
16 property which is used or to be used for research and development only
17 in part, or during only part of its useful life, a proportionate part of
18 such expenditures shall be deductible. If all or part of such expendi-
19 tures with respect to any property shall have been deducted as provided
20 in this subparagraph, and such property is used for purposes other than
21 research and development to a greater extent than originally reported,
22 the taxpayer shall report such use in its report for the first taxable
23 year during which it occurs, and the commissioner of finance may recom-
24 pute the tax for the year or years for which such deduction was allowed,
25 and may assess any additional tax resulting from such recomputation
26 regardless of the time limitations set forth in section 11-674 of this
27 chapter.

28 (3) Such deductions shall be allowed only with respect to tangible
29 property which is depreciable pursuant to section one hundred sixty-sev-
30 en of the internal revenue code, having a situs in the city and used in
31 the taxpayer's trade or business, (A) constructed, reconstructed or
32 erected after December thirty-first, nineteen hundred sixty-five, pursu-
33 ant to a contract which was, on or before December thirty-first, nine-
34 teen hundred sixty-seven, and at all times thereafter, binding on the
35 taxpayer or, property, the physical construction, reconstruction or
36 erection of which began on or before December thirty-first, nineteen
37 hundred sixty-seven or which began after such date pursuant to an order
38 placed on or before December thirty-first, nineteen hundred sixty-seven,
39 and then only with respect to that portion of the basis thereof or the
40 expenditures relating thereto which is properly attributable to such
41 construction, reconstruction or erection after December thirty-first,
42 nineteen hundred sixty-five, or (B) acquired after December thirty-
43 first, nineteen hundred sixty-five, pursuant to a contract which was, on
44 or before December thirty-first, nineteen hundred sixty-seven, and at
45 all times thereafter, binding on the taxpayer or pursuant to an order
46 placed on or before December thirty-first, nineteen hundred sixty-seven,
47 by purchase as defined in section one hundred seventy-nine (d) of the
48 internal revenue code, if the original use of such property commenced
49 with the taxpayer, commenced in the city and commenced after December
50 thirty-first, nineteen hundred sixty-five, or (C) acquired, constructed,
51 reconstructed, or erected subsequent to December thirty-first nineteen
52 hundred sixty-seven, if such acquisition, construction, reconstruction
53 or erection is pursuant to a plan of the taxpayer which was in existence
54 December thirty-first, nineteen hundred sixty-seven and not thereafter
55 substantially modified, and such acquisition, construction, recon-
56 struction or erection would qualify under the rules in paragraphs four,

1 five or six of subsection (h) of section forty-eight of the internal
2 revenue code provided all references in such paragraphs four, five and
3 six to the dates October nine, nineteen hundred sixty-six, and October
4 ten, nineteen hundred sixty-six, shall be read as December thirty-first,
5 nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction
6 under clauses (A), (B) or (C) of this subparagraph only if the tangible
7 property shall be delivered or the construction, reconstruction or
8 erection shall be completed on or before December thirty-first, nineteen
9 hundred sixty-nine, except in the case of tangible property which is
10 acquired, constructed, reconstructed or erected pursuant to a contract
11 which was, on or before December thirty-first, nineteen hundred sixty-
12 seven, and at all times thereafter, binding on the taxpayer. Provided,
13 however, for any taxable year beginning on or after January first, nine-
14 teen hundred sixty-eight, a taxpayer shall not be allowed a deduction
15 under this paragraph with respect to tangible personal property leased
16 by it to any other person or corporation. Accordingly, any contract or
17 agreement to lease or rent or for a license to use such property shall
18 be considered a lease. With respect to property which the taxpayer uses
19 itself for purposes other than leasing for part of a taxable year and
20 leases for a part of a taxable year, the taxpayer shall be allowed a
21 deduction under this paragraph in proportion to the part of the year it
22 uses such property.

23 (4) If the deductions allowable for any taxable year, pursuant to this
24 subdivision, exceed the portion of the taxpayer's entire net income
25 allocated to the city for such year, the excess may be carried over to
26 the following taxable year or years and may be deducted from the portion
27 of the taxpayer's entire net income allocated to the city for such year
28 or years.

29 (5) In any taxable year when property is sold or otherwise disposed
30 of, with respect to which a deduction has been allowed pursuant to
31 subparagraph one or two of this paragraph, the gain or loss thereon
32 entering into the computation of federal taxable income shall be disre-
33 garded in computing entire net income, and there shall be added to or
34 subtracted from the portion of entire net income allocated within the
35 city the gain or loss upon such sale or other disposition. In computing
36 such gain or loss the basis of the property sold or disposed of shall be
37 adjusted to reflect the deduction allowed with respect to such property
38 pursuant to subparagraph one or two of this paragraph. Provided, howev-
39 er, that no loss shall be recognized for the purposes of this subpara-
40 graph with respect to a sale or other disposition of property to a
41 person whose acquisition thereof is not a purchase as defined in section
42 one hundred seventy-nine (d) of the internal revenue code.

43 (e) At the election of the taxpayer there shall be deducted from the
44 portion of its entire net income allocated within the city either or
45 both of the items set forth in subparagraphs one and two of this para-
46 graph, except that only one of such deductions shall be allowed with
47 respect to any one item of property.

48 (1) Depreciation with respect to any property such as described in
49 subparagraphs three and four of this paragraph, not exceeding twice the
50 depreciation allowed with respect to the same property for federal
51 income tax purposes. Such deduction shall be allowed only upon condition
52 that entire net income be computed without any deduction for the depre-
53 ciation of the same property, and the total of all deductions allowed in
54 any taxable year or years with respect to the depreciation of any such
55 property shall not exceed its cost or other basis multiplied by the
56 taxpayer's business allocation percentage determined under this subdivi-

1 sion for the first year it deducts such depreciation under this para-
2 graph.

3 (2) Expenditures paid or incurred during the taxable year for the
4 construction, reconstruction, erection or acquisition of any property
5 such as described in subparagraph three of this paragraph which is used
6 or to be used for purposes of research and development in the exper-
7 imental or laboratory sense. Such purposes shall not be deemed to
8 include the ordinary testing or inspection of materials or products for
9 quality control, efficiency surveys, management studies, consumer
10 surveys, advertising, promotions or research in connection with liter-
11 ary, historical or similar projects. Such deductions shall be allowed
12 only on condition that it does not exceed the amount of the expenditures
13 multiplied by the taxpayer's business allocation percentage determined
14 under this subdivision for the year the expenditures are paid or
15 incurred and that entire net income for the taxable year and all
16 succeeding taxable years be computed without the deduction of any such
17 expenditures and without any deduction for depreciation of the same
18 property, except to the extent that its basis may be attributable to
19 factors other than such expenditures, or in case a deduction is allow-
20 able pursuant to this subparagraph for only a part of such expenditures,
21 on condition that any deduction allowed for federal income tax purposes
22 on account of such expenditures or on account of depreciation of the
23 same property be proportionately reduced in computing entire net income
24 for the taxable year and all succeeding taxable years. With respect to
25 property which is used or to be used for research and development only
26 in part, or during only part of its useful life, a proportionate part of
27 such expenditures shall be deductible. If all or part of such expendi-
28 tures with respect to any property shall have been deducted as provided
29 in this subparagraph, and such property is used for purposes other than
30 research and development to a greater extent than originally reported,
31 the taxpayer shall report such use in its report for the first taxable
32 year during which it occurs, and the commissioner of finance may recom-
33 pute the tax for the year or years for which such deduction was allowed,
34 and may assess any additional tax resulting from such recomputation
35 regardless of the time limitations set forth in section 11-674 of this
36 chapter.

37 (3) Such deduction shall be allowed only with respect to tangible
38 property which is depreciable pursuant to section one hundred sixty-sev-
39 en of the internal revenue code, having a situs in the city and used in
40 the taxpayer's trade or business (A) the construction, reconstruction or
41 erection of which is completed after December thirty-first, nineteen
42 hundred sixty-seven, and then only with respect to that portion of the
43 basis thereof or the expenditures relating thereto which is properly
44 attributable to such construction, reconstruction or erection after
45 December thirty-first, nineteen hundred sixty-five, or (B) acquired
46 after December thirty-first, nineteen hundred sixty-seven by purchase or
47 defined in section one hundred seventy-nine (d) of the internal revenue
48 code, if the original use of such property commenced with the taxpayer,
49 commenced in this state and commenced after December thirty-first nine-
50 teen hundred sixty-five. Provided, however, for any taxable year begin-
51 ning on or after January first, nineteen hundred sixty-eight, a taxpayer
52 shall not be allowed a deduction under this paragraph with respect to
53 tangible personal property leased by it to any other person or corpo-
54 ration. Accordingly, any contract or agreement to lease or rent or for a
55 license to use such property shall be considered a lease. With respect
56 to property which the taxpayer uses itself for purposes other than leas-

1 ing for part of a taxable year and leases for a part of a taxable year,
2 the taxpayer shall be allowed a deduction under this paragraph in
3 proportion to the part of the year it uses such property.

4 (4) A deduction under subparagraph one of this paragraph shall be
5 allowed with respect to tangible property described in subparagraph
6 three only if such property is principally used by the taxpayer in the
7 production of goods by manufacturing; processing; assembling; refining;
8 mining; extracting; farming; agriculture; horticulture; floriculture;
9 viticulture or commercial fishing. For purposes of this subparagraph,
10 manufacturing shall mean the process of working raw materials into wares
11 suitable for use or which gives new shapes, new qualities or new combi-
12 nations to matter which already has gone through some artificial process
13 by the use of machinery, tools, appliances and other similar equipment.
14 Property used in the production of goods shall include machinery, equip-
15 ment or other tangible property which is principally used in the repair
16 and service of other machinery, equipment or other tangible property
17 used principally in the production of goods and shall include all facil-
18 ities used in the manufacturing operation, including storage of material
19 to be used in manufacturing and of the products that are manufactured.
20 At the option of the taxpayer, air and water pollution control facili-
21 ties which qualify for elective deductions under paragraph (g) of subdi-
22 vision eight of section 11-602 of this subchapter may be treated, for
23 purposes of this paragraph, as tangible property principally used in the
24 production of goods by manufacturing; processing; assembling; refining;
25 mining; extracting; farming; agriculture; horticulture; floriculture;
26 viticulture; or commercial fishing, in which event, a deduction shall
27 not be allowed under such paragraph (g).

28 (5) Subject to the limitation imposed by subparagraphs one and two of
29 this paragraph, if the deductions allowable for any taxable year, pursu-
30 ant to this subdivision, exceed the portion of the taxpayer's entire net
31 income allocated to the city for such year, the excess may be carried
32 over to the following taxable year or years and may be deducted from the
33 portion of the taxpayer's entire net income allocated to the city for
34 such year or years.

35 (6) In any taxable year when property is sold or otherwise disposed
36 of, with respect to which a deduction has been allowed pursuant to
37 subparagraph one or two of this paragraph, the gain or loss thereon
38 entering into the computation of federal taxable income shall be disre-
39 garded in computing entire net income, and there shall be added to or
40 subtracted from the portion of entire net income allocated within the
41 city the gain or loss upon such sale or other disposition. In computing
42 such gain or loss the basis of the property sold or disposed of shall be
43 adjusted to reflect the deduction allowed with respect to such property
44 pursuant to subparagraph one or two of this paragraph. Provided, howev-
45 er, that no loss shall be recognized for the purposes of this subpara-
46 graph with respect to a sale or other disposition of property to a
47 person whose acquisition thereof is not a purchase as defined in section
48 one hundred seventy-nine (d) of the internal revenue code.

49 4. The portion of the business capital of a taxpayer to be allocated
50 within the city shall be determined by multiplying the amount thereof by
51 the business allocation percentage determined as provided for in this
52 subdivision. Provided, however, such business allocation percentage, for
53 purposes of allocating business capital, shall (a) for taxable years
54 beginning before nineteen hundred ninety-four, be determined without
55 regard to clause (C) of subparagraph six of paragraph (a) of subdivision
56 three of this section and (b) for taxable years beginning after nineteen

1 hundred ninety-three, be determined with regard to such clause (C) but
2 only in the case of a taxpayer subject to the provisions of paragraph
3 (b) of subdivision six of section 11-602 of this subchapter.

4 5. The portion of the investment capital of a taxpayer to be allocated
5 within the city shall be determined by multiplying the amount thereof by
6 the investment allocation percentage determined as provided in this
7 subdivision.

8 7. The portion of the subsidiary capital of a taxpayer to be allocated
9 within the city shall be determined by (a) multiplying the amount of its
10 subsidiary capital invested in each subsidiary during the period covered
11 by its report, or, in the case of any such capital so invested during
12 only a portion of such period, such portion of such capital, by the
13 issuer's allocation percentage, as defined in subparagraph one of para-
14 graph (b) of subdivision three of this section, of each such subsidiary
15 and (b) adding together the sums so obtained.

16 8. If it shall appear to the commissioner of finance that any business
17 or investment allocation percentage determined as provided in this
18 subdivision does not properly reflect the activity, business, income or
19 capital of a taxpayer within the city, the commissioner of finance shall
20 be authorized in his or her discretion, in the case of a business allo-
21 cation percentage, to adjust it by (a) excluding one or more of the
22 factors therein, (b) including one or more other factors, such as
23 expenses, purchases, contract values, minus subcontract values, (c)
24 excluding one or more assets in computing such allocation percentage,
25 provided the income therefrom is also excluded in determining entire net
26 income, or (d) any other similar or different method calculated to
27 effect a fair and proper allocation of the income and capital reasonably
28 attributable to the city, and in the case of an investment allocation
29 percentage to adjust it by excluding one or more assets in computing
30 such percentage provided the income therefrom is also excluded in deter-
31 mining entire net income. The commissioner of finance from time to time
32 shall publish all rulings of general public interest with respect to any
33 application of the provisions of this subdivision.

34 9. If it shall appear to the commissioner of finance that any business
35 allocation percentage determined as provided in subdivisions one through
36 eight of this section does not properly reflect the activity, business,
37 income or capital of a taxpayer within the city, the commissioner of
38 finance shall be authorized in his or her discretion to adjust it by (a)
39 excluding one or more of the factors therein, (b) including one or more
40 other factors, such as expenses, purchases, contract values, minus
41 subcontract values, (c) excluding one or more assets in computing such
42 allocation percentage, provided the income therefrom, is also excluded
43 in determining entire net income, or (d) any other similar or different
44 method calculated to effect a fair and proper allocation of the income
45 and capital reasonably attributable to the city, and in the case of an
46 investment allocation percentage, to adjust it by excluding one or more
47 assets in computing such percentage provided the income therefrom is
48 also excluded in determining entire net income. The commissioner of
49 finance from time to time shall publish all rulings of general public
50 interest with respect to any application of the provisions of this
51 subdivision.

52 11. (a) A taxpayer shall be allowed a credit, to be refunded in the
53 manner as provided in this subdivision, against the tax imposed by this
54 chapter. The amount of such credit shall be fifty percent of the tax
55 incurred in market making transactions under the provisions of article
56 twelve of the tax law on such transactions subject to such tax occurring

1 on and after August first, nineteen hundred seventy-six and paid by such
2 taxpayer, except when such tax shall have been paid pursuant to section
3 two hundred seventy-nine-a of such tax law.

4 (b) For purposes of this subdivision:

5 (1) the term "taxpayer" shall mean any corporation subject to tax
6 under this chapter registered with the United States securities and
7 exchange commission in accordance with subsection (b) of section fifteen
8 of the securities exchange act of nineteen hundred thirty-four, as
9 amended, and acting as a dealer in a transaction described in subpara-
10 graph two of this paragraph, and

11 (2) the term "market making transaction" shall mean any transaction
12 involving a sale, including a short sale, by a dealer of shares or
13 certificates subject to the tax imposed by article twelve of the tax
14 law, provided such shares or certificates are sold:

15 (i) as stock in trade or inventory or as property held for sale in the
16 ordinary course of such dealer's trade or business, including transfers
17 which are part of an underwriting,

18 (ii) in (a) a bona fide arbitrage transaction; (b) a bona fide hedge
19 transaction involving a long or short position in any equity security
20 and a long or short position in a security entitling the holder to
21 acquire or sell such equity security; or (c) a risk arbitrage trans-
22 action in connection with a merger, acquisition, tender offer, recap-
23 italization, reorganization, or similar transaction, or

24 (iii) to offset a transaction made in error.

25 Provided, however, that, except as to subclause (c) of clause (ii) of
26 this paragraph, the term "market making transaction" shall not include
27 any sale of shares or certificates identified in such dealer's records
28 as a security held for investment within the meaning of section twelve
29 hundred thirty-six of the internal revenue code.

30 (c) The credit allowed under this subdivision for any taxable year
31 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
32 ited or refunded in accordance with the provisions of section 11-677 of
33 this chapter, except as otherwise provided in subdivision three of
34 section 11-606 and subdivision eleven of section 11-608; provided,
35 however, that the provisions of this title notwithstanding, the amount
36 to be refunded pursuant to this subdivision shall not be paid prior to
37 the first day of the eighth month following the close of the taxable
38 year, and the provisions of subdivision three of section 11-679 of this
39 chapter notwithstanding interest shall be allowed and paid on the over-
40 payment of the credit under this subdivision from the first day of the
41 eleventh month following the close of the taxable year, or three months
42 after a claim for the credit or refund provided for in this subdivision
43 has been filed, whichever is later.

44 (d) Provided, however, that the credit provided under this subdivision
45 shall be allowed only to the extent that the amount of credit allowable
46 with respect to market making transactions under the provisions of this
47 subdivision, determined without regard to the provisions of this para-
48 graph, exceeds fifty percent of all rebates, provided for under the
49 provisions of section two hundred eighty-a of the tax law, allowed for
50 such taxes incurred in the same market making transactions with respect
51 to which the credit is determined. No credit shall be allowed under this
52 subdivision with respect to any tax incurred in market making trans-
53 actions occurring on or after October first, nineteen hundred eighty-
54 one.

55 12. (a) In addition to the credit allowed by subdivision eleven of
56 this section, a taxpayer shall be allowed a credit against the tax

1 imposed by this subchapter to be credited or refunded in the manner
2 provided in this section. The amount of such credit shall be the excess
3 of (A) the amount of sales and compensating use taxes imposed by section
4 eleven hundred seven of the tax law during the taxpayer's taxable year
5 which became legally due on or after and was paid on or after July
6 first, nineteen hundred seventy-seven, less any credits or refunds of
7 such taxes, with respect to the purchase or use by the taxpayer of
8 machinery or equipment for use or consumption directly and predominantly
9 in the production of tangible personal property, gas, electricity,
10 refrigeration or steam for sale, by manufacturing, processing, generat-
11 ing, assembling, refining, mining or extracting, or telephone central
12 office equipment or station apparatus or comparable telegraph equipment
13 for use directly and predominantly in receiving at destination or initi-
14 ating and switching telephone or telegraph communication, but not
15 including parts with a useful life of one year or less or tools or
16 supplies used in connection with such machinery, equipment or apparatus
17 over (B) the amount of any credit for such sales and compensating use
18 taxes allowed or allowable against the taxes imposed by subchapter two
19 of chapter eleven of this title for any periods embraced within the
20 taxable year of the taxpayer under this subchapter.

21 (b) The credit allowed under this subdivision for any taxable year
22 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
23 ited or refunded, without interest, in accordance with the provisions of
24 section 11-677 of this chapter.

25 (c) Where the taxpayer receives a refund or credit of any tax imposed
26 under section eleven hundred seven of the tax law for which the taxpayer
27 had claimed a credit under the provisions of this subdivision in a prior
28 taxable year, the amount of such tax refund shall be added to the tax
29 imposed by subdivision one of section 11-603 of this subchapter, and
30 such amount shall be subtracted in computing entire net income for the
31 taxable year.

32 13. (a) In addition to any other credit allowed by this section, a
33 taxpayer shall be allowed a credit against the tax imposed by this
34 subchapter to be credited or refunded without interest, in the manner
35 provided in this section.

36 (1) Where a taxpayer shall have relocated to the city from a location
37 outside the state, and by such relocation shall have created a minimum
38 of one hundred industrial or commercial employment opportunities; and
39 where such taxpayer shall have entered into a written lease for the
40 relocation premises, the terms of which lease provide for increased
41 additional payments to the landlord which are based solely and directly
42 upon any increase or addition in real estate taxes imposed on the leased
43 premises, the taxpayer upon approval and certification by the industrial
44 and commercial incentive board shall be entitled to a credit against the
45 tax imposed by this subchapter. The amount of such credit shall be: An
46 amount equal to the annual increased payments actually made by the
47 taxpayer to the landlord which are solely and directly attributable to
48 an increase or addition to the real estate tax imposed upon the leased
49 premises. Such credit shall be allowed only to the extent that the
50 taxpayer has not otherwise claimed said amount as a deduction against
51 the tax imposed by this subchapter.

52 The industrial and commercial incentive board in approving and certi-
53 fying to the qualifications of the taxpayer to receive the tax credit
54 provided for in this subdivision shall first determine that the appli-
55 cant has met the requirements of this section, and further, that the
56 granting of the tax credit to the applicant is in the "public interest".

1 In determining that the granting of the tax credit is in the public
2 interest, the board shall make affirmative findings that: the granting
3 of the tax credit to the applicant will not effect an undue hardship on
4 similar taxpayers already located within the city; the existence of this
5 tax incentive has been instrumental in bringing about the relocation of
6 the applicant to the city; and the granting of the tax credit will
7 foster the economic recovery and economic development of the city.

8 The tax credit, if approved and certified by the industrial and
9 commercial incentive board, must be utilized annually by the taxpayer
10 for the length of the term of the lease or for a period not to exceed
11 ten years from the date of relocation whichever period is shorter.

12 (2) When used in this section, the following terms shall have the
13 following meanings:

14 (i) "Employment opportunity" means the creation of a full time posi-
15 tion of gainful employment for an industrial or commercial employee and
16 the actual hiring of such employee for the said position.

17 (ii) "Industrial employee" means one engaged in the manufacture or
18 assembling of tangible goods or the processing of raw materials.

19 (iii) "Commercial employee" means one engaged in the buying, selling
20 or otherwise providing of goods or services other than on a retail
21 basis.

22 (iv) "Retail" means the selling or otherwise disposing or furnishing
23 of tangible goods or services directly to the ultimate user or consumer.

24 (v) "Full time position" means the hiring of an industrial or commer-
25 cial employee in a position of gainful employment where the number of
26 hours worked by such employees is not less than thirty hours during any
27 given work week.

28 (vi) "Industrial and commercial incentive board" means the board
29 created pursuant to part three of subchapter two of chapter two of this
30 title.

31 (b) The credit allowed under this subdivision for any taxable year
32 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
33 ited or refunded, without interest, in accordance with the provisions of
34 section 11-677 of this chapter.

35 14. (a) In addition to any other credit allowed by this section, a
36 taxpayer shall be allowed a credit against the tax imposed by this
37 subchapter to be credited or refunded without interest, in the manner
38 provided in this section. The amount of such credit shall be:

39 (1) A maximum of three hundred dollars for each commercial employment
40 opportunity and a maximum of five hundred dollars for each industrial
41 employment opportunity relocated to the city from an area outside the
42 state. Such credit shall be allowed to a taxpayer who relocates a mini-
43 mum of ten employment opportunities. The credit shall be allowed against
44 employment opportunity relocation costs incurred by the taxpayer. Such
45 credit shall be allowed only to the extent that the taxpayer has not
46 claimed a deduction for allowable employment opportunity relocation
47 costs. Such credit may be taken by the taxpayer in whole or in part in
48 the year in which the employment opportunity is relocated by such
49 taxpayer or either of the two years succeeding such event, provided,
50 however, no credit shall be allowed under this subdivision to a taxpayer
51 for industrial employment opportunities relocated to premises (A) that
52 are within an industrial business zone established pursuant to section
53 22-626 of this code and (B) for which a binding contract to purchase or
54 lease was first entered into by the taxpayer on or after July first, two
55 thousand five.

1 The commissioner of finance is empowered to promulgate rules and regu-
2 lations and to prescribe the form of application to be used by a taxpay-
3 er seeking such credit.

4 (2) When used in this section: (i) "Employment opportunity" means the
5 creation of a full time position of gainful employment for an industrial
6 or commercial employee and the actual hiring of such employee for the
7 said position.

8 (ii) "Industrial employee" means one engaged in the manufacture or
9 assembling of tangible goods or the processing of raw materials.

10 (iii) "Commercial employee" means one engaged in the buying, selling
11 or otherwise providing of goods or services other than on a retail
12 basis.

13 (iv) "Retail" means the selling or otherwise disposing of tangible
14 goods directly to the ultimate user or consumer.

15 (v) "Full time position" means the hiring of an industrial or commer-
16 cial employee in a position of gainful employment where the number of
17 hours worked by such employee is not less than thirty hours during any
18 given work week.

19 (vi) "Employment opportunity relocation costs" means the costs
20 incurred by the taxpayer in moving furniture, files, papers and office
21 equipment into the city from a location outside the state; the costs
22 incurred by the taxpayer in the moving and installation of machinery and
23 equipment into the city from a location outside the state; the costs of
24 installation of telephones and other communications equipment required
25 as a result of the relocation to the city from a location outside the
26 state; the cost incurred in the purchase of office furniture and
27 fixtures required as a result of the relocation to the city from a
28 location outside the state; and the cost of renovation of the premises
29 to be occupied as a result of the relocation provided, however, that
30 such renovation costs shall be allowable only to the extent that they do
31 not exceed seventy-five cents per square foot of the total area utilized
32 by the taxpayer in the occupied premises.

33 (b) The credit allowed under this section for any taxable year shall
34 be deemed to be an overpayment of tax by the taxpayer to be credited or
35 refunded without interest in accordance with the provisions of section
36 11-677 of this chapter.

37 17. (a) In addition to any other credit allowed by this section, a
38 taxpayer that has obtained the certifications required by chapter six-B
39 of title twenty-two of the preceding municipality code shall be allowed
40 a credit against the tax imposed by this subchapter. The amount of the
41 credit shall be the amount determined by multiplying five hundred
42 dollars or, in the case of a taxpayer that has obtained pursuant to
43 chapter six-B of such title twenty-two a certification of eligibility
44 dated on or after July first, nineteen hundred ninety-five, one thousand
45 dollars or, in the case of an eligible business that has obtained pursu-
46 ant to chapter six-B of such title twenty-two a certification of eligi-
47 bility dated on or after July first, two thousand, for a relocation to
48 eligible premises located within a revitalization area defined in subdivi-
49 sion (n) of section 22-621 of the code of the preceding municipality,
50 three thousand dollars, by the number of eligible aggregate employment
51 shares maintained by the taxpayer during the taxable year with respect
52 to particular premises to which the taxpayer has relocated; provided,
53 however, with respect to a relocation for which no application for a
54 certificate of eligibility is submitted prior to July first, two thou-
55 sand three, to eligible premises that are not within a revitalization
56 area, if the date of such relocation as determined pursuant to subdivi-

1 sion (j) of section 22-621 of the code of the preceding municipality is
2 before July first, nineteen hundred ninety-five, the amount to be multi-
3 plied by the number of eligible aggregate employment shares shall be
4 five hundred dollars, and with respect to a relocation for which no
5 application for a certificate of eligibility is submitted prior to July
6 first, two thousand three, to eligible premises that are within a revi-
7 talization area, if the date of such relocation as determined pursuant
8 to subdivision (j) of such section is before July first, nineteen
9 hundred ninety-five, the amount to be multiplied by the number of eligi-
10 ble aggregate employment shares shall be five hundred dollars, and if
11 the date of such relocation as determined pursuant to subdivision (j) of
12 such section is on or after July first, nineteen hundred ninety-five,
13 and before July first, two thousand, one thousand dollars; provided,
14 however, that no credit shall be allowed for the relocation of any
15 retail activity or hotel services; provided, further, that no credit
16 shall be allowed under this subdivision to any taxpayer that has elected
17 pursuant to subdivision (d) of section 22-622 of the code of the preced-
18 ing municipality to take such credit against a gross receipts tax
19 imposed by chapter eleven of this title; and provided that in the case
20 of an eligible business that has obtained pursuant to chapter six-B of
21 such title twenty-two certifications of eligibility for more than one
22 relocation, the portion of the total amount of eligible aggregate
23 employment shares to be multiplied by the dollar amount specified in
24 this subdivision for each such certification of a relocation shall be
25 the number of total attributed eligible aggregate employment shares
26 determined with respect to such relocation pursuant to subdivision (o)
27 of section 22-621 of the code of the preceding municipality. For
28 purposes of this subdivision, the terms "eligible aggregate employment
29 shares," "relocate," "retail activity" and "hotel services" shall have
30 the meanings ascribed by section 22-621 of the code of the preceding
31 municipality.

32 (b) The credit allowed under this subdivision with respect to eligible
33 aggregate employment shares maintained with respect to particular prem-
34 ises to which the taxpayer has relocated shall be allowed for the first
35 taxable year during which such eligible aggregate employment shares are
36 maintained with respect to such premises and for any of the twelve
37 succeeding taxable years during which eligible aggregate employment
38 shares are maintained with respect to such premises; provided that the
39 credit allowed for the twelfth succeeding taxable year shall be calcu-
40 lated by multiplying the number of eligible aggregate employment shares
41 maintained with respect to such premises in the twelfth succeeding taxa-
42 ble year by the lesser of one and a fraction the numerator of which is
43 such number of days in the taxable year of relocation less the number of
44 days the eligible business maintained employment shares in the eligible
45 premises in the taxable year of relocation and the denominator of which
46 is the number of days in such twelfth succeeding taxable year during
47 which such eligible aggregate employment shares are maintained with
48 respect to such premises. Except as provided in paragraph (d) of this
49 subdivision, if the amount of the credit allowable under this subdivi-
50 sion for any taxable year exceeds the tax imposed for such year, the
51 excess may be carried over, in order, to the five immediately succeeding
52 taxable years and, to the extent not previously deductible, may be
53 deducted from the taxpayer's tax for such years.

54 (c) The credit allowable under this subdivision shall be deducted
55 after the credit allowed by subdivision eighteen of this section, but
56 prior to the deduction of any other credit allowed by this section.

1 (d) In the case of a taxpayer that has obtained a certification of
2 eligibility pursuant to chapter six-B of title twenty-two of the code of
3 the preceding municipality dated on or after July first, two thousand
4 for a relocation to eligible premises located within the revitalization
5 area defined in subdivision (n) of section 22-621 of the code of the
6 preceding municipality, the credits allowed under this subdivision, or
7 in the case of a taxpayer that has relocated more than once, the portion
8 of such credits attributed to such certification of eligibility pursuant
9 to paragraph (a) of this subdivision, against the tax imposed by this
10 chapter for the taxable year of such relocation and for the four taxable
11 years immediately succeeding the taxable year of such relocation, shall
12 be deemed to be overpayments of tax by the taxpayer to be credited or
13 refunded, without interest, in accordance with the provisions of section
14 11-677 of this chapter. For such taxable years, such credits or portions
15 thereof may not be carried over to any succeeding taxable year;
16 provided, however, that this paragraph shall not apply to any relocation
17 for which an application for a certification of eligibility was not
18 submitted prior to July first, two thousand three, unless the date of
19 such relocation is on or after July first, two thousand.

20 17-a. (a) In addition to any other credit allowed by this section, a
21 taxpayer shall be allowed a credit against the tax imposed by this
22 subchapter to be credited or refunded in the manner provided in this
23 subdivision. The amount of such credit shall be equal to the amount of
24 sales and compensating use taxes imposed by section eleven hundred seven
25 of the tax law during the taxpayer's taxable year, and the amount of any
26 interest imposed in connection therewith, which was paid after January
27 first, nineteen hundred ninety-five, less any credit or refund of such
28 taxes, or such interest, with respect to the purchase or use by the
29 taxpayer of the services described in subdivision (b) of section eleven
30 hundred five-b of the tax law.

31 (b) The credit allowed under this subdivision for any taxable year
32 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
33 ited or refunded, without interest, in accordance with the provisions of
34 section 11-677 of this chapter.

35 (c) Where the taxpayer receives a refund or credit of any tax imposed
36 under section eleven hundred seven of the tax law, or of any interest
37 imposed in connection therewith, for which the taxpayer had claimed a
38 credit under the provisions of this subdivision in a prior taxable year,
39 the amount of such tax, or such interest, refund or credit shall be
40 added to the tax imposed by subdivision one of section 11-603 of this
41 subchapter, and such amount shall be subtracted in computing entire net
42 income for the taxable year.

43 17-b. (a) For taxable years beginning on or after January first, two
44 thousand six, in addition to any other credit allowed by this section,
45 an eligible business that first enters into a binding contract on or
46 after July first, two thousand five to purchase or lease eligible prem-
47 ises to which it relocates shall be allowed a one-time credit against
48 the tax imposed by this subchapter to be credited or refunded in the
49 manner hereinafter provided in this subdivision. The amount of such
50 credit shall be one thousand dollars per full-time employee; provided,
51 however, that the amount of such credit shall not exceed the lesser of
52 actual relocation costs or one hundred thousand dollars.

53 (b) When used in this subdivision, the following terms shall have the
54 following meanings:

55 (i) "Eligible business" means any business subject to tax under this
56 subchapter that (1) has been conducting substantial business operations

1 and engaging primarily in industrial and manufacturing activities at one
2 or more locations within the city of Staten Island or outside the state
3 of New York continuously during the twenty-four consecutive full months
4 immediately preceding relocation, (2) has leased the premises from which
5 it relocates continuously during the twenty-four consecutive full months
6 immediately preceding relocation, (3) first enters into a binding
7 contract on or after July first, two thousand five to purchase or lease
8 eligible premises to which such business will relocate, and (4) will be
9 engaged primarily in industrial and manufacturing activities at such
10 eligible premises.

11 (ii) "Eligible premises" means premises located entirely within an
12 industrial business zone. For any eligible business, an industrial busi-
13 ness zone tax credit shall not be granted with respect to more than one
14 eligible premises.

15 (iii) "Full-time employee" means (1) one person gainfully employed in
16 an eligible premises by an eligible business where the number of hours
17 required to be worked by such person is not less than thirty-five hours
18 per week; or (2) two persons gainfully employed in an eligible premises
19 by an eligible business where the number of hours required to be worked
20 by each such person is more than fifteen hours per week but less than
21 thirty-five hours per week.

22 (iv) "Industrial business zone" means an area within the city of
23 Staten Island established pursuant to section 22-626 of the code of the
24 preceding municipality.

25 (v) "Industrial business zone tax credit" means a credit, as provided
26 for in this subdivision, against a tax imposed under this subchapter.

27 (vi) "Industrial and manufacturing activities" means activities
28 involving the assembly of goods to create a different article, or the
29 processing, fabrication, or packaging of goods. Industrial and manufac-
30 turing activities shall not include waste management or utility
31 services.

32 (vii) "Relocation" means the physical relocation of furniture,
33 fixtures, equipment, machinery and supplies directly to an eligible
34 premises, from one or more locations of an eligible business, including
35 at least one location at which such business conducts substantial busi-
36 ness operations and engages primarily in industrial and manufacturing
37 activities. For purposes of this subdivision, the date of relocation
38 shall be (1) the date of the completion of the relocation to the eligi-
39 ble premises or (2) ninety days from the commencement of the relocation
40 to the eligible premises, whichever is earlier.

41 (viii) "Relocation costs" means costs incurred in the relocation of
42 such furniture, fixtures, equipment, machinery and supplies, including,
43 but not limited to, the cost of dismantling and reassembling equipment
44 and the cost of floor preparation necessary for the reassembly of the
45 equipment. Relocation costs shall include only such costs that are
46 incurred during the ninety-day period immediately following the
47 commencement of the relocation to an eligible premises. Relocation costs
48 shall not include costs for structural or capital improvements or items
49 purchased in connection with the relocation.

50 (c) The credit allowed under this subdivision for any taxable year
51 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
52 ited or refunded without interest, in accordance with the provisions of
53 section 11-677 of this chapter.

54 (d) The number of full-time employees for the purposes of calculating
55 an industrial business tax credit shall be the average number of full-
56 time employees, calculated on a weekly basis, employed in the eligible

1 premises by the eligible business in the fifty-two week period imme-
2 diately following the earlier of (1) the date of the completion of the
3 relocation to eligible premises or (2) ninety days from the commencement
4 of the relocation to the eligible premises.

5 (e) The credit allowed under this subdivision must be taken by the
6 taxpayer in the taxable year in which such twelve-month period selected
7 by the taxpayer ends.

8 (f) For the purposes of calculating entire net income in the taxable
9 year that an industrial business tax credit is allowed, a taxpayer must
10 add back the amount of the credit allowed under this subdivision, to the
11 extent of any relocation costs deducted in the current taxable year or a
12 prior taxable year in calculating federal taxable income.

13 (g) The credit allowed under this subdivision shall not be granted for
14 an eligible business for more than one relocation, provided, however, an
15 industrial business tax credit shall not be granted if the eligible
16 business receives benefits pursuant to chapter six-B or six-C of title
17 twenty-two of the code of the preceding municipality, through a grant
18 program administered by the business relocation assistance corporation,
19 or through the New York city printers relocation fund grant.

20 (h) The commissioner of finance is authorized to promulgate rules and
21 regulations and to prescribe forms necessary to effectuate the purposes
22 of this subdivision.

23 18. (a) If a corporation is a partner in an unincorporated business
24 taxable under chapter five of this title, and is required to include in
25 entire net income its distributive share of income, gain, loss and
26 deductions of, or guaranteed payments from, such unincorporated busi-
27 ness, such corporation shall be allowed a credit against the tax imposed
28 by this subchapter equal to the lesser of the amounts determined in
29 subparagraphs one and two of this paragraph:

30 (1) The amount determined in this subparagraph is the product of (A)
31 the sum of (i) the tax imposed by chapter five of this title on the
32 unincorporated business for its taxable year ending within or with the
33 taxable year of the corporation and paid by the unincorporated business
34 and (ii) the amount of any credit or credits taken by the unincorporated
35 business under section 11-503 of this title, except the credit allowed
36 by subdivision (b) of such section, for its taxable year ending within
37 or with the taxable year of the corporation, to the extent that such
38 credits do not reduce such unincorporated business's tax below zero, and
39 (B) a fraction, the numerator of which is the net total of the corpo-
40 ration's distributive share of income, gain, loss and deductions of, and
41 guaranteed payments from, the unincorporated business for such taxable
42 year, and the denominator of which is the sum, for such taxable year, of
43 the net total distributive shares of income, gain, loss and deductions
44 of, and guaranteed payments to, all partners in the unincorporated busi-
45 ness for whom or which such net total, as separately determined for each
46 partner, is greater than zero.

47 (2) The amount determined in this subparagraph is the product of (A)
48 the excess of (i) the tax computed under clause one of subparagraph (a)
49 of paragraph E of subdivision one of this section, without allowance of
50 any credits allowed by this section, over (ii) the tax so computed,
51 determined as if the corporation had no such distributive share or guar-
52 anteed payments with respect to the unincorporated business, and (B) a
53 fraction, the numerator of which is four and the denominator of which is
54 eight and eighty-five one-hundredths, provided, however, that the
55 amounts computed in clauses (i) and (ii) of this subparagraph shall be
56 computed with the following modifications:

1 (I) such amounts shall be computed without taking into account any
2 carryforward or carryback by the partner of a net operating loss;

3 (II) if, prior to taking into account any distributive share or guar-
4 anteed payments from any unincorporated business or any net operating
5 loss carryforward or carryback, the entire net income of the partner is
6 less than zero, such entire net income shall be treated as zero; and

7 (III) if such partner's net total distributive share of income, gain,
8 loss and deductions of, and guaranteed payments from, any unincorporated
9 business is less than zero, such net total shall be treated as zero. The
10 amount determined in this subparagraph shall not be less than zero.

11 (b)(1) Notwithstanding anything to the contrary in paragraph (a) of
12 this subdivision, in the case of a corporation that, before the applica-
13 tion of this subdivision or any other credit allowed by this section, is
14 liable for the tax on entire net income under clause one of subparagraph
15 (a) of paragraph E of subdivision one of this section, the credit or the
16 sum of the credits that may be taken by such corporation for a taxable
17 year under this subdivision with respect to an unincorporated business
18 or unincorporated businesses in which it is a partner shall not exceed
19 the tax so computed, without allowance of any credits allowed by this
20 section, multiplied by a fraction the numerator of which is four and the
21 denominator of which is eight and eighty-five one-hundredths. If the
22 credit allowed under this subdivision or the sum of such credits exceeds
23 the product of such tax and such fraction, the amount of the excess may
24 be carried forward, in order, to each of the seven immediately succeed-
25 ing taxable years and, to the extent not previously taken, shall be
26 allowed as a credit in each of such years. Accordingly, the credit
27 determined for the taxable year under paragraph (a) of this subdivision
28 shall be taken before taking any credit carryforward pursuant to this
29 paragraph and the credit carryforward attributable to the earliest taxa-
30 ble year shall be taken before taking a credit carryforward attributable
31 to a subsequent taxable year.

32 (2) Notwithstanding anything to the contrary in paragraph (a) of this
33 subdivision, in the case of a corporation that, before the application
34 of this subdivision or any other credit allowed by this section, is
35 liable for the tax on entire net income plus certain salaries and other
36 compensation under clause three of subparagraph (a) of paragraph E of
37 subdivision one of this section, the maximum credit that may be taken in
38 any taxable year is the amount that will reduce the tax so computed,
39 without allowance of any credits allowed by this section, to zero. For
40 purposes of this paragraph each dollar of credit shall be applied so as
41 to reduce such tax for taxable years beginning before January first, two
42 thousand seven by sixty-six and thirty-eight one-hundredths cents; for
43 taxable years beginning on or after January first, two thousand seven
44 and before January first, two thousand eight by fifty-eight and eight
45 one-hundredths cents; for taxable years beginning on or after January
46 first, two thousand eight and before January first, two thousand nine by
47 forty-nine and seventy-eight one-hundredths cents; for taxable years
48 beginning on or after January first, two thousand nine and before Janu-
49 ary first, two thousand ten by forty-one and forty-eight one-hundredths
50 cents; and for taxable years beginning on or after January first, two
51 thousand ten by thirty-three and nineteen one-hundredths cents. If the
52 amount of credit allowed under this subdivision or the sum of such cred-
53 its exceeds the amount that may be taken against such tax, the amount of
54 the excess may be carried forward, in order, to each of the seven imme-
55 diately succeeding taxable years and, to the extent not previously
56 taken, shall be allowed as a credit in each of such years. Accordingly,

1 the credit determined for the taxable year under paragraph (a) of this
2 subdivision shall be taken before taking any credit carryforward pursu-
3 ant to this paragraph and the credit carryforward attributable to the
4 earliest taxable year shall be taken before taking a credit carryforward
5 attributable to a subsequent taxable year.

6 (3) No credit allowed under this subdivision may be taken in a taxable
7 year by a taxpayer that, in the absence of such credit, would be liable
8 for the tax computed on the basis of business and investment capital
9 under clause two of subparagraph (a) of paragraph E of subdivision one
10 of this section or the fixed-dollar minimum tax under clause four of
11 subparagraph (a) of paragraph E of subdivision one of this section. No
12 credit allowed under this subdivision may be taken against the tax
13 computed on the basis of subsidiary capital under subparagraph (b) of
14 paragraph E of subdivision one of this section.

15 (c) For corporations that file a report on a combined basis pursuant
16 to subdivision four of section 11-605 of this chapter, the credit
17 allowed by this subdivision shall be computed as if the combined group
18 were the partner in each unincorporated business from which any of the
19 members of such group had a distributive share or guaranteed payments,
20 provided, however, if more than one member of the combined group is a
21 partner in the same unincorporated business, for purposes of the calcu-
22 lation required in subparagraph one of paragraph (a) of this subdivi-
23 sion, the numerator of the fraction described in clause (B) of such
24 subparagraph one shall be the sum of the net total distributive shares
25 of income, gain, loss and deductions of, and guaranteed payments from,
26 the unincorporated business of all of the partners of the unincorporated
27 business within the combined group for which such net total, as sepa-
28 rately determined for each partner, is greater than zero, and the denom-
29 inator of such fraction shall be the sum of the net total distributive
30 shares of income, gain, loss and deductions of, and guaranteed payments
31 from, the unincorporated business of all partners in the unincorporated
32 business for whom or which such net total, as separately determined for
33 each partner, is greater than zero.

34 (d) The credit allowed by this subdivision shall not be allowed to a
35 partner in an unincorporated business with respect to any tax paid by
36 the unincorporated business under chapter five of this title for any
37 taxable year beginning before July first, nineteen hundred ninety-four.

38 (e) Notwithstanding any other provision of this subchapter, the credit
39 allowable under this subdivision shall be taken prior to the taking of
40 any other credit allowed by this section. Notwithstanding any other
41 provision of this subchapter, the application of this subdivision shall
42 not change the basis on which the taxpayer's tax is computed under para-
43 graph E of subdivision one of this section.

44 19. Lower Manhattan relocation and employment assistance credit. (a)
45 In addition to any other credit allowed by this section, a taxpayer that
46 has obtained the certifications required by chapter six-C of title twen-
47 ty-two of the code of the preceding municipality shall be allowed a
48 credit against the tax imposed by this chapter. The amount of the credit
49 shall be the amount determined by multiplying three thousand dollars by
50 the number of eligible aggregate employment shares maintained by the
51 taxpayer during the taxable year with respect to eligible premises to
52 which the taxpayer has relocated; provided, however, that no credit
53 shall be allowed for the relocation of any retail activity or hotel
54 services; provided, further, that no credit shall be allowed under this
55 subdivision to any taxpayer that has elected pursuant to subdivision (d)
56 of section 22-624 of the code of the preceding municipality to take such

1 credit against a gross receipts tax imposed under chapter eleven of this
2 title. For purposes of this subdivision, the terms "eligible aggregate
3 employment shares," "eligible premises," "relocate," "retail activity"
4 and "hotel services" shall have the meanings ascribed by section 22-623
5 of the code of the preceding municipality.

6 (b) The credit allowed under this subdivision with respect to eligible
7 aggregate employment shares maintained with respect to eligible premises
8 to which the taxpayer has relocated shall be allowed for the taxable
9 year of the relocation and for any of the twelve succeeding taxable
10 years during which eligible aggregate employment shares are maintained
11 with respect to eligible premises; provided that the credit allowed for
12 the twelfth succeeding taxable year shall be calculated by multiplying
13 the number of eligible aggregate employment shares maintained with
14 respect to eligible premises in the twelfth succeeding taxable year by
15 the lesser of one and a fraction the numerator of which is such number
16 of days in the taxable year of relocation less the number of days the
17 taxpayer maintained employment shares in eligible premises in the tax-
18 able year of relocation and the denominator of which is the number of
19 days in such twelfth taxable year during which such eligible aggregate
20 employment shares are maintained with respect to such premises.

21 (c) Except as provided in paragraph (d) of this subdivision, if the
22 amount of the credit allowable under this subdivision for any taxable
23 year exceeds the tax imposed for such year, the excess may be carried
24 over, in order, to the five immediately succeeding taxable years and, to
25 the extent not previously deductible, may be deducted from the taxpay-
26 er's tax for such years.

27 (d) The credits allowed under this subdivision, against the tax
28 imposed by this chapter for the taxable year of the relocation and for
29 the four taxable years immediately succeeding the taxable year of such
30 relocation, shall be deemed to be overpayments of tax by the taxpayer to
31 be credited or refunded, without interest, in accordance with the
32 provisions of section 11-677 of this chapter. For such taxable years,
33 such credits or portions thereof may not be carried over to any succeed-
34 ing taxable year.

35 (e) The credit allowable under this subdivision shall be deducted
36 after the credits allowed by subdivisions seventeen and eighteen of this
37 section, but prior to the deduction of any other credit allowed by this
38 section.

39 20. Film production credit. (a)(1) allowance of credit. A taxpayer
40 which is a qualified film production company, and which is subject to
41 tax under this subchapter, shall be allowed a credit against such tax,
42 pursuant to the provisions in paragraph (c) of this subdivision, to be
43 computed as provided in this subdivision.

44 (2) The amount of the credit shall be the product of five percent and
45 the qualified production costs paid or incurred in the production of a
46 qualified film, provided that the qualified production costs, excluding
47 post production costs, paid or incurred which are attributable to the
48 use of tangible property or the performance of services at a qualified
49 film production facility in the production of such qualified film equal
50 or exceed seventy-five percent of the production costs, excluding post
51 production costs, paid or incurred which are attributable to the use of
52 tangible property or the performance of services at any film production
53 facility within and without the city of Staten Island in the production
54 of such qualified film. However, if the qualified production costs,
55 excluding post production costs, which are attributable to the use of
56 tangible property or the performance of services at a qualified film

1 production facility in the production of such qualified film are less
2 than three million dollars, then the portion of the qualified production
3 costs attributable to the use of tangible property or the performance of
4 services in the production of such qualified film outside of a qualified
5 film production facility shall be allowed only if the shooting days
6 spent in the city of Staten Island outside of a film production facility
7 in the production of such qualified film equal or exceed seventy-five
8 percent of the total shooting days spent within and without the city of
9 Staten Island outside of a film production facility in the production of
10 such qualified film. The credit shall be allowed for the taxable year in
11 which the production of such qualified film is completed.

12 (3) No qualified production costs used by a taxpayer either as the
13 basis for the allowance of the credit provided for under this subdivi-
14 sion or used in the calculation of the credit provided for under this
15 subdivision shall be used by such taxpayer to claim any other credit
16 allowed pursuant to this title.

17 (b) Definitions. As used in this subdivision, the following terms
18 shall have the following meanings:

19 (1) "Qualified production costs" means production costs only to the
20 extent such costs are attributable to the use of tangible property or
21 the performance of services within the city of New York directly and
22 predominantly in the production, including pre-production and post
23 production, of a qualified film.

24 (2) "Production costs" means any costs for tangible property used and
25 services performed directly and predominantly in the production, includ-
26 ing pre-production and post production, of a qualified film.
27 "Production costs" shall not include (i) costs for a story, script or
28 scenario to be used for a qualified film and (ii) wages or salaries or
29 other compensation for writers, directors, including music directors,
30 producers and performers, other than background actors with no scripted
31 lines. "Production costs" generally include technical and crew
32 production costs, such as expenditures for film production facilities,
33 or any part thereof, props, makeup, wardrobe, film processing, camera,
34 sound recording, set construction, lighting, shooting, editing and
35 meals.

36 (3) "Qualified film" means a feature-length film, television film,
37 television pilot and/or each episode of a television series, regardless
38 of the medium by means of which the film, pilot or episode is created or
39 conveyed. "Qualified film" shall not include (i) a documentary film,
40 news or current affairs program, interview or talk program, "how-to"
41 (i.e., instructional) film or program, film or program consisting prima-
42 rily of stock footage, sporting event or sporting program, game show,
43 award ceremony, film or program intended primarily for industrial,
44 corporate or institutional end-users, fundraising film or program,
45 daytime drama (i.e., daytime "soap opera"), commercials, music videos or
46 "reality" program, or (ii) a production for which records are required
47 under section 2257 of title 18, United States code, to be maintained
48 with respect to any performer in such production, reporting of books,
49 films, etc. with respect to sexually explicit conduct.

50 (4) "Film production facility" shall mean a building and/or complex of
51 buildings and their improvements and associated back-lot facilities in
52 which films are or are intended to be regularly produced and which
53 contain at least one sound stage.

54 (5) "Qualified film production facility" shall mean a film production
55 facility in the city of Staten Island, which contains at least one sound

1 stage having a minimum of seven thousand square feet of contiguous
2 production space.

3 (6) "Qualified film production company" shall mean a corporation which
4 is principally engaged in the production of a qualified film and
5 controls the qualified film during production.

6 (c) Application of credit. (1) The credit allowed under this subdivi-
7 sion for any taxable year shall not reduce the tax due for such year to
8 less than the amount prescribed in clause four of subparagraph (a) of
9 paragraph E of subdivision one of this section. Provided, however, that
10 if the amount of the credit allowable under this subdivision for any
11 taxable year reduces the tax to such amount, fifty percent of the excess
12 shall be treated as an overpayment of tax to be credited or refunded in
13 accordance with the provisions of section 11-677 of this chapter;
14 provided, however, the provisions of section 11-679 of this chapter
15 notwithstanding, no interest shall be paid thereon. The balance of such
16 credit not credited or refunded in such taxable year may be carried over
17 to the immediately succeeding taxable year and may be credited against
18 the taxpayer's tax for such year. The excess, if any, of the amount of
19 the credit over the tax for such succeeding year shall be treated as an
20 overpayment of tax to be credited or refunded in accordance with the
21 provisions of section 11-677 of this chapter. Provided, however, the
22 provisions of section 11-679 of this chapter notwithstanding, no inter-
23 est shall be paid thereon.

24 (2) Notwithstanding anything contained in this section to the contra-
25 ry, the credit provided by this subdivision shall be allowed against the
26 taxes authorized by this chapter for the taxable year after reduction by
27 all other credits permitted by this chapter.

28 21. Biotechnology credit. (a) (1) A taxpayer that is a qualified
29 emerging technology company, engages in biotechnologies, and meets the
30 eligibility requirements of this subdivision, shall be allowed a credit
31 against the tax imposed by this subchapter. The amount of credit shall
32 be equal to the sum of the amounts specified in subparagraphs three,
33 four, and five of this paragraph, subject to the limitations in subpara-
34 graph seven of this paragraph and paragraph (b) of this subdivision. For
35 the purposes of this subdivision, "qualified emerging technology compa-
36 ny" shall mean a company located in a city: (A) whose primary products
37 or services are classified as emerging technologies and whose total
38 annual product sales are ten million dollars or less; or (B) a company
39 that has research and development activities in city and whose ratio of
40 research and development funds to net sales equals or exceeds the aver-
41 age ratio for all surveyed companies classified as determined by the
42 National Science Foundation in the most recent published results from
43 its Survey of Industry Research and Development, or any comparable
44 successor survey as determined by the department, and whose total annual
45 product sales are ten million dollars or less. For the purposes of this
46 subdivision, the definition of research and development funds shall be
47 the same as that used by the National Science Foundation in the afore-
48 mentioned survey. For the purposes of this subdivision, "biotechnolo-
49 gies" shall mean the technologies involving the scientific manipulation
50 of living organisms, especially at the molecular and/or the sub-molecu-
51 lar genetic level, to produce products conducive to improving the lives
52 and health of plants, animals, and humans; and the associated scientific
53 research, pharmacological, mechanical, and computational applications
54 and services connected with these improvements. Activities included with
55 such applications and services shall include, but not be limited to,
56 alternative mRNA splicing, DNA sequence amplification, antigenetic

1 switching bioaugmentation, bioenrichment, bioremediation, chromosome
2 walking, cytogenetic engineering, DNA diagnosis, fingerprinting, and
3 sequencing, electroporation, gene translocation, genetic mapping, site-
4 directed mutagenesis, bio-transduction, bio-mechanical and bio-electri-
5 cal engineering, and bio-informatics.

6 (2) An eligible taxpayer shall (A) have no more than one hundred full-
7 time employees, of which at least seventy-five percent are employed in
8 the city, (B) have a ratio of research and development funds to net
9 sales, as referred to in section thirty-one hundred two-e of the public
10 authorities law, which equals or exceeds six percent during the calendar
11 year ending with or within the taxable year for which the credit is
12 claimed, and (C) have gross revenues, along with the gross revenues of
13 its "affiliates" and "related members" not exceeding twenty million
14 dollars for the calendar year immediately preceding the calendar year
15 ending with or within the taxable year for which the credit is claimed.
16 For the purposes of this subdivision, "affiliates" shall mean those
17 corporations that are members of the same affiliated group, as defined
18 in section fifteen hundred four of the internal revenue code, as the
19 taxpayer. For the purposes of this subdivision, the term "related
20 members" shall mean a person, corporation, or other entity, including an
21 entity that is treated as a partnership or other pass-through vehicle
22 for purposes of federal taxation, whether such person, corporation or
23 entity is a taxpayer or not, where one such person, corporation or enti-
24 ty, or set of related persons, corporations or entities, directly or
25 indirectly owns or controls a controlling interest in another entity.
26 Such entity or entities may include all taxpayers under chapters five,
27 eleven and seventeen of this title, and subchapters two and three of
28 this chapter. A controlling interest shall mean, in the case of a corpo-
29 ration, either thirty percent or more of the total combined voting power
30 of all classes of stock of such corporation, or thirty percent or more
31 of the capital, profits or beneficial interest in such voting stock of
32 such corporation; and in the case of a partnership, association, trust
33 or other entity, thirty percent or more of the capital, profits or bene-
34 ficial interest in such partnership, association, trust or other entity.

35 (3) An eligible taxpayer shall be allowed a credit for eighteen per
36 centum of the cost or other basis for federal income tax purposes of
37 research and development property that is acquired by the taxpayer by
38 purchase as defined in subdivision (d) of section one hundred seventy-
39 nine of the internal revenue code and placed in service during the
40 calendar year that ends with or within the taxable year for which the
41 credit is claimed. Provided, however, for the purposes of this paragraph
42 only, an eligible taxpayer shall be allowed a credit for such percentage
43 of the (A) cost or other basis for federal income tax purposes for prop-
44 erty used in the testing or inspection of materials and products, (B)
45 the costs or expenses associated with quality control of the research
46 and development, (C) fees for use of sophisticated technology facilities
47 and processes, and (D) fees for the production or eventual commercial
48 distribution of materials and products resulting from the activities of
49 an eligible taxpayer as long as such activities fall under activities
50 relating to biotechnologies. The costs, expenses and other amounts for
51 which a credit is allowed and claimed under this paragraph shall not be
52 used in the calculation of any other credit allowed under this subchap-
53 ter. For the purposes of this subdivision, "research and development
54 property" shall mean property that is used for purposes of research and
55 development in the experimental or laboratory sense. Such purposes shall
56 not be deemed to include the ordinary testing or inspection of materials

1 or products for quality control, efficiency surveys, management studies,
2 consumer surveys, advertising, promotions, or research in connection
3 with literary, historical or similar projects.

4 (4) An eligible taxpayer shall be allowed a credit for nine per centum
5 of qualified research expenses paid or incurred by the taxpayer in the
6 calendar year that ends with or within the taxable year for which the
7 credit is claimed. For the purposes of this subdivision, "qualified
8 research expenses" shall mean expenses associated with in-house research
9 and processes, and costs associated with the dissemination of the
10 results of the products that directly result from such research and
11 development activities; provided, however, that such costs shall not
12 include advertising or promotion through media. In addition, costs asso-
13 ciated with the preparation of patent applications, patent application
14 filing fees, patent research fees, patent examinations fees, patent post
15 allowance fees, patent maintenance fees, and grant application expenses
16 and fees shall qualify as qualified research expenses. In no case shall
17 the credit allowed under this subparagraph apply to expenses for liti-
18 gation or the challenge of another entity's intellectual property
19 rights, or for contract expenses involving outside paid consultants.

20 (5) An eligible taxpayer shall be allowed a credit for qualified high-
21 technology training expenditures as described in this subparagraph paid
22 or incurred by the taxpayer during the calendar year that ends with or
23 within the taxable year for which the credit is claimed.

24 (A) The amount of credit shall be one hundred percent of the training
25 expenses described in clause (C) of this subparagraph, subject to a
26 limitation of no more than four thousand dollars per employee per calen-
27 dar year for such training expenses.

28 (B) Qualified high-technology training shall include a course or
29 courses taken and satisfactorily completed by an employee of the taxpay-
30 er at an accredited, degree granting post-secondary college or universi-
31 ty in a city that (i) directly relates to biotechnology activities, and
32 (ii) is intended to upgrade, retrain or improve the productivity or
33 theoretical awareness of the employee. Such course or courses may
34 include, but are not limited to, instruction or research relating to
35 techniques, meta, macro, or micro-theoretical or practical knowledge
36 bases or frontiers, or ethical concerns related to such activities. Such
37 course or courses shall not include classes in the disciplines of
38 management, accounting or the law or any class designed to fulfill the
39 discipline specific requirements of a degree program at the associate,
40 baccalaureate, graduate or professional level of these disciplines.
41 Satisfactory completion of a course or courses shall mean the earning
42 and granting of credit or equivalent unit, with the attainment of a
43 grade of "B" or higher in a graduate level course or courses, a grade of
44 "C" or higher in an undergraduate level course or courses, or a similar
45 measure of competency for a course that is not measured according to a
46 standard grade formula.

47 (C) Qualified high-technology training expenditures shall include
48 expenses for tuition and mandatory fees, software required by the insti-
49 tution, fees for textbooks or other literature required by the institu-
50 tion offering the course or courses, minus applicable scholarships and
51 tuition or fee waivers not granted by the taxpayer or any affiliates of
52 the taxpayer, that are paid or reimbursed by the taxpayer. Qualified
53 high-technology expenditures do not include room and board, computer
54 hardware or software not specifically assigned for such course or cours-
55 es, late-charges, fines or membership dues and similar expenses. Such
56 qualified expenditures shall not be eligible for the credit provided by

1 this section unless the employee for whom the expenditures are disbursed
2 is continuously employed by the taxpayer in a full-time, full-year posi-
3 tion primarily located at a qualified site during the period of such
4 coursework and lasting through at least one hundred eighty days after
5 the satisfactory completion of the qualifying course-work. Qualified
6 high-technology training expenditures shall not include expenses for
7 in-house or shared training outside of a city higher education institu-
8 tion or the use of consultants outside of credit granting courses,
9 whether such consultants function inside of such higher education insti-
10 tution or not.

11 (D) If a taxpayer relocates from an academic business incubator facil-
12 ity partnered with an accredited post-secondary education institution
13 located within city, which provides space and business support services
14 to taxpayers, to another site, the credit provided in this subdivision
15 shall be allowed for all expenditures referenced in clause (C) of this
16 subparagraph paid or incurred in the two preceding calendar years that
17 the taxpayer was located in such an incubator facility for employees of
18 the taxpayer who also relocate from said incubator facility to such city
19 site and are employed and primarily located by the taxpayer in city.
20 Such expenditures in the two preceding years shall be added to the
21 amounts otherwise qualifying for the credit provided by this subdivision
22 that were paid or incurred in the calendar year that the taxpayer relo-
23 cates from such a facility. Such expenditures shall include expenses
24 paid for an eligible employee who is a full-time, full-year employee of
25 said taxpayer during the calendar year that the taxpayer relocated from
26 an incubator facility notwithstanding (i) that such employee was
27 employed full or part-time as an officer, staff-person or paid intern of
28 the taxpayer when such taxpayer was located at such incubator facility
29 or (ii) that such employee was not continuously employed when such
30 taxpayer was located at the incubator facility during the one hundred
31 eighty day period referred to in clause (C) of this subparagraph,
32 provided such employee received wages or equivalent income for at least
33 seven hundred fifty hours during any twenty-four month period when the
34 taxpayer was located at the incubator facility. Such expenditures shall
35 include payments made to such employee after the taxpayer has relocated
36 from the incubator facility for qualified expenditures if such payments
37 are made to reimburse an employee for expenditures paid by the employee
38 during such two preceding years. The credit provided under this para-
39 graph shall be allowed in any taxable year that the taxpayer qualifies
40 as an eligible taxpayer.

41 (E) For purposes of this subdivision the term "academic year" shall
42 mean the annual period of sessions of a post-secondary college or
43 university.

44 (F) For the purposes of this subdivision the term "academic incubator
45 facility" shall mean a facility providing low-cost space, technical
46 assistance, support services and educational opportunities, including
47 but not limited to central services provided by the manager of the
48 facility to the tenants of the facility, to an entity located in city.
49 Such entity's primary activity must be in biotechnologies, and such
50 entity must be in the formative stage of development. The academic incu-
51 bator facility and the entity must act in partnership with an accredited
52 post-secondary college or university located in city. An academic incu-
53 bator facility's mission shall be to promote job creation, entrepreneur-
54 ship, technology transfer, and provide support services to incubator
55 tenants, including, but not limited to, business planning, management

1 assistance, financial-packaging, linkages to financing services, and
2 coordinating with other sources of assistance.

3 (6) An eligible taxpayer may claim credits under this subdivision for
4 three consecutive years. In no case shall the credit allowed by this
5 subdivision to a taxpayer exceed two hundred fifty thousand dollars per
6 calendar year for eligible expenditures made during such calendar year.

7 (7) The credit allowed under this subdivision for any taxable year
8 shall not reduce the tax due for such year to less than the amount
9 prescribed in clause four of subparagraph (a) of paragraph E of subdivi-
10 sion one of this section. Provided, however, if the amount of credit
11 allowed under this subdivision for any taxable year reduces the tax to
12 such amount, any amount of credit not deductible in such taxable year
13 shall be treated as an overpayment of tax to be credited or refunded in
14 accordance with the provisions of section 11-677 of this chapter;
15 provided, however, that notwithstanding the provisions of section 11-679
16 of this chapter, no interest shall be paid thereon.

17 (8) The credit allowed under this subdivision shall only be allowed
18 for taxable years beginning on or after January first, two thousand ten
19 and before January first, two thousand nineteen.

20 (b) (1) The percentage of the credit allowed to a taxpayer under this
21 subdivision in any calendar year shall be:

22 (A) If the average number of individuals employed full time by a
23 taxpayer in the city during the calendar year that ends with or within
24 the taxable year for which the credit is claimed is at least one hundred
25 five percent of the taxpayer's base year employment, one hundred
26 percent, except that in no case shall the credit allowed under this
27 clause exceed two hundred fifty thousand dollars per calendar year.
28 Provided, however, the increase in base year employment shall not apply
29 to a taxpayer allowed a credit under this subdivision that was, (i)
30 located outside of the city, (ii) not doing business, or (iii) did not
31 have any employees, in the year preceding the first year that the credit
32 is claimed. Any such taxpayer shall be eligible for one hundred percent
33 of the credit for the first calendar year that ends with or within the
34 taxable year for which the credit is claimed, provided that such taxpay-
35 er locates in the city, begins doing business in the city or hires
36 employees in the city during such calendar year and is otherwise eligi-
37 ble for the credit pursuant to the provisions of this subdivision.

38 (B) If the average number of individuals employed full time by a
39 taxpayer in the city during the calendar year that ends with or within
40 the taxable year for which the credit is claimed is less than one
41 hundred five percent of the taxpayer's base year employment, fifty
42 percent, except that in no case shall the credit allowed under this
43 clause exceed one hundred twenty-five thousand dollars per calendar
44 year. In the case of an entity located in city receiving space and busi-
45 ness support services by an academic incubator facility, if the average
46 number of individuals employed full time by such entity in the city
47 during the calendar year in which the credit allowed under this subdivi-
48 sion is claimed is less than one hundred five percent of the taxpayer's
49 base year employment, the credit shall be zero.

50 (2) For the purposes of this subdivision, "base year employment" means
51 the average number of individuals employed full-time by the taxpayer in
52 the city in the year preceding the first calendar year that ends with or
53 within the taxable year for which the credit is claimed.

54 (3) For the purposes of this subdivision, average number of individ-
55 uals employed full-time shall be computed by adding the number of such
56 individuals employed by the taxpayer at the end of each quarter during

1 each calendar year or other applicable period and dividing the sum so
2 obtained by the number of such quarters occurring within such calendar
3 year or other applicable period.

4 (4) Notwithstanding anything contained in this section to the contra-
5 ry, the credit provided by this subdivision shall be allowed against the
6 taxes authorized by this chapter for the taxable year after reduction by
7 all other credits permitted by this chapter.

8 22. Beer production credit. (a) A taxpayer subject to tax under this
9 subchapter, that is registered as a distributor under article eighteen
10 of the tax law, and that produces sixty million or fewer gallons of beer
11 in this state in the taxable year, shall be allowed a credit against the
12 tax imposed by this subchapter in the amount specified in paragraph (b)
13 of this subdivision. Provided, however, that no credit shall be allowed
14 for any beer produced in excess of fifteen million five hundred thousand
15 gallons in the taxable year. Notwithstanding anything in this title to
16 the contrary, if a partnership is allowed a credit under subdivision (p)
17 of section 11-503 of this title, a taxpayer that is a partner in such
18 partnership shall not be allowed a credit under this subdivision for any
19 taxable year that includes the last day of the taxable year for which
20 the partnership is allowed such credit.

21 (b) The amount of the credit per taxpayer per taxable year for each
22 gallon of beer produced in the city of New York on or after January
23 first, two thousand seventeen shall be determined as follows:

24 (1) for the first five hundred thousand gallons of beer produced in
25 the city of New York in the taxable year, the credit shall equal twelve
26 cents per gallon; and

27 (2) for each gallon of beer produced in the city of New York in the
28 taxable year in excess of five hundred thousand gallons, the credit
29 shall equal three and eighty-six one-hundredths cents per gallon. In no
30 event shall the credit allowed under this subdivision for any taxable
31 year reduce the tax due for such year to less than the amount prescribed
32 in clause four of subparagraph (a) of paragraph E of subdivision one of
33 this section. However, if the amount of credit allowed under this subdivi-
34 sion for any taxable year reduces the tax to such amount, any amount
35 of credit thus not deductible in such taxable year shall be treated as
36 an overpayment of tax to be credited or refunded in accordance with the
37 provisions of section 11-677 of this chapter; provided, however, that
38 notwithstanding the provisions of section 11-679 of this chapter, no
39 interest shall be paid thereon.

40 23. Credit for the provision of child care. In addition to any other
41 credit allowed under this section, a taxpayer whose application for a
42 credit authorized by section 11-144 of this title has been approved by
43 the department of finance shall be allowed a credit against the tax
44 imposed by this chapter. The amount of the credit shall be determined as
45 provided in such section. To the extent the amount of the credit allowed
46 by this subdivision exceeds the amount of tax due pursuant to this
47 subchapter, as calculated without such credit, such excess amount shall
48 be treated as an overpayment of tax to be credited or refunded in
49 accordance with the provisions of section 11-677 of this chapter,
50 provided, however, that notwithstanding the requirements of section
51 11-679 of this chapter to the contrary, no interest shall be paid there-
52 on.

53 § 11-605 Reports. 1. Every corporation having an officer, agent or
54 representative within the city, shall annually on or before March
55 fifteenth, transmit to the commissioner of finance a report in a form
56 prescribed by the commissioner, except that a corporation which reports

1 on the basis of a fiscal year shall transmit its report within two and
2 one-half months after the close of its fiscal year, setting forth such
3 information as the commissioner of finance may prescribe and every
4 taxpayer which ceases to do business in the city or to be subject to the
5 tax imposed by this subchapter shall transmit to the commissioner of
6 finance a report on the date of such cessation or at such other time as
7 the commissioner may require covering each year or period for which no
8 report was theretofore filed. Every taxpayer shall also transmit such
9 other reports and such facts and information as the commissioner of
10 finance may require in the administration of this subchapter. The
11 commissioner of finance may grant a reasonable extension of time for
12 filing reports whenever good cause exists.

13 With respect to taxable years ending prior to December thirty-first,
14 nineteen hundred sixty-six, the returns required to be made and filed
15 pursuant to this section shall be made and filed on or before the
16 fifteenth day of the third month following the close of such taxable
17 year or September eleventh, nineteen hundred sixty-six, whichever is
18 later.

19 An automatic extension of six months for the filing of its annual
20 report shall be allowed any taxpayer if, within the time prescribed by
21 either of the preceding paragraphs, whichever is applicable, such
22 taxpayer files with the commissioner of finance an application for
23 extension in such form as the commissioner may prescribe by regulation
24 and pays on or before the date of such filing the amount properly esti-
25 mated as its tax.

26 2. Every report shall have annexed thereto a certification by the
27 president, vice-president, treasurer, assistant treasurer, chief
28 accounting officer or another officer of the taxpayer duly authorized so
29 to act to the effect that the statements contained therein are true. In
30 the case of an association, within the meaning of paragraph three of
31 section (a) of section seventy-seven hundred one of the internal revenue
32 code, a publicly-traded partnership treated as a corporation for
33 purposes of the internal revenue code pursuant to section seventy-seven
34 hundred four thereof and any business conducted by a trustee or trustee
35 wherein interest or ownership is evidenced by certificates or other
36 written instruments, such certification shall be made by any person duly
37 authorized so to act on behalf of such association, publicly-traded
38 partnership or business. The fact that an individual's name is signed on
39 a certification of the report shall be prima facie evidence that such
40 individual is authorized to sign and certify the report on behalf of the
41 corporation. Blank forms of reports shall be furnished by the commis-
42 sioner of finance, on application, but failure to secure such a blank
43 shall not release any corporation from the obligation of making any
44 report required by this subchapter.

45 2-a. The commissioner of finance may prescribe regulations and
46 instructions requiring returns of information to be made and filed in
47 conjunction with the reports required to be filed pursuant to this
48 section, relating to payments made to shareholders owning, directly or
49 indirectly, individually or in the aggregate, more than fifty percent of
50 the issued capital stock of the taxpayer, where such payments are treat-
51 ed as payments of interest in the computation of entire net income
52 reported on such reports.

53 3. If the amount of taxable income, alternative minimum taxable income
54 or other basis of tax for any year of any taxpayer, or of any sharehold-
55 er of any taxpayer which has elected to be taxed under subchapter s of
56 chapter one of the internal revenue code or of any shareholder of any

1 taxpayer with respect to which an election has been made to be treated
2 as a qualified subchapter s subsidiary under paragraph three of
3 subsection (b) of section thirteen hundred sixty-one of the internal
4 revenue code, as returned to the United States treasury department or
5 the New York state commissioner of taxation and finance is changed or
6 corrected by the commissioner of internal revenue or other officer of
7 the United States or the New York state commissioner of taxation and
8 finance or other competent authority, or where a renegotiation of a
9 contract or subcontract with the United States or the state of New York
10 results in a change in taxable income, alternative minimum taxable
11 income or other basis of tax, or where a recovery of a war loss results
12 in a computation or recomputation of any tax imposed by the United
13 States or the state of New York, or if a taxpayer or such shareholder of
14 a taxpayer, pursuant to subsection (d) of section sixty-two hundred
15 thirteen of the internal revenue code, executes a notice of waiver of
16 the restrictions provided in subsection (a) of said section, or if a
17 taxpayer, or such shareholder of a taxpayer, pursuant to subsection (f)
18 of section one thousand eighty-one of the tax law, executes a notice of
19 waiver of the restrictions provided in subsection (c) of said section,
20 such taxpayer shall report such changed or corrected taxable income,
21 alternative minimum taxable income or other basis of tax, or the results
22 of such renegotiation, or such computation, or recomputation, or such
23 execution of such notice of waiver and the changes or corrections of the
24 taxpayer's federal or New York state taxable income, alternative minimum
25 taxable income or other basis of tax on which it is based, within ninety
26 days, or one hundred twenty days, in the case of a taxpayer making a
27 combined report under this subchapter for such year, after such
28 execution or the final determination of such change or correction or
29 renegotiation, or such computation, or recomputation, or as required by
30 the commissioner of finance, and shall concede the accuracy of such
31 determination or state wherein it is erroneous. The allowance of a
32 tentative carryback adjustment based upon a net operating loss carryback
33 or net capital loss carryback pursuant to section sixty-four hundred
34 eleven of the internal revenue code shall be treated as a final determi-
35 nation for purposes of this subdivision. Any taxpayer filing an amended
36 return with such department shall also file within ninety days thereaft-
37 er an amended report with the commissioner of finance.

38 4. (a) Any taxpayer which owns or controls either directly or indi-
39 rectly substantially all the capital stock of one or more other corpo-
40 rations, or substantially all the capital stock of which is owned or
41 controlled either directly or indirectly by one or more other corpo-
42 rations or by interests which own or control either directly or indi-
43 rectly substantially all the capital stock of one or more other corpo-
44 rations, hereinafter referred to in this paragraph as "related
45 corporations", shall make a combined report covering any related corpo-
46 rations if there are substantial intercorporate transactions among the
47 related corporations, regardless of the transfer price for such inter-
48 corporate transactions. It is not necessary that there be substantial
49 intercorporate transactions between any one corporation and every other
50 related corporation. It is necessary, however, that there be substantial
51 intercorporate transactions between the taxpayer and a related corpo-
52 ration or, collectively, a group of such related corporations. The
53 report shall set forth such information as the commissioner of finance
54 may require.

55 In determining whether there are substantial intercorporate trans-
56 actions, the commissioner shall consider and evaluate all activities and

1 transactions of the taxpayer and its related corporations. Activities
2 and transactions that will be considered include, but are not limited
3 to: manufacturing, acquiring goods or property, or performing services,
4 for related corporations; selling goods acquired from related corpo-
5 rations; financing sales of related corporations; performing related
6 customer services using common facilities and employees for related
7 corporations; incurring expenses that benefit, directly or indirectly,
8 one or more related corporations; and transferring assets, including
9 such assets as accounts receivable, patents or trademarks from one or
10 more related corporations.

11 (1) No taxpayer may be permitted to make a report on a combined basis
12 covering any such other corporations where such taxpayer or any such
13 other corporation allocates in accordance with clause (A) of subpara-
14 graph six of paragraph (a) of subdivision three of section 11-604 of
15 this subchapter and such taxpayer or any such other corporation does not
16 so allocate.

17 (2) No taxpayer may be permitted to make a report on a combined basis
18 covering any such other corporations where such taxpayer or any such
19 other corporation allocates in accordance with subparagraph seven of
20 paragraph (a) of subdivision three of section 11-604 of this subchapter
21 and such taxpayer or any such other corporation does not so allocate.

22 (3) Except as provided in the first undesignated paragraph of this
23 subdivision, no combined report covering any corporation not a taxpayer
24 shall be required unless the commissioner of finance deems such a report
25 necessary, because of inter-company transactions or some agreement,
26 understanding, arrangement or transaction referred to in subdivision
27 five of this section, in order properly to reflect the tax liability
28 under this subchapter.

29 (4) A corporation organized under the laws of a country other than the
30 United States shall not be required or permitted to make a report on a
31 combined basis.

32 (5)(i) For purposes of this subparagraph, the term "closest control-
33 ling stockholder" means the corporation that indirectly owns or controls
34 over fifty percent of the voting stock of a captive REIT or captive RIC,
35 is subject to tax under this subchapter or otherwise required to be
36 included in a combined report under this subchapter, and is the fewest
37 tiers of corporations away in the ownership structure from the captive
38 REIT or captive RIC. The commissioner is authorized to prescribe by
39 regulation or published guidance the criteria for determining the clos-
40 est controlling stockholder.

41 (ii) A captive REIT or a captive RIC must be included in a combined
42 report with the corporation that directly owns or controls over fifty
43 percent of the voting stock of the captive REIT or captive RIC if that
44 corporation is subject to tax or required to be included in a combined
45 report under this subchapter.

46 (iii) If over fifty percent of the voting stock of a captive REIT or
47 captive RIC is not directly owned or controlled by a corporation that is
48 subject to tax or required to be included in a combined report under
49 this subchapter, then the captive REIT or captive RIC must be included
50 in a combined report with the corporation that is the closest control-
51 ling stockholder of the captive REIT or captive RIC. If the closest
52 controlling stockholder of the captive REIT or captive RIC is subject to
53 tax or otherwise required to be included in a combined report under this
54 subchapter, then the captive REIT or captive RIC must be included in a
55 combined report under this subchapter.

1 (iv) If the corporation that directly owns or controls the voting
2 stock of the captive REIT or captive RIC is described in subparagraph
3 one, two or four of this paragraph as a corporation not permitted to
4 make a combined report, then the provisions in clause (iii) of this
5 subparagraph must be applied to determine the corporation in whose
6 combined report the captive REIT or captive RIC should be included. If,
7 under clause (iii) of this subparagraph, the corporation that is the
8 closest controlling stockholder of the captive REIT or captive RIC is
9 described in subparagraph one, two or four of this paragraph as a corpo-
10 ration not permitted to make a combined report, then that corporation is
11 deemed to not be in the ownership structure of the captive REIT or
12 captive RIC, and the closest controlling stockholder will be determined
13 without regard to that corporation.

14 (v) If a captive REIT owns the stock of a qualified REIT subsidiary,
15 as defined in paragraph two of subsection (i) of section eight hundred
16 fifty-six of the internal revenue code, then the qualified REIT subsid-
17 iary must be included in a combined report with the captive REIT.

18 (vi) If a captive REIT or a captive RIC is required under this subpar-
19 agraph to be included in a combined report with another corporation, and
20 that other corporation is also required to be included in a combined
21 report with another related corporation or corporations under this para-
22 graph, then the captive REIT or the captive RIC must be included in that
23 combined report with those corporations.

24 (vii) If a captive REIT or a captive RIC is not required to be
25 included in a combined report with another corporation under clause (ii)
26 or (iii) of this subparagraph, or in a combined return under the
27 provisions of subparagraph (v) of paragraph two of subdivision (f) of
28 section 11-646 of this chapter, then the captive REIT or captive RIC is
29 subject to the opening provisions of this paragraph and the provisions
30 of subparagraph three of this paragraph. The captive REIT or captive RIC
31 must be included in a combined report under this subchapter with another
32 corporation if either the substantial intercorporate transactions
33 requirement in the opening provisions of this paragraph or the inter-
34 company transactions or agreement, understanding, arrangement or trans-
35 action requirement of subparagraph three of this paragraph is satisfied
36 and more than fifty percent of the voting stock of the captive REIT or
37 the captive RIC and substantially all of the capital stock of that other
38 corporation are owned and controlled, directly or indirectly, by the
39 same corporation.

40 (b)(1)(i) In the case of a combined report the tax shall be measured
41 by the combined entire net income or combined capital of all the corpo-
42 rations included in the report, including any captive REIT or captive
43 RIC; provided, however, in no event shall the tax measured by combined
44 capital exceed the limitation provided for in paragraph F of subdivision
45 one of section 11-604 of this subchapter.

46 (ii) In the case of a captive REIT or captive RIC required under this
47 subdivision to be included in a combined report, entire net income must
48 be computed as required under subdivision seven, in the case of a
49 captive REIT, or subdivision eight, in the case of a captive RIC, of
50 section 11-603 of this chapter. However, the deduction under the inter-
51 nal revenue code for dividends paid by the captive REIT or captive RIC
52 to any member of the affiliated group that includes the corporation that
53 directly or indirectly owns over fifty percent of the voting stock of
54 the captive REIT or captive RIC shall not be allowed for taxable years
55 beginning on or after January first, two thousand nine. The term "affil-
56 iated group" means "affiliated group" as defined in section fifteen

1 hundred four of the internal revenue code, but without regard to the
2 exceptions provided for in subsection (b) of that section.

3 (2) In computing combined entire net income intercorporate dividends
4 shall be eliminated, in computing combined business and investment capi-
5 tal intercorporate stock holdings and intercorporate bills, notes and
6 accounts receivable and payable and other intercorporate indebtedness
7 shall be eliminated and in computing combined subsidiary capital inter-
8 corporate stockholdings shall be eliminated.

9 5. In case it shall appear to the commissioner of finance that any
10 agreement, understanding or arrangement exists between the taxpayer and
11 any other corporation or any person or firm, whereby the activity, busi-
12 ness, income or capital of the taxpayer within the city is improperly or
13 inaccurately reflected, the commissioner of finance is authorized and
14 empowered, in its discretion and in such manner as it may determine, to
15 adjust items of income, deductions and capital, and to eliminate assets
16 in computing any allocation percentage provided only that any income
17 directly traceable thereto be also excluded from entire net income, so
18 as equitably to determine the tax. Where (a) any taxpayer conducts its
19 activity or business under any agreement, arrangement or understanding
20 in such manner as either directly or indirectly to benefit its members
21 or stockholders, or any of them, or any person or persons directly or
22 indirectly interested in such activity or business, by entering into any
23 transaction at more or less than a fair price which, but for such agree-
24 ment, arrangement or understanding, might have been paid or received
25 therefor, or (b) any taxpayer, a substantial portion of whose capital
26 stock is owned either directly or indirectly by another corporation,
27 enters into any transaction with such other corporation on such terms as
28 to create an improper loss or net income, the commissioner of finance
29 may include in the entire net income of the taxpayer the fair profits,
30 which, but for such agreement, arrangement or understanding, the taxpay-
31 er might have derived from such transaction.

32 6. An action may be brought at any time by the corporation counsel at
33 the instance of the commissioner of finance to compel the filing of
34 reports due under this subchapter.

35 7. Reports shall be preserved for five years, and thereafter until the
36 commissioner of finance orders them to be destroyed.

37 8. Where the state tax commission changes or corrects a taxpayer's
38 sales and compensating use tax liability with respect to the purchase or
39 use of items for which a sales or compensating use tax credit against
40 the tax imposed by this chapter was claimed, the taxpayer shall report
41 such change or correction to the commissioner of finance within ninety
42 days of the final determination of such change or correction, or as
43 required by the commissioner of finance, and shall concede the accuracy
44 of such determination or state wherein it is erroneous. Any taxpayer
45 filing an amended return or report relating to the purchase or use of
46 such items shall also file within ninety days thereafter a copy of such
47 amended return or report with the commissioner of finance.

48 § 11-606 Payment and lien of tax. 1. To the extent the tax imposed by
49 section 11-603 of this subchapter shall not have been previously paid
50 pursuant to section 11-608 of this subchapter,

51 (a) such tax, or the balance thereof, shall be payable to the commis-
52 sioner of finance in full at the time the report is required to be
53 filed, and

54 (b) such tax, or the balance thereof, imposed on any taxpayer which
55 ceases to do business in the city or to be subject to the tax imposed by
56 this subchapter shall be payable to the commissioner of finance at the

1 time the report is required to be filed; all other taxes of any such
2 taxpayer, which pursuant to the provisions of this section would other-
3 wise be payable subsequent to the time such report is required to be
4 filed, shall nevertheless be payable at such time.

5 If the taxpayer, within the time prescribed by section 11-605 of this
6 subchapter, shall have applied for an automatic extension of time to
7 file its annual report and shall have paid to the commissioner of
8 finance on or before the date such application is filed an amount prop-
9 erly estimated as provided by said section, the only amount payable in
10 addition to the tax shall be interest at the underpayment rate set by
11 the commissioner of finance pursuant to section 11-687 of this chapter,
12 or, if no rate is set, at the rate of seven and one-half percent per
13 annum upon the amount by which the tax, or the portion thereof payable
14 on or before the date the report was required to be filed, exceeds the
15 amount so paid. For purposes of this paragraph:

16 (1) an amount so paid shall be deemed properly estimated if it is
17 either: (A) not less than ninety percent of the tax as finally deter-
18 mined, computed without regard to any credit allowable under subdivision
19 eleven of section 11-604 of this subchapter, or (B) not less than the
20 tax shown, computed without regard to any credit allowable under subdivi-
21 sion eleven of section 11-604 of this subchapter, on the taxpayer's
22 report for the preceding taxable year, if such preceding year was a
23 taxable year of twelve months; and

24 (2) the time when a report is required to be filed shall be determined
25 without regard to any extension of time for filing such report.

26 2. The commissioner of finance may grant a reasonable extension of
27 time for payment of any tax imposed by this subchapter under such condi-
28 tions as it deems just and proper.

29 3. Subdivision one of this section shall apply to a taxpayer which has
30 a right to a credit pursuant to subdivision eleven of section 11-604 of
31 this subchapter, except that the tax, or balance thereof, payable to the
32 commissioner of finance in full pursuant to subdivision one of this
33 section, at the time the report is required to be filed, shall be calcu-
34 lated and paid at such time as if the credit provided for in subdivision
35 eleven of section 11-604 of this subchapter were not allowed.

36 § 11-607 Declaration of estimated tax. 1. Every taxpayer subject to
37 the tax imposed by section 11-603 of this subchapter shall make a decla-
38 ration of its estimated tax for the current privilege period, containing
39 such information as the commissioner of finance may prescribe by regu-
40 lations or instructions, if such estimated tax can reasonably be
41 expected to exceed one thousand dollars.

42 2. The term "estimated tax" means the amount which a taxpayer esti-
43 mates to be the tax imposed by section 11-603 of this subchapter for the
44 current privilege period, less the amount which it estimates to be the
45 sum of any credits allowable against the tax other than the credit
46 allowable under subdivision eleven of section 11-604 of this subchapter.

47 3. In the case of a taxpayer which reports on the basis of a calendar
48 year, a declaration of estimated tax shall be filed on or before June
49 fifteenth of the current privilege period, except that if the require-
50 ments of subdivision one are first met:

51 (a) after May thirty-first and before September first of such
52 current privilege period, the declaration shall be filed on or before
53 September fifteenth, or

54 (b) after August thirty-first and before December first of such
55 current privilege period, the declaration shall be filed on or before
56 December fifteenth.

1 4. A taxpayer may amend a declaration under regulations of the
2 commissioner of finance.

3 5. If, on or before February fifteenth of the succeeding year in the
4 case of a taxpayer which reports on the basis of a calendar year, a
5 taxpayer files its report for the year for which the declaration is
6 required, and pays therewith the balance, if any, of the full amount
7 of the tax shown to be due on the report,

8 (a) such report shall be considered as its declaration if no decla-
9 ration is required to be filed during the calendar or fiscal year for
10 which the tax was imposed, but is otherwise required to be filed on or
11 before December fifteenth pursuant to subdivision three of this
12 section, and

13 (b) such report shall be considered as the amendment permitted by
14 subdivision four of this section to be filed on or before December
15 fifteenth if the tax shown on the report is greater than the estimated
16 tax shown on a declaration previously made.

17 6. This section shall apply to privilege periods of twelve months
18 other than a calendar year by the substitution of the months of such
19 fiscal year for the corresponding months specified in this section.

20 7. If the privilege period for which a tax is imposed by section
21 11-603 of this subchapter is less than twelve months, every taxpayer
22 required to make a declaration of estimated tax for such privilege
23 period shall make such a declaration in accordance with regulations of
24 the commissioner of finance.

25 8. The commissioner of finance may grant a reasonable extension of
26 time, not to exceed three months, for the filing of any declaration
27 required pursuant to this section, on such terms and conditions as it
28 may require.

29 § 11-608 Payments on account of estimated tax. 1. Every taxpayer
30 subject to the tax imposed by section 11-603 of this subchapter shall
31 pay with the report required to be filed for the preceding privilege
32 period, if any, or with an application for extension of the time and
33 filing such report, an amount equal to twenty-five per centum of the
34 preceding year's tax, computed without regard to the credit provided for
35 in subdivision twelve of section 11-604 of this subchapter, if such
36 preceding year's tax exceeded one thousand dollars.

37 2. The estimated tax with respect to which a declaration for such
38 privilege period is required shall be paid, in the case of a taxpayer
39 which reports on the basis of a calendar year, as follows:

40 (a) If the declaration is filed on or before June fifteenth, the esti-
41 mated tax shown thereon, after applying thereto the amount, if any, paid
42 during the same privilege period pursuant to subdivision one of this
43 section, shall be paid in three equal installments. One of such
44 installments shall be paid at the time of the filing of the declaration,
45 one shall be paid on the following September fifteenth, and one on the
46 following December fifteenth.

47 (b) If the declaration is filed after June fifteenth and not after
48 September fifteenth of such privilege period, and is not required to be
49 filed on or before June fifteenth of such period, the estimated tax
50 shown on such declaration, after applying thereto the amount, if any,
51 paid during the same privilege period pursuant to subdivision one of
52 this section, shall be paid in two equal installments. One of such
53 installments shall be paid at the time of the filing of the declaration
54 and one shall be paid on the following December fifteenth.

55 (c) If the declaration is filed after September fifteenth of such
56 privilege period, and is not required to be filed on or before September

1 fifteenth of such privilege period, the estimated tax shown on such
2 declaration, after applying thereto the amount, if any, paid in respect
3 to such privilege period pursuant to subdivision one of this section,
4 shall be paid in full at the time of the filing of the declaration.

5 (d) If the declaration is filed after the time prescribed therefor, or
6 after the expiration of any extension of time therefor, paragraphs (b)
7 and (c) of this subdivision shall not apply, and there shall be paid at
8 the time of such filing all installments of estimated tax payable at or
9 before such time, and the remaining installments shall be paid at the
10 times at which, and in the amounts in which, they would have been paya-
11 ble if the declaration had been filed when due.

12 3. If any amendment of a declaration is filed, the remaining install-
13 ments, if any, shall be ratably increased or decreased, as the case may
14 be, to reflect any increase or decrease in the estimated tax by reason
15 of such amendment, and if any amendment is made after September
16 fifteenth of the privilege period, any increase in the estimated tax by
17 reason thereof shall be paid at the time of making such amendment.

18 4. Any amount paid shall be applied after payment as a first install-
19 ment against the estimated tax of the taxpayer for the current privilege
20 period shown on the declaration required to be filed pursuant to section
21 11-607 of this subchapter or, if no declaration of estimated tax is
22 required to be filed by the taxpayer to such section, any such amount
23 shall be considered a payment on account of the tax shown on the report
24 required to be filed by the taxpayer for such privilege period.

25 5. Notwithstanding the provisions of section 11-679 of this chapter or
26 of section three-a of the general municipal law, if an amount paid
27 pursuant to subdivision one of this section exceeds the tax shown on the
28 report required to be filed by the taxpayer for the privilege period
29 during which the amount was paid, interest shall be allowed and paid on
30 the amount by which the amount so paid pursuant to such subdivision
31 exceeds such tax, at the overpayment rate set by the commissioner of
32 finance pursuant to section 11-687 of this chapter, or, if no rate is
33 set, at the rate of four percent per annum from the date of payment of
34 the amount so paid pursuant to such subdivision to the fifteenth day of
35 the third month following the close of the privilege period, provided,
36 however, that no interest shall be allowed or paid under this subdivi-
37 sion if the amount thereof is less than one dollar or if such interest
38 becomes payable solely because of a carryback of a net operating loss in
39 a subsequent privilege period.

40 6. As used in this section, "the preceding year's tax" means the tax
41 imposed upon the taxpayer by section 11-603 of this subchapter for the
42 preceding calendar or fiscal year, or, for purposes of computing the
43 first installment of estimated tax when an application has been filed
44 for extension of the time for filing the report required to be filed for
45 such preceding calendar or fiscal year, the amount properly estimated
46 pursuant to section 11-607 of this subchapter as the tax imposed upon
47 the taxpayer for such calendar or fiscal year.

48 7. This section shall apply to a privilege period of less than twelve
49 months in accordance with regulations of the commissioner of finance.

50 8. The provisions of this section shall apply to privilege periods of
51 twelve months other than a calendar year by the substitution of the
52 months of such fiscal year for the corresponding months specified in
53 such provisions.

54 9. The commissioner of finance may grant a reasonable extension of
55 time, not to exceed six months, for payment of any installment of esti-
56 mated tax required pursuant to this section, on such terms and condi-

1 tions as the commissioner may require including the furnishing of a bond
2 or other security by the taxpayer in an amount not exceeding twice the
3 amount for which any extension of time for payment is granted, provided
4 however that interest at the underpayment rate set by the commissioner
5 of finance pursuant to section 11-687 of this chapter, or, if no rate is
6 set, at the rate of seven and one-half percent per annum for the period
7 of the extension shall be charged and collected on the amount for which
8 any extension of time for payment is granted under this subdivision.

9 10. A taxpayer may elect to pay any installment of estimated tax prior
10 to the date prescribed in this section for payment thereof.

11 11. The portion of an overpayment attributable to a credit allowable
12 pursuant to subdivision eleven of section 11-604 of this subchapter may
13 not be credited against any payment due under this section.

14 § 11-609 Collection of taxes. Every foreign corporation, other than
15 a moneyed corporation, subject to the provisions of this subchapter,
16 except a corporation having authority to do business by virtue of
17 section thirteen hundred five of the business corporation law, shall
18 file in the department of state a certificate of designation in its
19 corporate name, signed and acknowledged by its president or a vice-pre-
20 sident or its secretary or treasurer, under its corporate seal, desig-
21 nating the secretary of state as its agent upon whom process in any
22 action provided for by this subchapter may be served within this state,
23 and setting forth an address to which the secretary of state shall mail
24 a copy of any such process against the corporation which may be served
25 upon the secretary of state. In case any such corporation shall have
26 failed to file such certificate of designation, it shall be deemed to
27 have designated the secretary of state as its agent upon whom such proc-
28 ess against it may be served; and until a certificate of designation
29 shall have been filed, the corporation shall be deemed to have directed
30 the secretary of state to mail copies of process served upon him or her
31 to the corporation at its last known office address within or without
32 the state. When a certificate of designation has been filed by such
33 corporation the secretary of state shall mail copies of process there-
34 after served upon the secretary of state to the address set forth in
35 such certificate. Any such corporation, from time to time, may change
36 the address to which the secretary of state is directed to mail copies
37 of process, by filing a certificate to that effect executed, signed and
38 acknowledged in like manner as a certificate of designation as provided
39 in this section. Service of process upon any such corporation or upon
40 any corporation having authority to do business by virtue of section
41 thirteen hundred five of the business corporation law, in any action
42 commenced at any time pursuant to the provisions of this subchapter, may
43 be made by either: (a) personally delivering to and leaving with the
44 secretary of state, a deputy secretary of state or with any person
45 authorized by the secretary of state to receive such service duplicate
46 copies thereof at the office of the department of state in the city of
47 Albany, in which event the secretary of state shall forthwith send by
48 registered mail, return receipt requested, one of such copies to the
49 corporation at the address designated by it or at its last known office
50 address within or without the state, or (b) personally delivering to and
51 leaving with the secretary of state, a deputy secretary of state or with
52 any person authorized by the secretary of state to receive such service,
53 a copy thereof at the office of the department of state in the city of
54 Albany and by delivering a copy thereof to, and leaving such copy with,
55 the president, vice-president, secretary, assistant secretary, treasur-
56 er, assistant treasurer, or cashier of such corporation, or the officer

1 performing corresponding functions under another name, or a director or
2 managing agent of such corporation, personally without the state. Proof
3 of such personal service without the state shall be filed with the clerk
4 of the court in which the action is pending within thirty days after
5 such service, and such service shall be complete ten days after proof
6 thereof is filed.

7 § 11-610 Limitations of time. The provisions of the civil practice
8 law and rules relative to the limitation of time enforcing a civil reme-
9 dy shall not apply to any proceeding or action taken to levy, appraise,
10 assess, determine or enforce the collection of any tax or penalty
11 prescribed by this subchapter, provided, however, that as to real estate
12 in the hands of persons who are owners thereof who would be purchasers
13 in good faith but for such tax or penalty and as to the lien on real
14 estate of mortgages held by persons who would be holders thereof in good
15 faith but for such tax or penalty, all such taxes and penalties shall
16 cease to be a lien on such real estate as against such purchasers or
17 holders after the expiration of ten years from the date such taxes
18 became due and payable. The limitations provided for in this section
19 shall not apply to any transfer from a corporation to a person or corpo-
20 ration with intent to avoid payment of any taxes, or where with like
21 intent the transfer is made to a grantee corporation, or any subsequent
22 grantee corporation, controlled by such grantor or which has any commu-
23 nity of interest with it, either through stock ownership or otherwise.

24 SUBCHAPTER 3
25 FINANCIAL CORPORATION TAX
26 PART 1

27 TAX ON STATE BANKS, TRUST COMPANIES, FINANCIAL
28 CORPORATIONS AND SAVINGS AND LOAN ASSOCIATIONS

29 § 11-611 Definitions. When used in this part:

30 1. The term "financial corporation" means every corporation doing a
31 banking business as defined in this section, other than a national bank-
32 ing association, a trust company all of the capital stock of which is
33 owned by not less than twenty savings banks organized under a law of
34 this state, or a corporation taxable under subchapter two of this chap-
35 ter, and shall include the mortgage facilities corporation created by
36 chapter five hundred sixty-four of the laws of nineteen hundred fifty-
37 six and any corporation eighty percent or more of whose voting stock is
38 beneficially owned by a corporation or corporations subject to article
39 three or article three-a of the banking law or a national banking asso-
40 ciation or associations, provided the corporation whose voting stock is
41 so owned is principally engaged in business which might be lawfully
42 conducted by a corporation subject to article three of the banking law
43 or a national banking association.

44 2. The word "paid", for the purpose of the deductions and credits
45 under this part, means "paid or accrued" or "paid or incurred," and the
46 terms "paid or incurred" and "paid or accrued" shall be construed
47 according to the method of accounting upon the basis of which the net
48 income is computed, under this part. The term "received," for the
49 purpose of the computation of net income under this part means "received
50 or accrued" and the term "received or accrued" shall be construed
51 according to the method of accounting upon the basis of which the net
52 income is computed under this part.

1 3. The word "dividend" means any distribution made by a corporation to
2 its shareholders or members, out of its earnings or profits, whether in
3 cash, or in property other than stock of the corporation.

4 4. The words "doing a banking business" means doing such business as a
5 corporation may be created to do under articles three, five, five-a, and
6 six of the banking law, or doing any business which a corporation is
7 authorized by such articles to do.

8 5. The words "foreign banker doing a banking business" in the city,
9 include every foreign corporation doing a banking business in the city,
10 except a national banking association.

11 6. The words "savings and loan association" mean every corporation
12 doing such business as a corporation may be created to do under article
13 ten of the banking law, including every federal savings and loan associ-
14 ation organized under authority of the United States.

15 § 11-612 Tax based on net income; imposition; minimum tax; new incor-
16 porations; dissolution; consolidations; mergers, etc.

17 1. For the privilege of doing business in the city:

18 (a) Every bank and savings and loan association organized under the
19 authority of this state;

20 (b) Every trust company incorporated, organized or formed under, by or
21 pursuant to a law of the state, other than a trust company all of the
22 stock of which is owned by not less than twenty savings banks organized
23 under a law of the state, and every domestic corporation authorized to
24 do a trust company's business solely or in connection with any other
25 business, under a general or special law of the state;

26 (c) Every other domestic financial corporation;

27 (d) Every incorporated foreign banker doing a banking business and
28 every other foreign financial corporation; and

29 (e) Every federal savings and loan association located within the
30 city, shall annually pay a tax at the rate of four and one-half per
31 centum except that for the years nineteen hundred seventy-one and those
32 following, the rate shall be five and sixty-three one hundredths per
33 centum, to be computed as provided in this part, upon the basis of its
34 net income for each calendar year, beginning with the calendar year
35 nineteen hundred sixty-six, next preceding the date when such tax
36 becomes due, if the taxpayer is required to file a declaration of esti-
37 mated tax and to make payments on account of such estimated tax as
38 provided by section 11-636 of this subchapter, upon the basis of its net
39 income for the calendar year with respect to which such declaration is
40 required to be filed.

41 2. Every such corporation for the privilege of doing business in the
42 city and every federal savings and loan association located in the city
43 shall be subject to a minimum tax of not less than ten dollars and not
44 less than one mill except that for the years nineteen hundred seventy-
45 one and those following such minimum tax shall be not less than twelve
46 and one-half dollars and not less than one and one-quarter mills upon
47 each dollar of such a part of its issued capital stock on the last day
48 of the calendar year preceding that in which such tax becomes due, at
49 its face value, as the gross income of such corporation derived from
50 business carried on within the city during such calendar year, bears to
51 its gross income derived from all business, both within and without the
52 city, during said year, but if such a corporation has stock without par
53 value, such stock shall be taken at its actual or market value, and not
54 less than five dollars per share, as may be determined by the commis-
55 sioner of finance; except that a savings bank and savings and loan asso-
56 ciation shall be subject to a minimum tax of not less than an amount

1 equal to two per centum of the amount of interest or dividends credited
2 by it to depositors or shareholders during the calendar year preceding
3 that in which such tax becomes due except that for the years nineteen
4 hundred seventy-one and those following such minimum tax shall be not
5 less than twelve and one-half dollars and not less than an amount equal
6 to two and one-half per centum of the amount of interest or dividends
7 credited by it to depositors or shareholders during the calendar year
8 preceding that in which such tax becomes due, provided that, in deter-
9 mining such amount each interest or dividend credit to a depositor or
10 shareholder shall be deemed to be the interest or dividend actually
11 credited or the interest or dividend which would have been credited if
12 it had been computed and credited at the rate of two per centum per
13 annum whichever is less and except also that in the case of a trust
14 company or savings bank incorporated in the calendar year preceding that
15 in which its first return under this part shall be due and after the
16 thirtieth day of June in such year, the minimum tax, computed as in this
17 subdivision provided, shall be reduced one-twelfth for each month, or
18 major portion thereof, subsequent to said thirtieth day of June during
19 which such trust company or savings bank did not exercise the privilege
20 of doing business in the city.

21 3. For the privilege of doing business in the city, every such domes-
22 tic corporation, except trust companies and savings banks, shall be
23 subject to a tax for the calendar year in which its organization certif-
24 icate is filed, and, for the privilege of doing business in the city,
25 every such foreign corporation shall be subject to a tax for the calen-
26 dar year in which it first does business in the city, and, every federal
27 savings and loan association located within the city shall be subject to
28 a tax for the calendar year in which it first becomes located within the
29 city, computed in the same manner and at the same rate as the minimum
30 tax under subdivision two of this section, except that the income form-
31 ing the basis for proration shall be the income for such calendar year,
32 and the issued capital stock shall be taken as of the last day of such
33 calendar year; provided, however, that the tax so computed shall be
34 reduced one-twelfth for each month, or major portion thereof, in such
35 calendar year, during which such corporation was not doing business in
36 the city, or, if a federal savings and loan association, was not located
37 in the city, and in no event shall the tax be less than ten dollars
38 except that for the year nineteen hundred seventy-one and those follow-
39 ing, in no event shall the tax be less than twelve and one-half dollars.

40 4. For the privilege of doing business in the city, every such trust
41 company and savings bank which shall become incorporated between the
42 thirty-first day of December and the succeeding first day of July, shall
43 be subject to a tax for such period, computed in the same manner and at
44 the same rate as the minimum tax under subdivision two of this section,
45 except that the income forming the basis for proration shall be the
46 income for such period; and the issued capital stock, or interest cred-
47 ited to depositors of a savings bank, shall be taken as of the last day
48 of such period; provided, however, that the tax so computed shall be
49 reduced one-half and an additional one-twelfth for each month, or major
50 portion thereof, in such period, during which such trust company or
51 savings bank was not doing business in the city, and in no event shall
52 the tax be less than ten dollars except that for the year nineteen
53 hundred seventy-one and those following, in no event shall the tax be
54 less than twelve and one-half dollars.

55 5. For the privilege of doing business in the city, every such corpo-
56 ration, except trust companies and savings banks, which shall be

1 dissolved between the thirty-first day of December and the succeeding
2 second day of September, and shall not become merged or consolidated
3 with another corporation taxable under this part and, every such foreign
4 corporation which shall cease to do business in the city during the same
5 period, and every federal savings and loan association which ceases to
6 be located in the city during the same period, and shall not become
7 merged or consolidated with another corporation taxable under this part,
8 shall pay a tax for the period from the thirty-first day of December up
9 to the time of dissolution, ceasing to do business in the city, or ceas-
10 ing to be located in the city, as the case may be, equal to that which
11 would have been payable had it not been dissolved, ceased to do business
12 in the city, or ceased to be located in the city, except that such tax
13 shall be reduced one-third and an additional one-twelfth for each month,
14 or major portion thereof, prior to such succeeding second day of Septem-
15 ber, during which such corporation was not doing business in the city,
16 or was not located in the city, and in no event shall the tax be less
17 than ten dollars except that for the year nineteen hundred seventy-one
18 and those following, in no event shall the tax be less than twelve and
19 one-half dollars. If such dissolution or cessation occurs between the
20 fifteenth day of March and the second day of September, and if such
21 corporation shall have filed its return on or before the fifteenth day
22 of March as required by section 11-633 of this subchapter, it may file a
23 claim for refund as provided in section 11-678 of this chapter, showing
24 any reduction in tax to which it may be entitled as provided in the
25 preceding sentence; and if it shall be made to appear that the amount of
26 tax due is less than the amount as computed on the basis of the original
27 return, the commissioner of finance shall adjust the computation of tax
28 accordingly. If the amount of tax as so adjusted shall be less than the
29 amount theretofore paid, the excess shall be refunded by the commission-
30 er of finance as provided in subdivision one of section 11-677 of this
31 chapter.

32 6. Every such trust company and savings bank, which shall be
33 dissolved, and shall not become merged or consolidated with another
34 corporation taxable under this part, shall, if dissolution takes place
35 between the thirtieth day of June and the succeeding first day of Janu-
36 ary, be subject to a tax, for that part of such period in which it had
37 been doing business, computed in the same manner and at the same rate as
38 the minimum tax under subdivision two of this section, except that the
39 income forming the basis for proration shall be the income for the
40 calendar year in which such dissolution occurs; and the issued capital
41 stock, or interest credited to depositors of a savings bank, shall be
42 taken as of the date of dissolution; provided, however, that the tax so
43 computed shall be reduced one-half and an additional one-twelfth for
44 each month, or major portion thereof, between the date of dissolution
45 and the succeeding first day of January. If dissolution occurs between
46 the thirty-first day of December and the succeeding sixteenth day of
47 March, such trust company and savings bank shall be subject to the same
48 tax that would have been due from it on or before the fifteenth day of
49 March had it not been dissolved, except that such tax shall be reduced
50 one-twelfth for each month, or major portion thereof, from the date of
51 dissolution to the succeeding first day of July, and shall be for the
52 period beginning on the preceding first day of July and ending on the
53 date of dissolution. In no event shall the tax under this subdivision
54 be less than ten dollars except that for the year nineteen hundred
55 seventy-one and those following, in no event shall the tax under this
56 subdivision be less than twelve and one-half dollars.

1 7. In the case of a consolidation or merger of taxpayers, or in case a
2 national bank taxable under part two of this subchapter shall be consol-
3 idated or merged with a taxpayer under this part, or in case of a series
4 of such transactions, there shall be added to the net income of the
5 taxpayer resulting from such consolidations or mergers the net income of
6 the taxpayers which are consolidated or merged for the period for which
7 the taxpayer resulting from such consolidation or merger is required to
8 render any return under this part, and if such resulting taxpayer is a
9 savings bank or savings and loan association, there shall be added to
10 the interest or dividends credited by it to depositors or shareholders
11 the amount of interest or dividends credited to depositors or sharehold-
12 ers during such period by the taxpayers which are consolidated or
13 merged, except that net income, interest or dividends shall not be
14 included if they have already been used as the basis for a tax under
15 this part, and the tax payable on filing such return shall be based upon
16 the entire net income reported therein or upon the entire amount of
17 interest or dividends so reported, as the case may be. The acquisition
18 by a taxpayer, directly or indirectly, of the assets or franchises of
19 another taxpayer or national bank shall be deemed a merger for the
20 purposes of this section.

21 8. The tax imposed by this part shall be for the calendar year next
22 preceding the year in which it becomes due; except that with respect to
23 corporations subject to a tax imposed under subdivision three, four,
24 five or six of this section, the tax shall be for the period therein
25 specified, and except that with respect to corporations required to file
26 a declaration of estimated tax and to make payments on account of such
27 estimated tax as provided by section 11-636 of this subchapter, all
28 payments of tax within a calendar year, whether computed on the basis of
29 net income for the current calendar year or on the basis of net income
30 for the preceding calendar year, shall be for the calendar year in which
31 the payments are required to be made.

32 9. In the event that it shall be finally determined by a court of
33 competent jurisdiction that the taxes imposed on national banking asso-
34 ciations by part two of this subchapter are unconstitutional or invalid
35 for the reason that they are not in conformity with the provisions of
36 section fifty-two hundred nineteen of the United States revised stat-
37 utes, then, in lieu of the taxes imposed by the provisions of this part,
38 every corporation that otherwise would have been subject to tax under
39 this part shall be subject to the tax imposed under subchapter two as of
40 July thirteenth, nineteen hundred sixty-six, and all of the provisions
41 of subchapter two, unless clearly inappropriate, shall be applicable
42 except subdivision four of section 11-603 of this chapter; and, in such
43 event, any payments made, reports or returns filed or any act of the
44 commissioner of finance or of a taxpayer purportedly under this subchap-
45 ter shall be treated as though made, filed or done pursuant to subchap-
46 ter two.

47 10. Cross reference. For years for which tax is imposed, see section
48 11-613 of this part.

49 § 11-613 Years for which imposed. 1. The tax imposed by section
50 11-612 of this part is imposed for each calendar year included within
51 the period beginning January first, nineteen hundred sixty-six and
52 ending December thirty-first, nineteen hundred seventy-two.

53 2. Cross reference. For tax imposed for years or periods subsequent to
54 nineteen hundred seventy-two, see part four of this subchapter.

55 § 11-614 Ascertainment of gain or loss. 1. For the purpose of ascer-
56 taining the gain derived or loss sustained from the sale or other dispo-

1 sition of property, real, personal or mixed, the basis shall be the cost
2 thereof, or the inventoried value if the inventory is made in accordance
3 with section 11-617 of this part.

4 2. Notwithstanding subdivision one of this section, with respect to
5 gain derived from the sale or other disposition of any property acquired
6 prior to January first, nineteen hundred sixty-six, except stock in
7 trade of the taxpayer or other property of a kind which would properly
8 be included in the inventory of the taxpayer if on hand at the close of
9 the taxable year, or property held by the taxpayer primarily for sale to
10 customers in the ordinary course of its trade or business, and accounts
11 or notes receivable acquired in the ordinary course of trade or business
12 from the sale of such stock in trade or property, or for services
13 rendered, net income shall not include:

14 (a) That portion of the gain included in determining net income pursu-
15 ant to subdivision one of this section with respect to each such proper-
16 ty, which exceeds:

17 (b) The amount of gain that would be included in determining net
18 income pursuant to subdivision one of this section with respect to each
19 such property if the basis of such property on the date of sale or other
20 disposition were equal to its fair market value on January first, nine-
21 teen hundred sixty-six, plus or minus all adjustments to basis made with
22 respect to each such property in computing net income for periods on or
23 after January first, nineteen hundred sixty-six provided that the total
24 adjustment to net income provided by this subdivision shall not exceed
25 the amount of the taxpayer's net gain from the sale or other disposition
26 of all such property, as determined pursuant to subdivision one of this
27 section.

28 3. In the case of any bond, with respect to which a deduction for
29 amortizable bond premium is allowable under subdivision nine of section
30 11-621 of this part, the basis for determining gain or loss shall be
31 reduced by the total amount of such deductions so allowable.

32 § 11-615 Exchange of property. Upon the sale or exchange of property
33 the entire amount of the gain or loss, determined under section 11-614
34 of this part, shall be recognized, except as provided in this section:

35 1. No gain or loss shall be recognized if common stock in a corpo-
36 ration is exchanged solely for common stock in the same corporation, or
37 if preferred stock in a corporation is exchanged solely for preferred
38 stock in the same corporation;

39 2. No gain or loss shall be recognized if stock or securities in a
40 corporation, a party to a reorganization are, in pursuance of the plan
41 or reorganization, exchanged solely for stock or securities in such
42 corporation or in another corporation a party to such reorganization;

43 3. No gain or loss shall be recognized if a taxpayer, a party to a
44 reorganization, exchanges property, in pursuance of the plan of reorgan-
45 ization, solely for stock or securities in another corporation a party
46 to such reorganization; and

47 4. No gain or loss shall be recognized if property is transferred to a
48 corporation by a taxpayer solely in exchange for stock or securities in
49 such corporation, and immediately after the exchange such taxpayer is in
50 control of the corporation; but in the case of an exchange by a taxpayer
51 and one or more other corporations or persons this subdivision shall
52 apply only if the amount of the stock and securities received by each is
53 substantially in proportion to its interest in the property prior to the
54 exchange.

55 5. If property, as a result of its destruction in whole or in part,
56 theft or seizure, or an exercise of the power of requisition or condem-

1 nation, or the threat of imminence thereof, is compulsorily or involun-
2 tarily converted into property similar or related in service or use to
3 the property so converted, or into money which is forthwith in good
4 faith, under regulations prescribed by the commissioner of finance,
5 expended in the acquisition of other property similar or related in
6 service or use to the property so converted, or in the acquisition of
7 control of a corporation owning such other property, or in the estab-
8 lishment of a replacement fund, no gain or loss shall be recognized. If
9 any part of the money is not so expended, the gain, if any, shall be
10 recognized, but in an amount not in excess of the money which is not so
11 expended.

12 6. If there is distributed, in pursuance of a plan of reorganization,
13 to a taxpayer shareholder in a corporation a party to the reorganiza-
14 tion, stock or securities in such corporation or in another corporation
15 a party to the reorganization, without the surrender by such taxpayer
16 shareholder of stock or securities in such a corporation, no gain to the
17 distributee from the receipt of such stock or securities shall be recog-
18 nized.

19 7. If an exchange would be within the provisions of subdivision one,
20 two, or four of this section if it were not for the fact that the prop-
21 erty received in exchange consists not only of property permitted by
22 such subdivision to be received without the recognition of gain, but
23 also of other property or money, then the gain, if any, to the recipient
24 shall be recognized, but in an amount not in excess of the sum of such
25 money and the fair market value of such other property.

26 8. If an exchange would be within the provisions of subdivision three
27 of this section if it were not for the fact that the property received
28 in exchange consists not only of stock or securities permitted by such
29 subdivision to be received without the recognition of gain, but also of
30 other property or money, then:

31 (a) If the taxpayer receiving such other property or money distributes
32 it in pursuance of the plan of reorganization, no gain to the taxpayer
33 shall be recognized from the exchange, but

34 (b) If the taxpayer receiving such other property or money does not
35 distribute it in pursuance of the plan of reorganization, the gain, if
36 any, to the taxpayer shall be recognized, but in an amount not in excess
37 of the sum of such money and the fair market value of such other prop-
38 erty so received, which is not so distributed.

39 9. If an exchange would be within the provisions of subdivision one,
40 two, three, or four of this section if it were not for the fact that the
41 property received in exchange consists not only of property permitted by
42 such subdivision to be received without the recognition of gain or loss,
43 but also of other property or money, then no loss from the exchange
44 shall be recognized.

45 10. As used in this section:

46 (a) The term "reorganization" means (i) a merger or consolidation,
47 including the acquisition by one corporation of at least a majority of
48 the voting stock and at least a majority of the total number of shares
49 of all other classes of stock of another corporation, or substantially
50 all the properties of another corporation, or (ii) a transfer by a
51 corporation of all or a part of its assets to another corporation if
52 immediately after the transfer the transferor or its stockholders or
53 both are in control of the corporation to which the assets are trans-
54 ferred, or (iii) a recapitalization, or (iv) a mere change in identity,
55 form or place of organization, however effected;

1 (b) The term "a party to a reorganization" includes a corporation
2 resulting from a reorganization and includes both corporations in the
3 case of an acquisition by one corporation of at least a majority of the
4 voting stock and at least a majority of the total number of shares of
5 all other classes of stock of another corporation; and

6 (c) The term "control" means the ownership of at least eighty per
7 centum of the voting stock and at least eighty per centum of the total
8 number of shares of all other classes of stock of the corporation.

9 11. No gain or loss shall be recognized upon the receipt by a taxpayer
10 of property distributed in complete liquidation of a corporation. For
11 the purposes of this subdivision a distribution shall be considered to
12 be in complete liquidation only if:

13 (a) the taxpayer receiving such property was, on the date of the
14 adoption of the plan of liquidation, and has continued to be at all
15 times until the receipt of the property, the owner of stock, in such
16 corporation, possessing at least eighty per centum of the total combined
17 voting power of all classes of stock entitled to vote and the owner of
18 at least eighty per centum of the total number of shares of all other
19 classes of stock, except non-voting stock which is limited and preferred
20 as to dividends, and was at no time on or after the date of the adoption
21 of the plan of liquidation and until the receipt of the property the
22 owner of a greater percentage of any class of stock than the percentage
23 of such class owned at the time of the receipt of the property; and
24 either:

25 (b) the distribution is by such corporation in complete cancellation
26 or redemption of all its stock, and the transfer of all the property
27 occurs within the base year; in such case the adoption by the sharehold-
28 ers of the resolution under which is authorized the distribution of all
29 the assets of the corporation in complete cancellation or redemption of
30 all its stock, shall be considered an adoption of a plan of liquidation,
31 even though no time for the completion of the transfer of the property
32 is specified on such resolution; or

33 (c) such distribution is one of a series of distributions by such
34 corporation in complete cancellation or redemption of all its stock in
35 accordance with a plan of liquidation under which the transfer of all
36 the property under the liquidation is to be completed within three years
37 from the close of the year during which is made the first of the series
38 of distributions under the plan, except that if such transfer is not
39 completed within such period, or if the taxpayer does not continue qual-
40 ified under paragraph (a) of this subdivision until the completion of
41 such transfer, no distribution under the plan shall be considered a
42 distribution in complete liquidation.

43 If such transfer of all the property does not occur within the year,
44 the commissioner of finance may require of the taxpayer such bond, or
45 waiver of the statute of limitations on assessment and collection, or
46 both, as the commissioner may deem necessary to insure, if the transfer
47 of the property is not completed within such three year period, or if
48 the taxpayer does not continue qualified under paragraph (a) of this
49 subdivision until the completion of such transfer, the assessment and
50 collection of all taxes then imposed under this part for such year or
51 subsequent years, to the extent attributable to property so received. A
52 distribution otherwise constituting a distribution in complete liqui-
53 dation within the meaning of this paragraph shall not be considered as
54 not constituting such a distribution merely because it does not consti-
55 tute a distribution or liquidation within the meaning of the corporate
56 law under which the distribution is made; and for the purposes of this

1 paragraph a transfer of property of such corporation to the taxpayer
2 shall not be considered as not constituting a distribution, or one of a
3 series of distributions, in complete cancellation or redemption of all
4 the stock of such corporation, merely because the carrying out of the
5 plan involves: (1) the transfer under the plan to the taxpayer by such
6 corporation of property, not attributable to shares owned by the taxpay-
7 er, upon an exchange described in subdivision three of this section, and
8 (2) the complete cancellation or redemption under the plan, as a result
9 of exchanges described in subdivision two of this section, of the shares
10 not owned by the taxpayers.

11 § 11-616 Exchange of property when no gain or loss is realized. When
12 property is exchanged for other property and no gain or loss is realized
13 under the provisions of the preceding section, the property received
14 shall be treated as taking the place of the property exchanged therefor.
15 Where no gain or loss is realized under the provisions of subdivision
16 eleven of section 11-615 of this part, the basis of the property
17 received shall be the same as it would be in the hands of the transferor
18 determined in accordance with the provisions of section 11-614 of this
19 part.

20 § 11-617 Inventory. Whenever in the opinion of the commissioner of
21 finance the use of inventories is necessary in order clearly to deter-
22 mine the income of any taxpayer, inventory shall be taken by such
23 taxpayer upon such basis as the commissioner of finance may prescribe,
24 conforming as nearly as may be to the best accounting practice in the
25 banking business most clearly reflecting the income.

26 § 11-618 Net income defined. The term "net income" means the gross
27 income of a taxpayer less the deductions allowed by this part.

28 § 11-619 Computation of net income. The net income shall be computed
29 in accordance with the method of accounting regularly employed in keep-
30 ing the books of such taxpayer; but if no such method of accounting has
31 been so employed, or if the method employed does not clearly reflect the
32 income, the computation shall be made upon such basis and in such manner
33 as in the opinion of the commissioner of finance does clearly reflect
34 the income. In determining net income, war losses, taxation of property
35 recovered, and basis of property shall be treated in substantially the
36 same manner as such losses, recoveries and basis are treated under the
37 applicable provisions of section thirteen hundred thirty-one of the
38 internal revenue code.

39 § 11-620 Gross income defined. 1. The term "gross income" includes
40 gains, profits and income derived from the business, of whatever kind
41 and in whatever form paid, including gains, profits or income from deal-
42 ings in property, whether real or personal, or gains, profits or income
43 received as compensation for services, as interest, rents, commissions,
44 brokerage or other fees, or otherwise in carrying on such business,
45 including all dividends received on stocks and all interest received
46 from federal, state, municipal or other bonds.

47 2. If the gross income of a taxpayer is derived from business carried
48 on both within and without the city, "gross income" means that propor-
49 tion thereof which is derived from business carried on within the city,
50 to be allocated and determined on the basis of separate accounting for
51 each office or branch or, at the election of the taxpayer, under rules
52 and regulations prescribed by the commissioner of finance.

53 3. "Gross income" of a savings bank shall include the amount received
54 by it in any taxable year as a distribution in liquidation of the mutual
55 savings bank fund.

1 § 11-621 Deductions. In computing net income there shall be allowed as
2 deductions:

3 1. All the ordinary and necessary expenses paid or incurred during the
4 year in carrying on business, including a reasonable allowance for sala-
5 ries or other compensation for personal services actually rendered, and
6 including rentals or other payments required to be made as a condition
7 to the continued use or possession for business purposes of property to
8 which the taxpayer has not taken or is not taking title or in which such
9 taxpayer has no equity.

10 2. All interest paid or accrued during the year on indebtedness.

11 3. Taxes, other than taxes on income or profits paid or accrued within
12 the year, imposed, first, by the authority of the United States, or of
13 any of its possessions, or, second, by the authority of any state, or
14 territory, or any county, school district, municipality, or other taxing
15 subdivisions of any state or territory, not including those assessed
16 against local benefits of a kind tending to increase the value of the
17 property assessed, or, third, by the authority of any foreign govern-
18 ment.

19 4. Losses sustained during the year and not compensated for by insur-
20 ance or otherwise, if incurred in business; unless in order to clearly
21 reflect the income the losses should in the opinion of the commissioner
22 of finance be accounted for as of a different period. No deduction shall
23 be allowed for any loss claimed to have been sustained in any sale or
24 other disposition of shares of stock or securities where it appears that
25 within thirty days before or after the date such sale or other disposi-
26 tion the taxpayer has acquired substantially identical property, and the
27 property so acquired is held by the taxpayer for any period after such
28 sale or other disposition, unless such claim is made with respect to a
29 transaction made in the ordinary course of business. If such acquisi-
30 tion is to the extent of part only of substantially identical property,
31 only a proportionate part of the loss shall be disallowed.

32 5. Debts ascertained to be worthless and charged off within the year;
33 or in the discretion of the commissioner of finance a reasonable addi-
34 tion to a reserve for bad debts. When satisfied that a debt is recovera-
35 ble only in part, the commissioner of finance may allow such debt to be
36 charged off in part.

37 6. A reasonable allowance for the exhaustion, wear and tear of proper-
38 ty used in business, including a reasonable allowance for obsolescence.
39 In the case of any such property acquired before January first, nineteen
40 hundred sixty-six, the amount of such deduction shall be equal to the
41 deduction properly taken for such property in reporting the tax due
42 pursuant to the former article nine-b of the tax law. With respect to
43 property such as described in subdivision twelve of this section, this
44 deduction may be computed and allowed as provided therein.

45 7. If the gross income be derived from business carried on within and
46 without the city, the deductions allowed by this section shall be allo-
47 cated and determined on the basis of separate accounting for each office
48 or branch or, at the election of the taxpayer, under rules and regu-
49 lations to be prescribed by the commissioner of finance.

50 8. In the case of any taxpayer who establishes or maintains a pension
51 trust to provide for the payment of reasonable pensions to its employ-
52 ees, there shall be allowed as a deduction, in addition to the contrib-
53 utions to such trust during the taxable year to cover the pension
54 liability accruing during the year, allowed as a deduction under subdi-
55 vision one of this section, a reasonable amount transferred or paid into
56 such trust during the taxable year in excess of such contributions, but

1 only if such amount (a) has not theretofore been allowable as a
2 deduction, and (b) is apportioned in equal parts over a period of ten
3 consecutive years beginning with the year in which the transfer or
4 payment is made or, under regulations of the commissioner of finance,
5 covers not more than one-tenth of the total pension liability with
6 respect to services rendered prior to such taxable year; provided that
7 said deduction shall be allowable only with respect to a taxable year,
8 whether the year of the transfer or payment or a subsequent year, of the
9 taxpayer ending within or with a taxable year of the trust with respect
10 to which the trust, by reason of its purposes or activities, is exempt
11 from federal income tax.

12 9. The amount of the amortizable bond premium on a bond for the year
13 shall be allowed as a deduction as hereinafter provided. In computing
14 such deduction: (a) the amount of the bond premium shall be determined
15 with reference to the amount of the basis, for determining loss on sale
16 or exchange, of such bond, and with reference to the amount payable on
17 maturity or on earlier call date, with adjustments proper to reflect
18 unamortized bond premium with respect to the bond, for the period prior
19 to July thirteenth, nineteen hundred sixty-six with respect to the
20 taxpayer with respect to such bond, and (b) the amortizable bond premium
21 of the year shall be the amount of the bond premium attributable to such
22 year. Accordingly, such determination shall be made in accordance with
23 the method of amortizing bond premium regularly employed by the holder
24 of such bond, if such method is reasonable, and in all other cases in
25 accordance with regulations of the commissioner of finance prescribing
26 reasonable methods of amortizing bond premium. This subdivision shall
27 apply only if the taxpayer shall so elect, in accordance with regu-
28 lations of the commissioner of finance, and such election shall be made
29 separately with respect to (1) bonds, the interest of which is wholly
30 taxable, and (2) bonds, the interest of which is wholly or partially tax
31 exempt, for purposes of the income tax imposed by chapter one of the
32 internal revenue code. If such election is made with respect to any bond
33 of the taxpayer described in clauses one or two of this subdivision, it
34 shall also apply to all bonds in the same class held by the taxpayer at
35 the beginning of the first year to which the election applies and to all
36 such bonds thereafter acquired by it and shall be binding for all subse-
37 quent years with respect to all such bonds of the taxpayer, unless upon
38 the application by the taxpayer, the commissioner of finance permits the
39 taxpayer, subject to such conditions as the commissioner of finance
40 deems necessary, to revoke such election. As used in this subdivision
41 the term "bond" means any bond, debenture, note or certificate or other
42 evidence of indebtedness, issued by any corporation and bearing inter-
43 est, including any like obligation issued by a government or political
44 subdivision thereof, with interest coupons or in registered form, but
45 does not include any such obligation which constitutes stock in trade of
46 the taxpayer or any such obligation of a kind which would properly be
47 included in the inventory of the taxpayer if on hand at the close of the
48 year, or any such obligation held by the taxpayer primarily for sale to
49 customers in the ordinary course of its trade or business.

50 10. In the case of a savings bank and savings and loan association,
51 amounts paid or credited to depositors or holders of accounts as inter-
52 est or dividends on their deposits or withdrawable accounts, if such
53 amounts are withdrawable on demand subject only to customary notice of
54 intention to withdraw.

55 11. A savings bank and savings and loan association may deduct in any
56 taxable year the amount of the repayment of any loan or advance from the

1 mutual savings bank fund in computing its net income and the amount of
2 interest or dividends subject to the minimum tax under subdivision three
3 of section 11-612 of this part.

4 12. (a) At the election of the taxpayer there shall be deducted from
5 gross income, or if gross income is derived from business carried on
6 within and without this city, from the portion thereof allocated within
7 the city, depreciation with respect to any property such as described in
8 paragraph (b) of this subdivision, not exceeding twice the depreciation
9 allowed with respect to the same property for federal income tax
10 purposes.

11 (b) Such deduction shall be allowed only with respect to tangible
12 property which is depreciable pursuant to section one hundred sixty-sev-
13 en of the internal revenue code, having a situs in this city and used in
14 the taxpayer's business, (i) constructed, reconstructed or erected after
15 December thirty-first, nineteen hundred sixty-five, pursuant to a
16 contract which was on or before December thirty-first, nineteen hundred
17 sixty-seven, and at all times thereafter, binding on the taxpayer or,
18 property, the physical construction, reconstruction or erection of which
19 began on or before December thirty-first, nineteen hundred sixty-seven
20 or which began after such date pursuant to an order placed on or before
21 December thirty-first, nineteen hundred sixty-seven, and then only with
22 respect to that portion of the basis thereof which is properly attribut-
23 able to such construction, reconstruction or erection after December
24 thirty-first, nineteen hundred sixty-five, or (ii) acquired after Decem-
25 ber thirty-first, nineteen hundred sixty-five, pursuant to a contract
26 which was, on or before December thirty-first, nineteen hundred sixty-
27 seven, and at all times thereafter, binding on the taxpayer or pursuant
28 to an order placed on or before December thirty-first, nineteen hundred
29 sixty-seven, by purchase as defined in section one hundred seventy-nine
30 (d) of the internal revenue code, if the original use of such property
31 commenced with the taxpayer, commenced in this city and commenced after
32 December thirty-first, nineteen hundred sixty-five, or (iii) acquired,
33 constructed, reconstructed or erected subsequent to December thirty-
34 first, nineteen hundred sixty-seven, if such acquisition, construction,
35 reconstruction or erection is pursuant to a plan of the taxpayer which
36 was in existence December thirty-first, nineteen hundred sixty-seven and
37 not thereafter substantially modified, and such acquisition,
38 construction, reconstruction or erection would qualify under the rules
39 in paragraph four, five or six of subsection (h) of section forty-eight
40 of the internal revenue code provided all references in such paragraphs
41 four, five and six to the dates October nine, nineteen hundred sixty-six
42 and October ten, nineteen hundred sixty-six shall be read as December
43 thirty-first, nineteen hundred sixty-seven. A taxpayer shall be allowed
44 a deduction under clause (i), (ii) or (iii) of this paragraph only if
45 the tangible property shall be delivered or the construction, recon-
46 struction or erection shall be completed on or before December thirty-
47 first, nineteen hundred sixty-nine, except in the case of tangible prop-
48 erty which is acquired, constructed, reconstructed or erected pursuant
49 to a contract which was, on or before December thirty-first, nineteen
50 hundred sixty-seven, and at all times thereafter, binding on the taxpay-
51 er. Provided, however, for any taxable year beginning on or after Janu-
52 ary first, nineteen hundred sixty-eight, a taxpayer shall not be allowed
53 a deduction under paragraph (a) of this subdivision with respect to
54 tangible personal property leased by it to any other person or corpo-
55 ration. Accordingly, any contract or agreement to lease or rent or for a
56 license to use such property shall be considered a lease. With respect

1 to property which the taxpayer uses itself for purposes other than leas-
2 ing for part of a taxable year and leases for a part of a taxable year,
3 the taxpayer shall be allowed a deduction under paragraph (a) of this
4 subdivision in proportion to the part of the year it uses such property.

5 (c) If the deduction allowable for any taxable year pursuant to this
6 subdivision exceeds the taxpayer's net income computed without the
7 allowance of such deduction and without the allowance of any deduction
8 pursuant to subdivision six of this section with references to the same
9 property, the excess may be carried over to the following taxable year
10 or years and may be deducted in computing net income for such year or
11 years.

12 (d) In any taxable year when property is sold or otherwise disposed
13 of, with respect to which a deduction has been allowed pursuant to this
14 subdivision, the gain or loss thereon shall be computed by adjusting the
15 basis of such property to reflect the deductions so allowed, and if the
16 taxpayer's gross income is derived from business carried on both within
17 and without the city, shall be allocated within the city. Provided,
18 however, that no loss shall be recognized for the purposes of this para-
19 graph with respect to a sale or other disposition of property to a
20 person whose acquisition thereof is not a purchase as defined in section
21 one hundred seventy-nine (d) of the internal revenue code.

22 § 11-622 Items not deductible. In computing net income no deduction
23 shall in any case be allowed in respect of:

24 (a) Any amount paid out for new buildings or for permanent improve-
25 ments or betterments made to increase the value of any property.

26 (b) Any amount expended in restoring property or in making good the
27 exhaustion thereof for which an allowance is or has been made.

28 PART 2

29 TAX ON NATIONAL BANKING ASSOCIATIONS
30 AND PRODUCTION CREDIT ASSOCIATIONS

31 § 11-623 Imposition of tax. 1. Pursuant to the authority conferred by
32 section fifty-two hundred nineteen of the United States revised statutes
33 and in conformity with the provisions contained in subdivision c of
34 clause one of such section, every national banking association organized
35 under authority of the United States and located within the city, shall
36 annually pay a tax, measured by its net income, to be computed, as
37 provided in this part, at the rate of four and one-half per centum
38 except that for the year nineteen hundred seventy-one and those follow-
39 ing the rate shall be five and sixty-three one hundredths per centum,
40 upon the basis of its net income for the calendar year next preceding
41 the date when such tax becomes due. Such tax shall be for the calendar
42 year next preceding the year in which it becomes due; except that with
43 respect to national banking associations required to file a declaration
44 of estimated tax and to make payments on account of such estimated tax
45 in accordance with the provisions of section 11-636 of this subchapter,
46 all payments of tax within a calendar year, whether computed on the
47 basis of net income for the current calendar year or on the basis of net
48 income for the preceding calendar year, shall be for the calendar year
49 in which the payments are required to be made. If, however, such a
50 national banking association shall be dissolved between the thirty-first
51 day of December and the succeeding second day of September, and shall
52 not become merged or consolidated with a corporation taxable under part
53 one of this subchapter, it shall pay a tax for the period from the thir-
54 ty-first day of December up to the time of dissolution equal to that

1 which would have been payable had it not been dissolved, except that
2 such tax shall be reduced by one-third and an additional one-twelfth for
3 each month, or major portion thereof, prior to such succeeding second
4 day of September, during which such corporation was so dissolved. If
5 such dissolution occurs between the fifteenth day of March and the
6 second day of September, and if such corporation shall have filed its
7 return on or before the fifteenth day of March as required by sections
8 11-630 and 11-633 of this subchapter, it may file a claim for refund as
9 provided in section 11-678 of this chapter, showing any reduction in tax
10 to which it may be entitled as provided by this section; and if it shall
11 be made to appear that the amount of tax due is less than the amount as
12 computed on the basis of the original return, the commissioner of
13 finance shall adjust the computation of tax accordingly. If the amount
14 of tax as so adjusted shall be less than the amount theretofore paid,
15 the excess shall be refunded by the commissioner of finance as provided
16 in subdivision one of section 11-677 of this chapter.

17 2. In the event that the taxes imposed by this part shall be finally
18 determined to be unconstitutional or invalid for the reason that they do
19 not conform with the provisions of section fifty-two hundred nineteen of
20 the United States revised statutes, then, in lieu of the taxes imposed
21 by the provisions of this part, every national banking association and
22 every production credit association that otherwise would have been
23 subject to tax under this part shall be subject to the tax imposed under
24 subchapter two as of July thirteenth, nineteen hundred sixty-six, and
25 all of the provisions of subchapter two, unless clearly inappropriate,
26 shall be applicable except subdivision four of section 11-603 of this
27 chapter; and, in such event, any payments made, reports or returns filed
28 or any act of the commissioner of finance or of a taxpayer purportedly
29 under this subchapter shall be treated as though made, filed or done
30 pursuant to subchapter two.

31 3. Cross reference. For years for which tax is imposed, see section
32 11-624 of this part.

33 § 11-624 Years for which imposed. 1. The tax imposed by section
34 11-623 of this part is imposed for each calendar year included within
35 the period beginning January first, nineteen hundred sixty-six and
36 ending December thirty-first, nineteen hundred seventy-two.

37 2. Cross reference. For tax imposed for years or periods subsequent to
38 nineteen hundred seventy-two, see part four of this subchapter.

39 § 11-625 Ascertainment of gain or loss; exchange of property. 1.
40 For the purpose of ascertaining the gain derived or loss sustained from
41 the sale or other disposition of property, real, personal or mixed, the
42 basis shall be the cost thereof, or the inventoried value if the inven-
43 tory is made in accordance with section 11-626 of this part.

44 2. Notwithstanding subdivision one of this section, with respect to
45 gain derived from the sale or other disposition of any property acquired
46 prior to January first, nineteen hundred sixty-six, except stock in
47 trade of the taxpayer or other property of a kind which would properly
48 be included in the inventory of the taxpayer if on hand at the close of
49 the taxable year, or property held by the taxpayer primarily for sale to
50 customers in the ordinary course of its trade or business and accounts
51 or notes receivable acquired in the ordinary course of trade or business
52 from the sale of such stock in trade or property, or for services
53 rendered, net income shall not include:

54 (a) That portion of the gain included in determining net income pursu-
55 ant to subdivision one of this section with respect to each such proper-
56 ty which exceeds:

1 (b) The amount of gain, if any, that would be included in determining
2 net income pursuant to subdivision one of this section with respect to
3 each such property if the basis of such property on the date of sale or
4 other disposition were equal to its fair market value on January first,
5 nineteen hundred sixty-six, plus or minus all adjustments to basis made
6 with respect to each such property in computing net income for periods
7 on or after January first, nineteen hundred sixty-six; provided that the
8 total adjustment to net income provided by this subdivision shall not
9 exceed the amount of the taxpayer's net gain from the sale or other
10 disposition of all such property, as determined pursuant to subdivision
11 one of this section.

12 3. Upon the sale or exchange of property the amount of the gain or
13 loss shall be determined in the manner prescribed by section 11-615 of
14 this subchapter and the basis of such property shall be determined in
15 the manner prescribed by section 11-616 of this subchapter.

16 4. In the case of any bond, with respect to which a deduction for
17 amortizable bond premium is allowable under paragraph (i) of subdivision
18 one of section 11-629 of this part, the basis for determining gain or
19 loss shall be reduced by the total amount of such deductions so allow-
20 able.

21 § 11-626 Inventory. Whenever in the opinion of the commissioner of
22 finance the use of inventories is necessary in order clearly to deter-
23 mine the income of any taxpayer, inventory shall be taken by such
24 taxpayer upon such basis as the commissioner of finance may prescribe,
25 conforming as nearly as may be to the best accounting practice in the
26 banking business and most clearly reflecting the income.

27 § 11-627 Net income defined; computation. The term "net income"
28 means the gross income of a taxpayer less the deductions allowed by this
29 part. The net income shall be computed in accordance with the method of
30 accounting regularly employed in keeping the books of such taxpayer; but
31 if no such method of accounting has been so employed, or if the method
32 employed does not clearly reflect the income, the computation shall be
33 made upon such basis and in such manner as in the opinion of the commis-
34 sioner of finance does clearly reflect the income. In determining net
35 income, war losses, taxation of property recovered, and basis of proper-
36 ty shall be treated in substantially the same manner as such losses,
37 recoveries and basis are treated under the applicable provisions of
38 section thirteen hundred thirty-one of the internal revenue code.

39 § 11-628 Gross income defined. 1. The term "gross income" includes
40 gains, profit and income derived from the business, of whatever kind and
41 in whatever form paid, including gains, profits or income from dealings
42 in property, whether real or personal, or gains, profits, or income
43 received as compensation for services, as interest, rents, commissions,
44 brokerage or other fees, or otherwise in carrying on such business,
45 including all dividends received on stocks and all interest received
46 from federal, state, municipal or other bonds.

47 2. If the gross income of such an association is derived from business
48 carried on both within and without the city, "gross income" means that
49 proportion thereof which is derived from business carried on within the
50 city, to be allocated and determined on the basis of separate accounting
51 for each office or branch or, at the election of the taxpayer, under
52 rules and regulations prescribed by the commissioner of finance.

53 § 11-629 Deductions. 1. In computing net income there shall be
54 allowed as deductions:

55 (a) All the ordinary and necessary expenses paid or incurred during
56 the year in carrying on business, including a reasonable allowance for

1 salaries or other compensation for personal services actually rendered,
2 and including rentals or other payments required to be made as a condi-
3 tion to the continued use or possession for business purposes of proper-
4 ty to which the taxpayer has not taken or is not taking title or in
5 which such taxpayer has no equity;

6 (b) All interest paid or accrued during the year on indebtedness;

7 (c) Taxes, other than taxes on income or profits paid or accrued with-
8 in the year, imposed, first, by the authority of the United States, or
9 of any of its possessions, or, second, by the authority of any state, or
10 territory, or any county, school district, municipality, or other taxing
11 subdivisions of any state or territory, not including those assessed
12 against local benefits of a kind tending to increase the value of the
13 property assessed, or, third, by the authority of any foreign govern-
14 ment;

15 (d) Losses sustained during the year and not compensated for by insur-
16 ance or otherwise, if incurred in business; unless in order to clearly
17 reflect the income the losses should in the opinion of the commissioner
18 of finance be accounted for as of a different period. No deduction
19 shall be allowed for any loss claimed to have been sustained in any sale
20 or other disposition of shares of stock or securities where it appears
21 that within thirty days before or after the date of such sale or other
22 disposition the taxpayer has acquired substantially identical property,
23 and the property so acquired is held by the taxpayer for any period
24 after such sale or other disposition, unless such claim is made with
25 respect to a transaction made in the ordinary course of business. If
26 such acquisition is to the extent of part only of substantially identi-
27 cal property, only a proportionate part of the loss shall be disallowed;

28 (e) Debts ascertained to be worthless and charged off within the year;
29 or in the discretion of the commissioner of finance a reasonable addi-
30 tion to a reserve for bad debts. When satisfied that a debt is recover-
31 able only in part, the commissioner of finance may allow such debt to be
32 charged off in part;

33 (f) A reasonable allowance for the exhaustion, wear and tear of prop-
34 erty used in business, including a reasonable allowance for obsoles-
35 cence. In the case of any such property acquired before January first,
36 nineteen hundred sixty-six, the amount of such deduction shall be equal
37 to the deduction properly taken for such property in reporting the tax
38 due. With respect to property such as described in paragraph (j) of
39 this subdivision, this deduction may be computed and allowed as provided
40 therein;

41 (g) If the gross income be derived from business carried on within and
42 without the city, the deductions allowed by this section shall be allo-
43 cated and determined on the basis of separate accounting for each office
44 or branch or, at the election of the taxpayer, under rules and regu-
45 lations to be prescribed by the commissioner of finance;

46 (h) In the case of any taxpayer, who establishes or maintains a
47 pension trust to provide for the payment of reasonable pensions to its
48 employees, there shall be allowed as a deduction, in addition to the
49 contributions to such trust during the taxable years, to cover the
50 pension liability accruing during the year, allowed as a deduction under
51 paragraph (a) of this subdivision, a reasonable amount transferred or
52 paid into such trust during the taxable year in excess of such contrib-
53 utions, but only if such amount: (1) has not theretofore been allowable
54 as a deduction, and (2) is apportioned in equal parts over a period of
55 ten consecutive years beginning with the year in which the transfer of
56 payment is made; provided that said deduction shall be allowable only

1 with respect to a taxable year, whether the year of the transfer or
2 payment or a subsequent year, of the taxpayer ending within or with a
3 taxable year of the trust with respect to which the trust, by reason of
4 its purposes or activities is exempt from federal income tax;

5 (i) The amount of the amortizable bond premium on a bond for the year
6 shall be allowed as a deduction as provided in this paragraph. In
7 computing such deduction, (a) the amount of the bond premium shall be
8 determined with reference to the amount of the basis, for determining
9 loss on sale or exchange, of such bond, and with reference to the amount
10 payable on maturity or on earlier call date, with adjustments proper to
11 reflect unamortized bond premium with respect to the bond, for the peri-
12 od prior to July thirteenth, nineteen hundred sixty-six with respect to
13 the taxpayer with respect to such bond, and (b) the amortizable bond
14 premium of the year shall be the amount of the bond premium attributable
15 to such year. Such determinations shall be made in accordance with the
16 method of amortizing bond premium regularly employed by the holder of
17 such bond, if such method is reasonable, and in all other cases in
18 accordance with regulations of the commissioner of finance prescribing
19 reasonable methods of amortizing bond premium. This paragraph shall
20 apply only if the taxpayer shall so elect, in accordance with regu-
21 lations of the commissioner of finance, and such election shall be made
22 separately with respect to: (1) bonds, the interest of which is wholly
23 taxable, and (2) bonds, the interest of which is wholly or partially tax
24 exempt, for purposes of the income tax imposed by chapter one of the
25 internal revenue code. If such election is made with respect to any bond
26 of the taxpayer described in clauses one or two of this subparagraph, it
27 shall also apply to all bonds in the same class held by the taxpayer at
28 the beginning of the first year to which the election applies and to all
29 such bonds thereafter acquired by it and shall be binding for all subse-
30 quent years with respect to all such bonds of the taxpayer, unless, upon
31 application by the taxpayer, the commissioner of finance permits the
32 taxpayer, subject to such conditions as the commissioner of finance
33 deems necessary, to revoke such election. As used in this paragraph,
34 the term "bond" means any bond, debenture, note, or certificate or other
35 evidence of indebtedness, issued by any corporation and bearing inter-
36 est, including any like obligation issued by a government or political
37 subdivision thereof, with interest coupons or in registered form, but
38 does not include any such obligation which constitutes stock in trade of
39 the taxpayer or any such obligation of a kind which would properly be
40 included in the inventory of the taxpayer if on hand at the close of the
41 year, or any such obligation held by the taxpayer primarily for sale to
42 customers in the ordinary course of its trade or business; and

43 (j) (1) At the election of the taxpayer there shall be deducted from
44 gross income, or if gross income is derived from business carried on
45 within and without this city, from the portion thereof allocated within
46 the city, depreciation with respect to any property such as described in
47 subparagraph two of this paragraph, not exceeding twice the depreciation
48 allowed with respect to the same property for federal income tax
49 purposes.

50 (2) Such deduction shall be allowed only with respect to tangible
51 property which is depreciable pursuant to section one hundred sixty-sev-
52 en of the internal revenue code, having a situs in this city and used in
53 the taxpayer's business, (i) constructed, reconstructed or erected after
54 December thirty-first, nineteen hundred sixty-five, pursuant to a
55 contract which was, on or before December thirty-first, nineteen hundred
56 sixty-seven, and at all times thereafter, binding on the taxpayer or

1 pursuant to an order placed on or before December thirty-first, nineteen
2 hundred sixty-seven, by purchase as defined in section one hundred
3 seventy-nine (d), of the internal revenue code, if the original use of
4 such property commenced with the taxpayer, commenced in this city and
5 commenced after December thirty-first, nineteen hundred sixty-five or
6 (ii) acquired, constructed, reconstructed, or erected subsequent to
7 December thirty-first, nineteen hundred sixty-seven, if such acquisi-
8 tion, construction, reconstruction or erection is pursuant to a plan of
9 the taxpayer which was in existence December thirty-first, nineteen
10 hundred sixty-seven and not thereafter substantially modified, and such
11 acquisition, construction, reconstruction or erection would qualify
12 under the rules in paragraph four, five or six of subsection (h) of
13 section forty-eight of the internal revenue code provided all references
14 in such paragraphs four, five and six to the dates October nine, nine-
15 teen hundred sixty-six, and October ten, nineteen hundred sixty-six,
16 shall read as December thirty-first, nineteen hundred sixty-seven. A
17 taxpayer shall be allowed a deduction under clause (i) or (ii) of this
18 subparagraph only if the tangible property shall be delivered or the
19 construction, reconstruction or erection shall be completed on or before
20 December thirty-first, nineteen hundred sixty-nine, except in the case
21 of tangible property which is acquired, constructed, reconstructed or
22 erected pursuant to a contract which was, on or before December thirty-
23 first, nineteen hundred sixty-seven, and at all times thereafter, bind-
24 ing on the taxpayer. Provided, however, for any taxable year beginning
25 on or after January first, nineteen hundred sixty-eight, a taxpayer
26 shall not be allowed a deduction under paragraph (a) of this subdivision
27 with respect to tangible personal property leased by it to any other
28 person or corporation. Any such contract or agreement to lease or rent
29 or for a license to use such property shall be considered a lease. With
30 respect to property which the taxpayer uses itself for purposes other
31 than leasing for part of a taxable year and leases for a part of a taxa-
32 ble year, the taxpayer shall be allowed a deduction under paragraph (a)
33 of this subdivision in proportion to the part of the year it uses such
34 property.

35 (3) If the deduction allowable for any taxable year pursuant to this
36 subdivision exceeds the taxpayer's net income computed without the
37 allowance of such deduction and without the allowance of any deduction
38 pursuant to paragraph (f) of this subdivision with reference to the same
39 property, the excess may be carried over to the following taxable year
40 or years and may be deducted in computing net income for such year or
41 years.

42 (4) In any taxable year when property is sold or otherwise disposed
43 of, with respect to which a deduction has been allowed pursuant to this
44 paragraph, the gain or loss thereon shall be computed by adjusting the
45 basis of such property to reflect the deductions so allowed, and if the
46 taxpayer's gross income is derived from business carried on both within
47 and without the city, shall be allocated within the city. Provided,
48 however, that no loss shall be recognized for the purposes of this para-
49 graph with respect to a sale or other disposition of property to a
50 person whose acquisition thereof is not a purchase as defined in section
51 one hundred seventy-nine (d) of the internal revenue code.

52 2. In computing net income no deduction shall in any case be allowed
53 in respect of:

54 (a) Any amount paid out for new buildings or for permanent improve-
55 ments or betterments made to increase the value of any property.

1 (b) Any amount expended in restoring or in making good the exhaustion
2 thereof for which an allowance is or has been made.

3 § 11-630 Administration; procedure; provisions of law applicable.
4 For the purpose of carrying into effect the provisions of this part, and
5 except as otherwise provided in this part, income shall be computed,
6 gain or loss ascertained, deductions made, apportionments and allo-
7 cations determined, at the same time and subject to the same limitations
8 and conditions, in so far as practicable, as is provided by part one of
9 this subchapter in relation to the tax imposed by such part.

10 § 11-631 Tax on production credit associations. Pursuant to the
11 authority conferred by the federal farm credit act of nineteen hundred
12 thirty-three, every production credit association organized under the
13 authority of the United States and located within the city after the
14 stock held in it by the federal production credit corporation has been
15 retired shall annually pay a tax measured by its net income, which shall
16 be computed in the same manner as the tax imposed upon national banking
17 associations by section 11-623 of this part and shall be subject to the
18 provisions of sections 11-624 of this part to 11-630 of this part inclu-
19 sive.

20 § 11-632 Applicability of part three. 1. This part shall be applica-
21 ble only to the taxes imposed by parts one and two of this subchapter.

22 2. Cross reference. For years for which parts one and two of this
23 subchapter impose a tax, see sections 11-613 and 11-624 of this subchap-
24 ter.

25 PART 3

26 ADMINISTRATION FOR PARTS 1 AND 2

27 § 11-633 Taxpayer's returns. 1. Every taxpayer, on or before March
28 fifteenth of each year, beginning with the year nineteen hundred sixty-
29 seven and ending with the year nineteen hundred seventy-three, shall
30 make a return subscribed by the taxpayer and affirmed by the taxpayer to
31 be true under the penalties of perjury to the commissioner of finance,
32 for the calendar year next preceding, as to the business or that portion
33 of the business of such taxpayer the income from which is the basis of
34 taxation under part one or two of this subchapter, except that every
35 trust company and savings bank which shall become incorporated between
36 the thirty-first day of December and the succeeding first day of July,
37 shall make its return for such period on or before September first, and
38 every taxpayer, other than a trust company and savings bank, which shall
39 commence to do business in the city or become located in the city, shall
40 make its return for the calendar year in which it commences to do busi-
41 ness or becomes located, on or before the twentieth day of January of
42 the year succeeding such calendar year, and except that every taxpayer,
43 other than a trust company and savings bank, which shall be dissolved,
44 cease to do business in the city or cease to be located in the city,
45 between the thirty-first day of December and the succeeding sixteenth
46 day of March and shall not become merged or consolidated with another
47 corporation taxable under the same part, shall make its return for such
48 period on or before the date of such dissolution, or cessation of busi-
49 ness, and every trust company and savings bank which shall be dissolved,
50 and shall not become merged or consolidated with another corporation
51 taxable under the same part, shall make its return, for the period for
52 which it is taxable under subdivision six of section 11-612 of this
53 subchapter on or before the date of such dissolution. Such return shall
54 be in such form and contain such information as the commissioner of

1 finance may require for the purpose of making any computation or other-
2 wise performing its duty under parts one, two, and three of this
3 subchapter. Such return shall state specifically the items of gross
4 income derived from such business and the deductions allowed by the part
5 for which the return is filed, the net income which is the basis of the
6 tax, and the amount of tax due. The return shall be subscribed by the
7 president, vice-president, treasurer, assistant treasurer, chief
8 accounting officer or any other officer of the taxpayer duly authorized
9 so to act. The fact that an individual's name is signed on the return
10 shall be prima facie evidence that such individual is authorized to
11 subscribe and affirm the return on behalf of the corporation. Blank
12 forms of return shall be furnished by the commissioner of finance upon
13 application, but failure to secure the form shall not relieve any
14 taxpayer from the obligation of making any return herein required. An
15 automatic extension of three months for the filing of its annual return
16 shall be allowed for any taxpayer if, within the time prescribed under
17 this subdivision for the filing thereof, such taxpayer files with the
18 commissioner of finance an application for extension in such form as the
19 commissioner of finance may prescribe by regulation and pays on or
20 before the date of such filing the amount properly estimated as its tax.
21 The commissioner of finance may grant a reasonable extension of time for
22 filing a return, which may be in addition to any three-month automatic
23 extension allowed, whenever in the commissioner's judgment good cause
24 exists and shall keep a record of every such extension and the reason
25 therefor. No such extension or extensions shall aggregate more than
26 three months, exclusive of any automatic extension.

27 2. If the amount of taxable income for any year of any taxpayer as
28 returned to the United States treasury department or the New York state
29 tax department is changed or corrected by the commissioner of internal
30 revenue or other officer of the United States or the New York state tax
31 commission or other competent authority; or if a taxpayer, pursuant to
32 subsection (d) of section sixty-two hundred thirteen of the internal
33 revenue code, executes a notice of waiver of the restrictions provided
34 in subsection (a) of such section, or if a taxpayer, pursuant to subdi-
35 vision (f) of section one thousand eighty-one of the tax law, executes a
36 notice of waiver of the restrictions provided in subdivision (c) of such
37 section, such taxpayer shall report such change or corrected taxable
38 income or such execution of such notice of waiver and the changes or
39 corrections of such taxpayer's federal or New York state taxable income
40 on which it is based, within ninety days after such execution or the
41 final determination of such change or correction, or as required by the
42 commissioner of finance, and shall concede the accuracy of such determi-
43 nation or state wherein it is erroneous. Any taxpayer filing an amended
44 return with such department shall also file within ninety days thereaft-
45 er an amended return with the commissioner of finance which shall
46 contain such information as it shall require.

47 § 11-634 Consolidated returns. Corporations which are affiliated
48 may, if authorized, and shall, if required, by the commissioner of
49 finance, under regulations prescribed by the commissioner of finance,
50 make a consolidated return for the purpose of parts one, two and three
51 of this subchapter. The commissioner of finance may, in his or her
52 discretion, authorize bank holding companies as defined in article
53 three-a of the banking law to make a consolidated return with affiliated
54 corporations taxable under part one and under part two of this subchap-
55 ter in which case the consolidated tax will be computed in accordance
56 with the provisions of part one of this subchapter. In all other cases

1 in which a corporation taxable under part two of this subchapter makes a
2 consolidated return with corporations taxable under part one of this
3 subchapter, the consolidated tax will be computed in accordance with the
4 provisions of part one of this subchapter. In any case in which a tax is
5 assessed upon the basis of a consolidated return, the total tax shall be
6 computed in the first instance as a unit and shall then be assessed upon
7 the respective affiliated corporations in such proportions as may be
8 agreed upon among them, or in the absence of any such agreement, then on
9 the basis of the net income properly assignable to each.

10 § 11-635 Payment of tax. Each taxpayer shall, at the time of filing
11 its return, pay to the commissioner of finance:

12 (a) the amount of tax payable under part one or two of this subchapter
13 as the same shall appear from the face of the return, or

14 (b) if payments of estimated tax have been made pursuant to section
15 11-636 of this part, the balance, if any, of the tax payable under part
16 one or two of this subchapter, as the same shall appear from the face of
17 the return, after applying thereto any payments made pursuant to said
18 section.

19 If the time for filing the return shall be extended, the taxpayer
20 shall pay in addition interest at the rate of six per centum per annum
21 from the time when the return was originally required to be filed to the
22 time of payment upon the amount by which the tax, or the portion thereof
23 payable when the return was required to be filed, exceeds the amount
24 then paid:

25 (1) a payment made on or before the date of filing of an application
26 for an automatic extension shall be deemed properly estimated if its
27 either: (A) not less than ninety per centum of the tax as finally
28 determined, or (B) not less than the tax shown on the taxpayer's return
29 for the preceding taxable year, if such preceding year was a taxable
30 year of twelve months; and

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

33 § 11-636 Declaration of estimated tax; payments on account of esti-
34 mated tax. 1. Every taxpayer subject to the tax imposed by part one or
35 two of this subchapter shall make a declaration of the estimated tax
36 upon the basis of its net income for the current calendar year, contain-
37 ing such information as the commissioner of finance may prescribe by
38 regulations or instructions, if such estimated tax can reasonably be
39 expected to exceed one thousand dollars.

40 2. The term "estimated tax" means the amount which a taxpayer esti-
41 mates to be the tax imposed upon it by part one or two of this subchap-
42 ter upon the basis of its net income for the current calendar year, less
43 the amount which it estimates to be the sum of any credits allowable
44 against the tax.

45 3. A declaration of estimated tax shall be filed on or before June
46 fifteenth of the calendar year upon the net income of which the tax is
47 based, except that if the requirements of subdivision one of this
48 section are first met:

49 (a) after June first and before October second of such calendar year,
50 the declaration shall be filed on or before October fifteenth, or

51 (b) after October first of such calendar year, the declaration shall
52 be filed on or before January fifteenth of the succeeding calendar year.

53 Notwithstanding any other provision of this subdivision, no declara-
54 tion need be filed prior to September eleventh, nineteen hundred sixty-
55 six.

1 4. A taxpayer may amend a declaration under regulations of the commis-
2 sioner of finance.

3 5. If, on or before February fifteenth of the succeeding year, a
4 taxpayer files its return for the calendar year upon the net income of
5 which the declaration is required to be based, and pays therewith the
6 balance, if any, of the full amount of the tax shown to be due on the
7 return,

8 (a) such return shall be considered as its declaration if no declara-
9 tion was required to be filed during such calendar year, but is other-
10 wise required to be filed on or before January fifteenth of the succeed-
11 ing year pursuant to subdivision three of this section,

12 (b) such return shall be considered as an amendment permitted by
13 subdivision four of this section to be filed on or before January
14 fifteenth if the tax shown on the return is greater than the estimated
15 tax shown on a declaration previously made.

16 6. The commissioner of finance may grant a reasonable extension of
17 time, not to exceed three months, for the filing of any declaration
18 required pursuant to this section, on such terms and conditions as the
19 commissioner may require.

20 7. Every taxpayer subject to the tax imposed by part one or two of
21 this subchapter shall pay with the return of tax, if any, required to be
22 filed upon the basis of its net income for the preceding calendar year,
23 or with an application for extension of the time for filing such return,
24 an amount equal to twenty-five per centum of the preceding year's tax,
25 if such preceding year's tax exceeded one thousand dollars.

26 8. The estimated tax with respect to which a declaration for such
27 calendar year is required pursuant to this section shall be paid as
28 follows:

29 (a) If the declaration is filed on or before June fifteenth, the esti-
30 mated tax shown thereon, after applying thereto the amount if any, paid
31 during the same calendar year pursuant to subdivision seven of this
32 section, shall be paid in three equal installments. One of such
33 installments shall be paid at the time of the filing of the declaration,
34 one shall be paid on the following October fifteenth, and one on the
35 following January fifteenth.

36 (b) If the declaration is filed after June fifteenth, and not after
37 October fifteenth of such calendar year, and is not required to be filed
38 on or before June fifteenth of such calendar year, the estimated tax
39 shown on such declaration, after applying thereto the amount, if any,
40 paid during the same calendar year pursuant to subdivision seven of this
41 section, shall be paid in two equal installments. One of such install-
42 ments shall be paid at the time of the filing of the declaration and one
43 shall be paid on the following January fifteenth.

44 (c) If the declaration is filed after October fifteenth of such calen-
45 dar year, and is not required to be filed on or before October fifteenth
46 of such calendar year, the estimated tax shown on such declaration,
47 after applying thereto the amount, if any, paid in respect of such
48 calendar year pursuant to subdivision seven of this section, shall be
49 paid in full at the time of the filing of the declaration.

50 (d) If the declaration is filed after the time prescribed therefor, or
51 after the expiration of any extension of time therefor, paragraphs (b)
52 and (c) of this subdivision shall not apply, and there shall be paid at
53 the time of such filing all installments of estimated tax payable at or
54 before such time, and the remaining installments shall be paid at the
55 times at which, and in the amounts in which, they would have been paya-
56 ble if the declaration had been filed when due.

1 9. If any amendment of a declaration is filed, the remaining install-
2 ments, if any, shall be ratably increased or decreased, as the case may
3 be, to reflect any increase or decrease in the estimated tax by reason
4 of such amendment, and if any amendment is made after October fifteenth
5 of the calendar year, any increase in the estimated tax by reason there-
6 of shall be paid at the time of making such amendment.

7 10. Any amount paid pursuant to subdivision seven of this section
8 shall be applied after payment as a first installment against the esti-
9 mated tax of the taxpayer shown on the declaration next required to be
10 filed pursuant to this section or, if no declaration of estimated tax is
11 required to be filed by the taxpayer pursuant to this section, any such
12 amount shall be considered a payment on account of the tax shown on the
13 return of tax required to be filed by the taxpayer upon the basis of its
14 net income for the calendar year during which such amount was paid.

15 11. Notwithstanding the provisions of section 11-679 of this chapter
16 or of section three-a of the general municipal law, if any amount paid
17 pursuant to subdivision seven of this section, exceeds the tax shown on
18 the return required to be filed by the taxpayer upon the basis of its
19 net income for the calendar year during which the amount was paid,
20 interest shall be allowed and paid on the amount by which the amount so
21 paid pursuant to such subdivision exceeds such tax, at the rate of six
22 per centum per annum from the date of payment of the amount so paid
23 pursuant to such subdivision to March fifteenth of the succeeding calen-
24 dar year, provided, however, that no interest shall be allowed or paid
25 under this subdivision if the amount thereof is less than one dollar.

26 12. As used in this section, "the preceding year's tax" means the tax
27 imposed upon the taxpayer by part one or two of this subchapter upon the
28 basis of its net income for the preceding calendar year, or, for
29 purposes of computing the first installment of estimated tax when an
30 application has been filed for extension of time for filing the return
31 required to be filed for such preceding calendar year, the amount prop-
32 erly estimated pursuant to section 11-635 of this part as the tax
33 imposed upon the basis of its net income for such calendar year.

34 13. This section shall apply to an income period of less than twelve
35 months in accordance with regulations of the commissioner of finance.

36 14. The commissioner of finance may grant a reasonable extension of
37 time, not to exceed six months, for payment of any installment of esti-
38 mated tax required pursuant to this section, on such terms and condi-
39 tions as the commissioner may require, including the furnishing of a
40 bond or other security by the taxpayer in an amount not exceeding twice
41 the amount for which any extension of time for payment is granted,
42 provided however, that interest at the rate of six per centum per annum
43 for the period of the extension shall be charged and collected on the
44 amount for which any extension of time for payment is granted under this
45 subdivision.

46 15. A taxpayer may elect to pay any installment of estimated tax prior
47 to the date prescribed in this section for payment thereof.

48 § 11-637 Real property taxable. Nothing in this subchapter shall be
49 construed to exempt the real property of any taxpayer from taxation to
50 the same extent, according to its value, as other real property is
51 taxed.

52 PART 4

53 BANKING CORPORATION TAX

54 § 11-638 General definitions. As used in this part:

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

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

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

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

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

28 (f) The term "financial holding company" means a corporation that,
29 pursuant to subsection (1) of section four of the federal bank holding
30 company act of nineteen hundred fifty-six, as amended, has filed with
31 the federal reserve board a written declaration that the corporation
32 elects to be a financial holding company and whose election has not been
33 found to be ineffective by the federal reserve board.

34 § 11-639 Imposition of tax. (a) (1) For the privilege of doing busi-
35 ness in the city in a corporate or organized capacity, a tax, computed
36 under section 11-643 of this part, is hereby annually imposed on every
37 banking corporation for each of its taxable years, or any part thereof,
38 beginning on or after January first, nineteen hundred seventy-three and
39 before January first, two thousand fifteen.

40 (2) For the privilege of doing business in the city in a corporate or
41 organized capacity, a tax, computed under section 11-643 of this part,
42 is hereby annually imposed on every banking corporation for each taxable
43 year, or any part thereof, commencing on or after January first, two
44 thousand fifteen, where such banking corporation (i) has an election in
45 effect under subsection (a) of section thirteen hundred sixty-two of the
46 internal revenue code of 1986, as amended, or (ii) is a qualified
47 subchapter S subsidiary within the meaning of paragraph three of
48 subsection (b) of section thirteen hundred sixty-one of the internal
49 revenue code of nineteen eighty-six, as amended.

50 (b) In the case of a taxpayer whose taxable year is other than a
51 calendar year, there is hereby imposed a tax for the privilege of doing
52 business in the city in a corporate or organized capacity for the period
53 beginning January first, nineteen hundred seventy-three and extending
54 through the subsequent part of its first such taxable year ending after
55 such date. Such tax shall be computed under section 11-643 of this part
56 on the basis of such taxpayer's entire net income, or other applicable

1 basis as the case may be, for such period and shall be paid with a
2 return which shall be separately filed with the department of finance
3 not later than the fifteenth day of the third month succeeding the close
4 of such period. The requirements of sections 11-644 and 11-645 of this
5 part, relating to declarations and payments of estimated tax, except
6 subdivision (a) of section 11-645 of this part, shall not be applicable
7 to the tax imposed by this subdivision.

8 (c) For taxable years beginning on or after January first, two thou-
9 sand eleven, (1) a banking corporation is doing business in the city in
10 a corporate or organized capacity if (i) it has issued credit cards to
11 one thousand or more customers who have a mailing address within the
12 city as of the last day of its taxable year, or (ii) it has merchant
13 customer contracts with merchants and the total number of locations
14 covered by those contracts equals one thousand or more locations in the
15 city to whom the banking corporation remitted payments for credit card
16 transactions during the taxable year, or (iii) it has receipts of one
17 million dollars or more in the taxable year from its customers who have
18 been issued credit cards by the banking corporation and have a mailing
19 address within the city, or (iv) it has receipts of one million dollars
20 or more arising from merchant customer contracts with merchants relating
21 to locations in the city, or (v) the sum of the number of customers
22 described in subparagraph (i) of this paragraph plus the number of
23 locations covered by its contracts described in subparagraph (ii) of
24 this paragraph equals one thousand or more, or the amount of its
25 receipts described in subparagraphs (iii) and (iv) of this paragraph
26 equals one million dollars or more. For purposes of this paragraph,
27 receipts from processing credit card transactions for merchants include
28 merchant discount fees received by the banking corporation.

29 (2) As used in this subdivision, the term "credit card" includes bank,
30 credit, travel and entertainment cards.

31 (d) Cross-Reference. For the taxation of corporations that are not
32 described in paragraph two of subdivision (a) of this section, that were
33 taxable under this subchapter for tax years beginning before January
34 first, two thousand fifteen, see subchapter three-A of this chapter.

35 § 11-640 Banking, corporation defined; exempt corporations. (a) For
36 the purpose of this part, a banking corporation means:

37 (1) every corporation or association organized under the laws of this
38 state which is authorized to do a banking business or which is doing a
39 banking business;

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

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

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

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

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

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

53 (8) the mortgage facilities corporation created in article seven of
54 the private housing finance law;

55 (9) any corporation sixty-five percent or more of whose voting stock
56 is owned or controlled, directly or indirectly, by a corporation or

1 corporations subject to article three-a of the banking law, or regis-
2 tered under the federal bank holding company act of nineteen hundred
3 fifty-six, as amended, or registered as a savings and loan holding
4 company, but excluding a diversified savings and loan holding company,
5 under the federal national housing act, as amended, or by a corporation
6 or corporations described in paragraphs one through eight of this subdivi-
7 sion, provided the corporation whose voting stock is so owned or
8 controlled is principally engaged in a business, regardless of where
9 conducted, which (i) might be lawfully conducted by a corporation
10 subject to article three of the banking law or by a national banking
11 association or (ii) is so closely related to banking or managing or
12 controlling banks as to be a proper incident thereto, as set forth in
13 paragraph eight of subsection (c) or subparagraph (F) of paragraph four
14 of subsection (k) of section four of the federal bank holding company
15 act of nineteen hundred fifty-six, as amended, or (iii) holds and
16 manages investment assets, including but not limited to bonds, notes,
17 debentures and other obligations for the payment of money, stocks, part-
18 nership interests or other equity interests, and other investment secu-
19 rities, and which is not a business described in subparagraph (i) or
20 (ii) of this paragraph.

21 (b) Banking business defined. The words "banking business" as used in
22 this section mean such business as a corporation or association may be
23 created to do under article three, three-B, five, five-A, six or ten of
24 the banking law or any business which a corporation or association is
25 authorized by such article to do. However, with respect to a national
26 banking association organized under the authority of the United States,
27 a federal savings bank, a federal savings and loan association or a
28 production credit association, the words "banking business" as used in
29 this section mean such business as a national banking association,
30 federal savings bank, federal savings and loan association or production
31 credit association, respectively, may be created to do or is authorized
32 to do under the laws of the United States or this state. The words
33 "banking business" as used in this section shall also mean such business
34 as any corporation or association organized under the authority of the
35 United States or organized under the laws of any other state or country
36 has authority to do which is substantially similar to the business which
37 a corporation or association may be created to do under article three,
38 three-B, five, five-A, six or ten of the banking law or any business
39 which a corporation or association is authorized by such article to do.

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

43 (d) Corporations taxable under subchapter two. Notwithstanding the
44 provisions of this part, all corporations of classes now or heretofore
45 taxable under subchapter two of this chapter shall continue to be taxa-
46 ble under subchapter two of this chapter, except: (1) corporations
47 organized under article five-A of the banking law; (2) corporations
48 subject to article three-A of the banking law, or registered under the
49 federal bank holding company act of nineteen hundred fifty-six, as
50 amended, or registered as a savings and loan holding company, but
51 excluding a diversified savings and loan holding company, under the
52 federal national housing act, as amended, which make a combined return
53 under the provisions of subdivision (f) of section 11-646 of this part;
54 (3) banking corporations described in paragraph nine of subdivision (a)
55 of this section; and (4) any captive REIT or captive RIC that is
56 required to be included in a combined return under the provisions of

1 section 11-646 of this part. Provided, however, that a corporation
2 described in paragraph three of this subdivision which was subject to
3 the tax imposed by subchapter two of this chapter for its taxable year
4 ending during nineteen hundred eighty-four may, on or before the due
5 date for filing its return, determined with regard to extensions, for
6 its taxable year ending during nineteen hundred eighty-five, make a one
7 time election to continue to be taxable under such subchapter two. Such
8 election shall continue to be in effect until revoked by the taxpayer.
9 In no event shall such election or revocation be for a part of a taxable
10 year.

11 (e) Corporations taxable under article thirty-three of the tax law.
12 Except for corporations described in subsection (l) of section fourteen
13 hundred fifty-three of the tax law, corporations liable to tax under
14 article thirty-three of the tax law shall not be subject to tax under
15 this part.

16 (f) A banking corporation organized under the laws of a country, or
17 any political subdivision thereof, other than the United States shall
18 not be deemed to be doing business in the city under this subchapter if
19 its activities in the city are limited solely to (1) investing or trad-
20 ing in stocks and securities for its own account within the meaning of
21 clause (ii) of subparagraph (A) of paragraph two of subsection (b) of
22 section eight hundred sixty-four of the internal revenue code or (2)
23 investing or trading in commodities for its own account within the mean-
24 ing of clause (ii) of subparagraph (B) of paragraph two of subsection
25 (b) of section eight hundred sixty-four of the internal revenue code or
26 (3) any combination of activities described in paragraphs one and two of
27 this subdivision.

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

51 For purposes of this paragraph, a corporation shall be considered to
52 be subject to tax under subchapter two of this chapter for a taxable
53 year if such corporation was not a taxpayer but was properly included in
54 a combined report filed pursuant to subdivision four of section 11-605
55 of this chapter for such taxable year and a corporation shall be consid-
56 ered to be subject to tax under this subchapter for a taxable year if

1 such corporation was not a taxpayer but was properly included in a
2 combined report filed pursuant to subdivision (f) or (g) of section
3 11-646 of this chapter for such taxable year. A corporation that was in
4 existence before January first, two thousand but first becomes a taxpay-
5 er in a taxable year beginning on or after January first, two thousand
6 and before January first, two thousand one, shall be considered for
7 purposes of this paragraph to have been subject to tax under subchapter
8 two of this chapter for its last taxable year beginning before January
9 first, two thousand if such corporation would have been subject to tax
10 under such subchapter for such taxable year if it had been a taxpayer
11 during such taxable year. A corporation that was in existence before
12 January first, two thousand but first becomes a taxpayer in a taxable
13 year beginning on or after January first, two thousand and before Janu-
14 ary first, two thousand one, shall be considered for purposes of this
15 paragraph to have been subject to tax under this subchapter for its last
16 taxable year beginning before January first, two thousand if such corpo-
17 ration would have been subject to tax under this subchapter for such
18 taxable year if it had been a taxpayer during such taxable year.

19 (2) Notwithstanding anything to the contrary contained in this section
20 other than subdivision (m) of this section, a corporation formed on or
21 after January first, two thousand and before January first, two thousand
22 one may elect to be subject to tax under this subchapter or under
23 subchapter two of this chapter for its first taxable year beginning on
24 or after January first, two thousand and before January first, two thou-
25 sand one in which either (i) sixty-five percent or more of its voting
26 stock is owned or controlled, directly or indirectly by a financial
27 holding company, provided the corporation whose voting stock is so owned
28 or controlled is principally engaged in activities that are described in
29 paragraph four or five of subdivision (k) of section four of the federal
30 bank holding company act of nineteen hundred fifty-six, as amended and
31 the regulations promulgated pursuant to the authority of such section or
32 (ii) it is a financial subsidiary. An election under this paragraph may
33 not be made by a corporation described in paragraphs one through eight
34 of subdivision (a) of this section or in subdivision (e) of this
35 section. In addition, an election under this paragraph may not be made
36 by a corporation that is a party to a reorganization, as defined in
37 subsection (a) of section three hundred sixty-eight of the internal
38 revenue code of nineteen hundred eighty-six, as amended, of a corpo-
39 ration described in paragraph one of this subdivision if both corpo-
40 rations were sixty-five percent or more owned or controlled, directly or
41 indirectly by the same interests at the time of the reorganization.

42 An election under this paragraph must be made by the taxpayer on or
43 before the due date for filing its return, determined with regard to
44 extensions of time for filing, for the applicable taxable year. The
45 election to be taxed under subchapter two of this chapter shall be made
46 by the taxpayer by filing the return required pursuant to subdivision
47 one of section 11-605 of this chapter and the election to be taxed under
48 this subchapter shall be made by the taxpayer by filing the return
49 required pursuant to subdivision (a) of section 11-646 of this chapter.
50 Any election made pursuant to this paragraph shall be irrevocable and
51 shall apply to each subsequent taxable year beginning on or after Janu-
52 ary first, two thousand and before January first, two thousand one,
53 provided that the stock ownership requirements described in subparagraph
54 (i) of this paragraph are met or such corporation described in subpara-
55 graph (ii) of this paragraph continues as a financial subsidiary.

1 (3) For purposes of this section, a financial subsidiary means a
2 corporation (i) sixty-five percent or more of whose voting stock is
3 owned or controlled, directly or indirectly by a banking corporation
4 described in paragraph one, two or three of subdivision (a) of this
5 section and (ii) is described in subdivision (g) of section five thou-
6 sand one hundred thirty-six-A of the revised statutes of the United
7 States or section forty-six of the federal deposit insurance act. For
8 purposes of this subchapter, the term "banking corporation" shall
9 include a corporation electing to be taxed under this subchapter pursu-
10 ant to paragraph two of this subdivision for so long as such election
11 shall be in effect.

12 (4) The provisions of this subdivision shall not apply to a captive
13 REIT or a captive RIC.

14 (h) Transitional provisions relating to the enactment and implementa-
15 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
16 to the contrary contained in this section other than subdivision (m) of
17 this section, a corporation that was in existence before January first,
18 two thousand one and was subject to tax under subchapter two of this
19 chapter for its last taxable year beginning before January first, two
20 thousand one, shall continue to be taxable under subchapter two for all
21 taxable years beginning on or after January first, two thousand one and
22 before January first, two thousand three, provided, however, this shall
23 not apply to any taxable year during which such corporation is a banking
24 corporation described in paragraphs one through eight of subdivision (a)
25 of this section. Notwithstanding anything to the contrary contained in
26 this section other than subdivision (m) of this section, a banking
27 corporation that was in existence before January first, two thousand one
28 and was subject to tax under this subchapter for its last taxable year
29 beginning before January first, two thousand one, shall continue to be
30 taxable under this subchapter for all taxable years beginning on or
31 after January first, two thousand one and before January first, two
32 thousand three. Provided, however, that nothing in this subdivision
33 shall prohibit a corporation that elected pursuant to subdivision (d) of
34 this section to be taxable under subchapter two of this chapter from
35 revoking that election in accordance with subdivision (d) of this
36 section.

37 For purposes of this paragraph, a corporation shall be considered to
38 be subject to tax under subchapter two of this chapter for a taxable
39 year if such corporation was not a taxpayer but was properly included in
40 a combined report filed pursuant to subdivision four of section 11-605
41 of this chapter for such taxable year and a corporation shall be consid-
42 ered to be subject to tax under this subchapter for a taxable year if
43 such corporation was not a taxpayer but was properly included in a
44 combined report filed pursuant to subdivision (f) or (g) of section
45 11-646 of this chapter for such taxable year. A corporation that was in
46 existence before January first, two thousand one but first becomes a
47 taxpayer in a taxable year beginning on or after January first, two
48 thousand one and before January first, two thousand three, shall be
49 considered for purposes of this paragraph to have been subject to tax
50 under subchapter two of this chapter for its last taxable year beginning
51 before January first, two thousand one if such corporation would have
52 been subject to tax under such subchapter for such taxable year if it
53 had been a taxpayer during such taxable year. A corporation that was in
54 existence before January first, two thousand one but first becomes a
55 taxpayer in a taxable year beginning on or after January first, two
56 thousand one and before January first, two thousand three, shall be

1 considered for purposes of this paragraph to have been subject to tax
2 under this subchapter for its last taxable year beginning before January
3 first, two thousand one if such corporation would have been subject to
4 tax under this subchapter for such taxable year if it had been a taxpay-
5 er during such taxable year.

6 (2) Notwithstanding anything to the contrary contained in this section
7 other than subdivision (m) of this section, a corporation formed on or
8 after January first, two thousand one and before January first, two
9 thousand three may elect to be subject to tax under this subchapter or
10 under subchapter two of this chapter for its first taxable year begin-
11 ning on or after January first, two thousand one and before January
12 first, two thousand three in which either (i) sixty-five percent or more
13 of its voting stock is owned or controlled, directly or indirectly by a
14 financial holding company, provided the corporation whose voting stock
15 is so owned or controlled is principally engaged in activities that are
16 described in paragraph four or five of subdivision (k) of section four
17 of the federal bank holding company act of nineteen hundred fifty-six,
18 as amended and the regulations promulgated pursuant to the authority of
19 such section or (ii) it is a financial subsidiary. An election under
20 this paragraph may not be made by a corporation described in paragraphs
21 one through eight of subdivision (a) of this section or in subdivision
22 (e) of this section. In addition, an election under this paragraph may
23 not be made by a corporation that is a party to a reorganization, as
24 defined in subsection (a) of section three hundred sixty-eight of the
25 internal revenue code of nineteen hundred eighty-six, as amended, of a
26 corporation described in paragraph one of this subdivision if both
27 corporations were sixty-five percent or more owned or controlled,
28 directly or indirectly by the same interests at the time of the reorgan-
29 ization.

30 An election under this paragraph must be made by the taxpayer on or
31 before the due date for filing its return, determined with regard to
32 extensions of time for filing, for the applicable taxable year. The
33 election to be taxed under subchapter two of this chapter shall be made
34 by the taxpayer by filing the return required pursuant to subdivision
35 one of section 11-605 of this chapter and the election to be taxed under
36 this subchapter shall be made by the taxpayer by filing the return
37 required pursuant to subdivision (a) of section 11-646 of this chapter.
38 Any election made pursuant to this paragraph shall be irrevocable and
39 shall apply to each subsequent taxable year beginning on or after Janu-
40 ary first, two thousand one and before January first, two thousand
41 three, provided that the stock ownership requirements described in
42 subparagraph (i) of this paragraph are met or such corporation described
43 in subparagraph (ii) of this paragraph continues as a financial subsid-
44 iary.

45 (3) For purposes of this section, a financial subsidiary means a
46 corporation (i) sixty-five percent or more of whose voting stock is
47 owned or controlled, directly or indirectly by a banking corporation
48 described in paragraph one, two or three of subdivision (a) of this
49 section and (ii) is described in subdivision (g) of section five thou-
50 sand one hundred thirty-six-A of the revised statutes of the United
51 States or section forty-six of the federal deposit insurance act. For
52 purposes of this subchapter, the term "banking corporation" shall
53 include a corporation electing to be taxed under this subchapter pursu-
54 ant to paragraph two of this subdivision for so long as such election
55 shall be in effect.

1 (i) Transitional provisions relating to the enactment and implementa-
2 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
3 to the contrary contained in this section other than subdivision (m) of
4 this section, a corporation that was in existence before January first,
5 two thousand three and was subject to tax under subchapter two of this
6 chapter for its last taxable year beginning before January first, two
7 thousand three, shall continue to be taxable under subchapter two for
8 all taxable years beginning on or after January first, two thousand
9 three and before January first, two thousand four provided, however,
10 this shall not apply to any taxable year during which such corporation
11 is a banking corporation described in paragraphs one through eight of
12 subdivision (a) of this section. Notwithstanding anything to the contra-
13 ry contained in this section other than subdivision (m) of this section,
14 a banking corporation that was in existence before January first, two
15 thousand three and was subject to tax under this subchapter for its last
16 taxable year beginning before January first, two thousand three, shall
17 continue to be taxable under this subchapter for all taxable years
18 beginning on or after January first, two thousand three and before Janu-
19 ary first, two thousand four. Provided, however, that nothing in this
20 subdivision shall prohibit a corporation that elected pursuant to subdivi-
21 sion (d) of this section to be taxable under subchapter two of this
22 chapter from revoking that election in accordance with subdivision (d)
23 of this section.

24 For purposes of this paragraph, a corporation shall be considered to
25 be subject to tax under subchapter two of this chapter for a taxable
26 year if such corporation was not a taxpayer but was properly included in
27 a combined report filed pursuant to subdivision four of section 11-605
28 of this chapter for such taxable year and a corporation shall be consid-
29 ered to be subject to tax under this subchapter for a taxable year if
30 such corporation was not a taxpayer but was properly included in a
31 combined report filed pursuant to subdivision (f) or (g) of section
32 11-646 of this chapter for such taxable year. A corporation that was in
33 existence before January first, two thousand three but first becomes a
34 taxpayer in a taxable year beginning on or after January first, two
35 thousand three and before January first, two thousand four, shall be
36 considered for purposes of this paragraph to have been subject to tax
37 under subchapter two of this chapter for its last taxable year beginning
38 before January first, two thousand three if such corporation would have
39 been subject to tax under such subchapter for such taxable year if it
40 had been a taxpayer during such taxable year. A corporation that was in
41 existence before January first, two thousand three but first becomes a
42 taxpayer in a taxable year beginning on or after January first, two
43 thousand three and before January first, two thousand four, shall be
44 considered for purposes of this paragraph to have been subject to tax
45 under this subchapter for its last taxable year beginning before January
46 first, two thousand three if such corporation would have been subject to
47 tax under this subchapter for such taxable year if it had been a taxpay-
48 er during such taxable year.

49 (2) Notwithstanding anything to the contrary contained in this section
50 other than subdivision (m) of this section, a corporation formed on or
51 after January first, two thousand three and before January first, two
52 thousand four may elect to be subject to tax under this subchapter or
53 under subchapter two of this chapter for its first taxable year begin-
54 ning on or after January first, two thousand three and before January
55 first, two thousand four in which either (i) sixty-five percent or more
56 of its voting stock is owned or controlled, directly or indirectly by a

1 financial holding company, provided the corporation whose voting stock
2 is so owned or controlled is principally engaged in activities that are
3 described in paragraphs four or five of subdivision (k) of section four
4 of the federal bank holding company act of nineteen hundred fifty-six,
5 as amended and the regulations promulgated pursuant to the authority of
6 such section or (ii) it is a financial subsidiary. An election under
7 this paragraph may not be made by a corporation described in paragraphs
8 one through eight of subdivision (a) of this section or in subdivision
9 (e) of this section. In addition, an election under this paragraph may
10 not be made by a corporation that is a party to a reorganization, as
11 defined in subsection (a) of section three hundred sixty-eight of the
12 internal revenue code of nineteen hundred eighty-six, as amended, of a
13 corporation described in paragraph one of this subdivision if both
14 corporations were sixty-five percent or more owned or controlled,
15 directly or indirectly by the same interests at the time of the reorgan-
16 ization.

17 An election under this paragraph must be made by the taxpayer on or
18 before the due date for filing its return, determined with regard to
19 extensions of time for filing, for the applicable taxable year. The
20 election to be taxed under subchapter two of this chapter shall be made
21 by the taxpayer by filing the return required pursuant to subdivision
22 one of section 11-605 of this chapter and the election to be taxed under
23 this subchapter shall be made by the taxpayer by filing the return
24 required pursuant to subdivision (a) of section 11-646 of this chapter.
25 Any election made pursuant to this paragraph shall be irrevocable and
26 shall apply to each subsequent taxable year beginning on or after Janu-
27 ary first, two thousand three and before January first, two thousand
28 four, provided that the stock ownership requirements described in
29 subparagraph (i) of this paragraph are met or such corporation described
30 in subparagraph (ii) of this paragraph continues as a financial subsid-
31 iary.

32 (3) For purposes of this section, a financial subsidiary means a
33 corporation (i) sixty-five percent or more of whose voting stock is
34 owned or controlled, directly or indirectly by a banking corporation
35 described in paragraph one, two or three of subdivision (a) of this
36 section and (ii) is described in subdivision (g) of section five thou-
37 sand one hundred thirty-six-A of the revised statutes of the United
38 States or section forty-six of the federal deposit insurance act. For
39 purposes of this subchapter, the term "banking corporation" shall
40 include a corporation electing to be taxed under this subchapter pursu-
41 ant to paragraph two of this subdivision for so long as such election
42 shall be in effect.

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

1 four and was subject to tax under this subchapter for its last taxable
2 year beginning before January first, two thousand four, shall continue
3 to be taxable under this subchapter for all taxable years beginning on
4 or after January first, two thousand four and before January first, two
5 thousand six. Provided, however, that nothing in this subdivision shall
6 prohibit a corporation that elected pursuant to subdivision (d) of this
7 section to be taxable under subchapter two of this chapter from revoking
8 that election in accordance with subdivision (d) of this section.

9 For purposes of this paragraph, a corporation shall be considered to
10 be subject to tax under subchapter two of this chapter for a taxable
11 year if such corporation was not a taxpayer but was properly included in
12 a combined report filed pursuant to subdivision four of section 11-605
13 of this chapter for such taxable year and a corporation shall be consid-
14 ered to be subject to tax under this subchapter for a taxable year if
15 such corporation was not a taxpayer but was properly included in a
16 combined report filed pursuant to subdivision (f) or (g) of section
17 11-646 of this chapter for such taxable year. A corporation that was in
18 existence before January first, two thousand four but first becomes a
19 taxpayer in a taxable year beginning on or after January first, two
20 thousand four and before January first, two thousand six, shall be
21 considered for purposes of this paragraph to have been subject to tax
22 under subchapter two of this chapter for its last taxable year beginning
23 before January first, two thousand four if such corporation would have
24 been subject to tax under such subchapter for such taxable year if it
25 had been a taxpayer during such taxable year. A corporation that was in
26 existence before January first, two thousand four but first becomes a
27 taxpayer in a taxable year beginning on or after January first, two
28 thousand four and before January first, two thousand six, shall be
29 considered for purposes of this paragraph to have been subject to tax
30 under this subchapter for its last taxable year beginning before January
31 first, two thousand four if such corporation would have been subject to
32 tax under this subchapter for such taxable year if it had been a taxpay-
33 er during such taxable year.

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

1 directly or indirectly by the same interests at the time of the reorgan-
2 ization.

3 An election under this paragraph must be made by the taxpayer on or
4 before the due date for filing its return, determined with regard to
5 extensions of time for filing, for the applicable taxable year. The
6 election to be taxed under subchapter two of this chapter shall be made
7 by the taxpayer by filing the return required pursuant to subdivision
8 one of section 11-605 of this chapter and the election to be taxed under
9 this subchapter shall be made by the taxpayer by filing the return
10 required pursuant to subdivision (a) of section 11-646 of this chapter.
11 Any election made pursuant to this paragraph shall be irrevocable and
12 shall apply to each subsequent taxable year beginning on or after Janu-
13 ary first, two thousand four and before January first, two thousand six,
14 provided that the stock ownership requirements described in subparagraph
15 (i) of this paragraph are met or such corporation described in subpara-
16 graph (ii) of this paragraph continues as a financial subsidiary.

17 (3) For purposes of this section, a financial subsidiary means a
18 corporation (i) sixty-five percent or more of whose voting stock is
19 owned or controlled, directly or indirectly by a banking corporation
20 described in paragraph one, two or three of subdivision (a) of this
21 section and (ii) is described in subdivision (g) of section five thou-
22 sand one hundred thirty-six-A of the revised statutes of the United
23 States or section forty-six of the federal deposit insurance act. For
24 purposes of this subchapter, the term "banking corporation" shall
25 include a corporation electing to be taxed under this subchapter pursu-
26 ant to paragraph two of this subdivision for so long as such election
27 shall be in effect.

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

51 For purposes of this paragraph, a corporation shall be considered to
52 be subject to tax under subchapter two of this chapter for a taxable
53 year if such corporation was not a taxpayer but was properly included in
54 a combined report filed pursuant to subdivision four of section 11-605
55 of this chapter for such taxable year and a corporation shall be consid-
56 ered to be subject to tax under this subchapter for a taxable year if

1 such corporation was not a taxpayer but was properly included in a
2 combined report filed pursuant to subdivision (f) or (g) of section
3 11-646 of this part for such taxable year. A corporation that was in
4 existence before January first, two thousand six but first becomes a
5 taxpayer in a taxable year beginning on or after January first, two
6 thousand six and before January first, two thousand eight, shall be
7 considered for purposes of this paragraph to have been subject to tax
8 under subchapter two of this chapter for its last taxable year beginning
9 before January first, two thousand six if such corporation would have
10 been subject to tax under such subchapter for such taxable year if it
11 had been a taxpayer during such taxable year. A corporation that was in
12 existence before January first, two thousand six but first becomes a
13 taxpayer in a taxable year beginning on or after January first, two
14 thousand six and before January first, two thousand eight, shall be
15 considered for purposes of this paragraph to have been subject to tax
16 under this subchapter for its last taxable year beginning before January
17 first, two thousand six if such corporation would have been subject to
18 tax under this subchapter for such taxable year if it had been a taxpay-
19 er during such taxable year.

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

44 An election under this paragraph must be made by the taxpayer on or
45 before the due date for filing its return, determined with regard to
46 extensions of time for filing, for the applicable taxable year. The
47 election to be taxed under subchapter two of this chapter shall be made
48 by the taxpayer by filing the return required pursuant to subdivision
49 one of section 11-605 of this chapter and the election to be taxed under
50 this subchapter shall be made by the taxpayer by filing the return
51 required pursuant to subdivision (a) of section 11-646 of this part. Any
52 election made pursuant to this paragraph shall be irrevocable and shall
53 apply to each subsequent taxable year beginning on or after January
54 first, two thousand six and before January first, two thousand eight,
55 provided that the stock ownership requirements described in subparagraph

1 (i) of this paragraph are met or such corporation described in subpara-
2 graph (ii) of this paragraph continues as a financial subsidiary.

3 (3) For purposes of this section, a financial subsidiary means a
4 corporation (i) sixty-five percent or more of whose voting stock is
5 owned or controlled, directly or indirectly by a banking corporation
6 described in paragraph one, two or three of subdivision (a) of this
7 section and (ii) is described in subdivision (g) of section five thou-
8 sand one hundred thirty-six-A of the revised statutes of the United
9 States or section forty-six of the federal deposit insurance act. For
10 purposes of this subchapter, the term "banking corporation" shall
11 include a corporation electing to be taxed under this subchapter pursu-
12 ant to paragraph two of this subdivision for so long as such election
13 shall be in effect.

14 (1) Transitional provisions relating to the enactment and implementa-
15 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
16 to the contrary contained in this section other than subdivision (m) of
17 this section, a corporation that was in existence before January first,
18 two thousand fourteen and was subject to tax under subchapter two of
19 this chapter for its last taxable year beginning before January first,
20 two thousand fourteen, shall continue to be taxable under such subchap-
21 ter for all taxable years beginning on or after January first, two thou-
22 sand fourteen and before January first, two thousand seventeen,
23 provided, however, this shall not apply to any taxable year during which
24 such corporation is a banking corporation described in paragraphs one
25 through eight of subdivision (a) of this section. Notwithstanding
26 anything to the contrary contained in this section other than subdivi-
27 sion (m) of this section, a banking corporation or corporation that was
28 in existence before January first, two thousand fourteen and was subject
29 to tax under this subchapter for its last taxable year beginning before
30 January first, two thousand fourteen, shall continue to be taxable under
31 this subchapter for all taxable years beginning on or after January
32 first, two thousand fourteen and before January first, two thousand
33 seventeen only if the corporation is a banking corporation as defined in
34 subdivision (a) of this section or the corporation satisfies the
35 requirements for a corporation to elect to be taxable under this
36 subchapter. Provided further, that nothing in this subdivision shall
37 prohibit a corporation that elected pursuant to subdivision (d) of this
38 section to be taxable under subchapter two of this chapter from revoking
39 that election in accordance with subdivision (d) of this section. For
40 purposes of this paragraph, a corporation shall be considered to be
41 subject to tax under subchapter two of this chapter for a taxable year
42 if such corporation was not a taxpayer but was properly included in a
43 combined report filed pursuant to subdivision four of section 11-605 of
44 this chapter for such taxable year and a corporation shall be considered
45 to be subject to tax under this subchapter for a taxable year if such
46 corporation was not a taxpayer but was properly included in a combined
47 report filed pursuant to subdivision (f) or (g) of section 11-646 of
48 this part for such taxable year. A corporation that was in existence
49 before January first, two thousand fourteen but first becomes a taxpayer
50 in a taxable year beginning on or after January first, two thousand
51 fourteen and before January first, two thousand seventeen, shall be
52 considered for purposes of this paragraph to have been subject to tax
53 under subchapter two of this chapter for its last taxable year beginning
54 before January first, two thousand fourteen if such corporation would
55 have been subject to tax under such subchapter for such taxable year if
56 it had been a taxpayer during such taxable year. A corporation that was

1 in existence before January first, two thousand fourteen but first
2 becomes a taxpayer in a taxable year beginning on or after January
3 first, two thousand fourteen and before January first, two thousand
4 seventeen, shall be considered for purposes of this paragraph to have
5 been subject to tax under this subchapter for its last taxable year
6 beginning before January first, two thousand fourteen if such corpo-
7 ration would have been subject to tax under this subchapter for such
8 taxable year if it had been a taxpayer during such taxable year.

9 (2) Notwithstanding anything to the contrary contained in this section
10 other than subdivision (m) of this section, a corporation formed on or
11 after January first, two thousand fourteen and before January first, two
12 thousand seventeen may elect to be subject to tax under this subchapter
13 or under subchapter two of this chapter for its first taxable year
14 beginning on or after January first, two thousand fourteen and before
15 January first, two thousand seventeen in which either (i) sixty-five
16 percent or more of its voting stock is owned or controlled, directly or
17 indirectly by a financial holding company, provided the corporation
18 whose voting stock is so owned or controlled is principally engaged in
19 activities that are described in paragraph four or five of subdivision
20 (k) of section four of the federal bank holding company act of nineteen
21 hundred fifty-six, as amended and the regulations promulgated pursuant
22 to the authority of such section or (ii) it is a financial subsidiary.
23 An election under this paragraph may not be made by a corporation
24 described in paragraphs one through eight of subdivision (a) of this
25 section or in subdivision (e) of this section. In addition, an election
26 under this paragraph may not be made by a corporation that is a party to
27 a reorganization, as defined in subsection (a) of section three hundred
28 sixty-eight of the internal revenue code of nineteen hundred eighty-six,
29 as amended, of a corporation described in paragraph one of this subdivi-
30 sion if both corporations were sixty-five percent or more owned or
31 controlled, directly or indirectly by the same interests at the time of
32 the reorganization.

33 An election under this paragraph must be made by the taxpayer on or
34 before the due date for filing its return, determined with regard to
35 extensions of time for filing, for the applicable taxable year. The
36 election to be taxed under subchapter two of this chapter shall be made
37 by the taxpayer by filing the return required pursuant to subdivision
38 one of section 11-605 of this chapter and the election to be taxed under
39 this subchapter shall be made by the taxpayer by filing the return
40 required pursuant to subdivision (a) of section 11-646 of this part. Any
41 election made pursuant to this paragraph shall be irrevocable and shall
42 apply to each subsequent taxable year beginning on or after January
43 first, two thousand fourteen and before January first, two thousand
44 seventeen, provided that the stock ownership and activities requirements
45 described in subparagraph (i) of this paragraph are met or such corpo-
46 ration described in subparagraph (ii) of this paragraph continues as a
47 financial subsidiary.

48 (3) For purposes of this section, a financial subsidiary means a
49 corporation (i) sixty-five percent or more of whose voting stock is
50 owned or controlled, directly or indirectly by a banking corporation
51 described in paragraph one, two or three of subdivision (a) of this
52 section and (ii) is described in subdivision (g) of section five thou-
53 sand one hundred thirty-six-A of the revised statutes of the United
54 States or section forty-six of the federal deposit insurance act. For
55 purposes of this subchapter, the term "banking corporation" shall
56 include a corporation electing to be taxed under this subchapter pursu-

1 ant to paragraph two of this subdivision for so long as such election
2 shall be in effect.

3 (m) (1) Notwithstanding anything in this part to the contrary, if any
4 of the conditions described in paragraph three of this subdivision apply
5 to a corporation that has made either the election to be taxable under
6 subchapter two of chapter six of this title pursuant to the Gramm-Leach-
7 Bliley transitional provisions in this section, or the election pursuant
8 to subdivision (d) of this section to continue to be taxable under
9 subchapter two of chapter six of this title, hereinafter the "electing
10 corporation", then such corporation shall be deemed to have revoked the
11 election as of the first day of the taxable year in which such condition
12 applied.

13 (2) Notwithstanding anything in this part to the contrary, if any of
14 the conditions described in paragraph three of this subdivision apply to
15 a corporation required to be taxable under subchapter two of chapter six
16 of this title pursuant to the Gramm-Leach-Bliley transitional provisions
17 in this section, hereinafter the "grandfathered corporation", such
18 corporation, if it is otherwise described in subdivision (a) of this
19 section, shall be taxable under this part as of the first day of the
20 taxable year in which such condition applied.

21 (3) The provisions of paragraph one and paragraph two of this subdivi-
22 sion shall apply if any of the following conditions exist or occur with
23 respect to the electing corporation or the grandfathered corporation in
24 a taxable year, including any short taxable year, beginning on or after
25 January first, two thousand nine:

26 (A) the corporation ceases to be a taxpayer under subchapter two of
27 chapter six of this title;

28 (B) the corporation becomes subject to the fixed dollar minimum tax
29 under clause four of subparagraph a of paragraph (E) of subdivision one
30 of section 11-604 of this chapter;

31 (C) the corporation has no wages or receipts allocable to the city
32 pursuant to subdivision three of section 11-604 of this chapter, or is
33 otherwise inactive; provided that this subparagraph shall not apply to a
34 corporation which is engaged in the active conduct of a trade or busi-
35 ness, or substantially all of the assets of which are stock and securi-
36 ties of corporations which are directly or indirectly controlled by it
37 and are engaged in the active conduct of a trade or business;

38 (D) sixty-five percent or more of the voting stock of the corporation
39 becomes owned or controlled directly by a corporation that acquired the
40 stock in a transaction, or series of related transactions, that quali-
41 fies as a purchase within the meaning of paragraph three of subsection
42 (h) of section three hundred thirty-eight of the internal revenue code
43 unless the corporation whose stock was acquired and the corporation
44 acquiring the stock were, immediately prior to such purchase, members of
45 the same affiliated group, as such term is defined in section fifteen
46 hundred four of the internal revenue code without regard to the exclu-
47 sions provided for in subsection (b) of such section; or

48 (E) the corporation, in a transaction or series of related trans-
49 actions, acquires assets, whether by contribution, purchase, or other-
50 wise, having an average value, determined in accordance with subdivision
51 two of section 11-604 of this chapter, or, if greater, a total tax
52 basis, in excess of forty percent of the average value, or, if greater,
53 the total tax basis, of all the assets of the corporation immediately
54 prior to such acquisition and as a result of such acquisition the corpo-
55 ration is principally engaged in a business that is different from the
56 business immediately prior to such acquisition, provided that such

1 different business is described in subparagraph (i) or (ii) of paragraph
2 nine of subdivision (a) of this section.

3 (n) Transitional provisions relating to the enactment and implementa-
4 tion of the federal Gramm-Leach-Bliley act. (1) Notwithstanding anything
5 to the contrary contained in this section other than subdivision (m) of
6 this section, a corporation that was in existence before January first,
7 two thousand seventeen and was subject to tax under subchapter two of
8 this chapter for its last taxable year beginning before January first,
9 two thousand seventeen, shall continue to be taxable under such subchap-
10 ter for all taxable years beginning on or after January first, two thou-
11 sand seventeen and before January first, two thousand twenty, provided,
12 however, this shall not apply to any taxable year during which such
13 corporation is a banking corporation described in paragraphs one through
14 eight of subdivision (a) of this section. Notwithstanding anything to
15 the contrary contained in this section other than subdivision (m) of
16 this section, a banking corporation or corporation that was in existence
17 before January first, two thousand seventeen and was subject to tax
18 under this subchapter for its last taxable year beginning before January
19 first, two thousand seventeen, shall continue to be taxable under this
20 subchapter for all taxable years beginning on or after January first,
21 two thousand seventeen and before January first, two thousand twenty
22 only if the corporation is a banking corporation as defined in subdivi-
23 sion (a) of this section or the corporation satisfies the requirements
24 for a corporation to elect to be taxable under this subchapter. Provided
25 further, that nothing in this subdivision shall prohibit a corporation
26 that elected pursuant to subdivision (d) of this section to be taxable
27 under subchapter two of this chapter from revoking that election in
28 accordance with subdivision (d) of this section.

29 For purposes of this paragraph, a corporation shall be considered to
30 be subject to tax under subchapter two of this chapter for a taxable
31 year if such corporation was not a taxpayer but was properly included in
32 a combined report filed pursuant to subdivision four of section 11-605
33 of this chapter for such taxable year and a corporation shall be consid-
34 ered to be subject to tax under this subchapter for a taxable year if
35 such corporation was not a taxpayer but was properly included in a
36 combined report filed pursuant to subdivision (f) or (g) of section
37 11-646 of this part for such taxable year. A corporation that was in
38 existence before January first, two thousand seventeen but first becomes
39 a taxpayer in a taxable year beginning on or after January first, two
40 thousand seventeen and before January first, two thousand twenty, shall
41 be considered for purposes of this paragraph to have been subject to tax
42 under subchapter two of this chapter for its last taxable year beginning
43 before January first, two thousand seventeen if such corporation would
44 have been subject to tax under such subchapter for such taxable year if
45 it had been a taxpayer during such taxable year. A corporation that was
46 in existence before January first, two thousand seventeen but first
47 becomes a taxpayer in a taxable year beginning on or after January
48 first, two thousand seventeen and before January first, two thousand
49 twenty, shall be considered for purposes of this paragraph to have been
50 subject to tax under this subchapter for its last taxable year beginning
51 before January first, two thousand seventeen if such corporation would
52 have been subject to tax under this subchapter for such taxable year if
53 it had been a taxpayer during such taxable year.

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

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

22 An election under this paragraph shall be made by the taxpayer on or
23 before the due date for filing its return, determined with regard to
24 extensions of time for filing, for the applicable taxable year. The
25 election to be taxed under subchapter two of this chapter shall be made
26 by the taxpayer by filing the return required pursuant to subdivision
27 one of section 11-605 of this chapter and the election to be taxed under
28 this subchapter shall be made by the taxpayer by filing the return
29 required pursuant to subdivision (a) of section 11-646 of this part. Any
30 election made pursuant to this paragraph shall be irrevocable and shall
31 apply to each subsequent taxable year beginning on or after January
32 first, two thousand seventeen and before January first, two thousand
33 twenty, provided that the stock ownership and activities requirements
34 described in subparagraph (i) of this paragraph are met or such corpo-
35 ration described in subparagraph (ii) of this paragraph continues as a
36 financial subsidiary.

37 (3) For purposes of this subdivision, a financial subsidiary means a
38 corporation (i) sixty-five percent or more of whose voting stock is
39 owned or controlled, directly or indirectly by a banking corporation
40 described in paragraph one, two or three of subdivision (a) of this
41 section and (ii) is described in subdivision (g) of section five thou-
42 sand one hundred thirty-six-A of the revised statutes of the United
43 States or section forty-six of the federal deposit insurance act. For
44 purposes of this subchapter, the term "banking corporation" shall
45 include a corporation electing to be taxed under this subchapter pursu-
46 ant to paragraph two of this subdivision for so long as such election
47 shall be in effect.

48 § 11-641 Computations of entire net income. (a) Entire net income
49 means total net income from all sources which shall be the same as the
50 entire taxable income, but not alternative minimum taxable income,

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

53 (2) which the taxpayer, in the case of a corporation which is exempt
54 from federal income tax, other than the tax on unrelated business taxa-
55 ble income imposed under section five hundred eleven of the internal
56 revenue code, but which is subject to tax under this part, would have

1 been required to report to the United States treasury department but for
2 such exemption, or

3 (3) which, in the case of a corporation organized under the laws of a
4 country other than the United States, is effectively connected with the
5 conduct of a trade or business within the United States as determined
6 under section eight hundred eighty-two of the internal revenue code, or

7 (4) which the taxpayer would have been required to report to the
8 United States treasury department if the taxpayer had not elected to be
9 taxed under subchapter s of chapter one of the internal revenue code, or

10 (5) which the taxpayer would have been required to report to the
11 United States treasury department if no election had been made to treat
12 the taxpayer as a qualified subchapter s subsidiary under paragraph
13 three of subsection (b) of section thirteen hundred sixty-one of the
14 internal revenue code, subject to the modifications and adjustments
15 provided in this section.

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

18 (1) (A) in the case of a corporation organized under the laws of a
19 country other than the United States, (i) any part of any income from
20 dividends or interest on any kind of stock, securities or indebtedness,
21 but only if such income is treated as effectively connected with the
22 conduct of a trade or business in the United States pursuant to section
23 eight hundred sixty-four of the internal revenue code, (ii) any income
24 exempt from federal taxable income under any treaty obligation of the
25 United States, but only if such income would be treated as effectively
26 connected in the absence of such exemption, provided that such treaty
27 obligation does not preclude the taxation of such income by a state, or
28 (iii) any income which would be treated as effectively connected if such
29 income were not excluded from gross income pursuant to subsection (a) of
30 section one hundred three of the internal revenue code; (B) in the case
31 of any other corporation, any part of any income from dividends or
32 interest on any kind of stock, securities or indebtedness; (C) except
33 that for purposes of subparagraphs (A) and (B) of this paragraph there
34 shall be excluded any amounts treated as dividends pursuant to section
35 seventy-eight of the internal revenue code and any amounts described in
36 paragraphs eleven and twelve of subdivision (e) of this section;

37 (2) taxes on or measured by income or profits paid or accrued within
38 the taxable year to the United States, or any of its possessions or to
39 any foreign country, taxes on or measured by income or profits paid or
40 accrued to the state or any subdivision thereof, including taxes imposed
41 under article nine, nine-A, thirteen-A, twenty-four-A, twenty-four-B of
42 the tax law, or under article thirty-two of the tax law as such article
43 was in effect on December thirty-first, two thousand fourteen and any
44 tax imposed under this part or subchapter two or three-A of this chap-
45 ter;

46 (4) for taxable years beginning after December thirty-first, nineteen
47 hundred eighty-one, except with respect to property which is a qualified
48 mass commuting vehicle described in subparagraph (D) of paragraph eight
49 of subsection (f) of section one hundred sixty-eight of the internal
50 revenue code, relating to qualified mass commuting vehicles, any amount
51 which the taxpayer claimed as a deduction in computing its federal taxa-
52 ble income solely as a result of an election made pursuant to the
53 provisions of such paragraph eight as it was in effect for agreements
54 entered into prior to January first, nineteen hundred eighty-four;

55 (5) for taxable years beginning after December thirty-first, nineteen
56 hundred eighty-one, except with respect to property which is a qualified

1 mass commuting vehicle described in subparagraph (D) of paragraph eight
2 of subsection (f) of section one hundred sixty-eight of the internal
3 revenue code, relating to qualified mass commuting vehicles, any amount
4 which the taxpayer would have been required to include in the computa-
5 tion of its federal taxable income had it not made the election permit-
6 ted pursuant to such paragraph eight as it was in effect for agreements
7 entered into prior to January first, nineteen hundred eighty-four;

8 (6) in the case of property placed in service in taxable years begin-
9 ning before nineteen hundred ninety-four, for taxable years beginning
10 after December thirty-first, nineteen hundred eighty-one, except with
11 respect to property subject to the provisions of section two hundred
12 eighty-F of the internal revenue code and property subject to the
13 provisions of section one hundred sixty-eight of the internal revenue
14 code which is placed in service in this state in taxable years beginning
15 after December thirty-first, nineteen hundred eighty-four, the amount
16 allowable as a deduction determined under section one hundred sixty-
17 eight of the internal revenue code;

18 (7) upon the disposition of property to which paragraph seven of
19 subdivision (e) of this section applies, the amount, if any, by which
20 the aggregate of the amounts described in such paragraph seven attribut-
21 able to such property exceeds the aggregate of the amounts described in
22 paragraph six of this subdivision attributable to such property;

23 (11) for taxable years beginning before January first, two thousand
24 ten, in the case of a taxpayer subject to the provisions of subdivision
25 (c) of section five hundred eighty-five of the internal revenue code,
26 the amount allowed as a deduction pursuant to section one hundred
27 sixty-six of such code; and

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

34 (13) for taxable years ending after September tenth, two thousand one,
35 in the case of qualified property described in paragraph two of
36 subsection k of section one hundred sixty-eight of the internal revenue
37 code, other than qualified resurgence zone property defined in subdivi-
38 sion (p) of this section, and other than qualified New York Liberty Zone
39 property described in paragraph two of subsection b of section fourteen
40 hundred-L of the internal revenue code, without regard to clause (i) of
41 subparagraph (C) of such paragraph, the amount allowable as a deduction
42 under section one hundred sixty-seven of the internal revenue code.

43 (14) for taxable years beginning on or after January first, two thou-
44 sand four, in the case of a taxpayer that is not an eligible farmer as
45 defined in subsection (n) of section six hundred six of the tax law, the
46 amount allowable as a deduction under sections one hundred seventy-nine,
47 one hundred sixty-seven and one hundred sixty-eight of the internal
48 revenue code with respect to a sport utility vehicle that is not a
49 passenger automobile as defined in paragraph five of subsection (d) of
50 section two hundred eighty-F of the internal revenue code.

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

53 (16) The amount of any federal deduction for taxes imposed under arti-
54 cle twenty-three of the tax law.

55 (17) For taxable years beginning in two thousand nineteen and two
56 thousand twenty, the amount of the increase in the federal interest

1 deduction allowed pursuant to paragraph ten of subdivision (j) of
2 section one hundred sixty-three of the internal revenue code.

3 (c)(1) Except as otherwise provided in paragraphs two and three of
4 this subdivision, in the case of the sale or exchange of property by a
5 taxpayer which has been subject to part one or two of this subchapter
6 three where the property has a higher adjusted basis for city tax
7 purposes than for federal tax purposes, there shall be allowed as a
8 deduction from entire net income, the portion of any gain or loss on
9 such sale which equals the difference in such basis.

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

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

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

20 (iii) where both the cost and the fair market price or value on Janu-
21 ary first, nineteen hundred sixty-six, are less than the value realized,
22 the basis for computing gain shall be the cost or the fair market price
23 or value on such date, whichever is higher;

24 (iv) where both the cost and the fair market price or value on January
25 first, nineteen hundred sixty-six, are in excess of the value realized,
26 the basis for computing loss shall be the cost or the fair market price
27 or value on such date, whichever is lower.

28 (3) In case of property of a savings bank acquired prior to January
29 first, nineteen hundred sixty-six, and disposed of thereafter, in
30 computing entire net income the basis of such property shall be the fair
31 market price or value on January first, nineteen hundred sixty-six.

32 (d) Entire net income shall not include any refund or credit of a tax
33 for which no exclusion or deduction was allowed in determining the
34 taxpayer's entire net income under this subchapter or subchapter two of
35 this chapter, or imposed by article twenty-three of the tax law for any
36 prior year.

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

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

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

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

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

52 (5) for taxable years beginning after December thirty-first, nineteen
53 hundred eighty-one, except with respect to property which is a qualified
54 mass commuting vehicle described in subparagraph (D) of paragraph eight
55 of subsection (f) of section one hundred sixty-eight of the internal
56 revenue code, relating to qualified mass commuting vehicles, any amount

1 which is included in the taxpayer's federal taxable income solely as a
2 result of an election made pursuant to the provisions of such paragraph
3 eight as it was in effect for agreements entered into prior to January
4 first, nineteen hundred eighty-four,

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

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

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

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

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

45 (11) (i) seventeen percent of interest income from subsidiary capital,
46 and

47 (ii) sixty percent of dividend income from subsidiary capital, and

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

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

1 (13) for the taxable years beginning before January first, two thou-
2 sand ten, in the case of a taxpayer which recaptures its balance of the
3 reserve for losses on loans for federal income tax purposes pursuant to
4 subdivision (c) of section five hundred eight-five of the internal
5 revenue code, any amount which is included in federal taxable income
6 pursuant to subdivision (c) of section five hundred eighty-five of such
7 code,

8 (14) for taxable years beginning before January first, two thousand
9 ten, in the case of a taxpayer subject to the provisions of subdivision
10 (c) of section five hundred eighty-five of the internal revenue code,
11 any amount which is included in federal taxable income as a result of a
12 recovery of a loan,

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

23 (16) one hundred percent of dividend income from subsidiary capital
24 received during the taxable year if that dividend income is directly
25 attributable to a dividend from a captive REIT or captive RIC for which
26 the captive REIT or captive RIC claimed a federal dividends paid
27 deduction and that captive REIT or captive RIC is included in a combined
28 report or return under subchapter two or part four of subchapter three
29 of this chapter.

30 (f) Provided the taxpayer has not made an election pursuant to para-
31 graph two of subdivision (b) of section 11-642 of this part, there shall
32 be allowed as a deduction in determining entire net income, to the
33 extent not deductible in determining federal taxable income, the
34 adjusted eligible net income of an international banking facility deter-
35 mined as follows:

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

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

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

50 (B) making or placing deposits with foreign persons which are banks or
51 foreign branches of banks, including foreign subsidiaries or foreign
52 branches of the taxpayer, or with other international banking facili-
53 ties; or

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

1 (3) Applicable expenses shall be any expenses or other deductions
2 attributable, directly or indirectly, to the eligible gross income
3 described in paragraph two of this subdivision.

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

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

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

19 (A) The numerator shall be

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

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

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

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

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

49 (8) For purposes of this subdivision, the term "foreign person" means:

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

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

54 (C) a foreign branch of a domestic corporation, including the taxpay-
55 er,

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

3 (E) an international banking facility.

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

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

16 (h)(1) For purposes of this subdivision, a "thrift institution" is a
17 banking corporation which satisfies the requirements of subparagraphs
18 (A) and (B) of this paragraph.

19 (A) Such banking corporation must be (i) a banking corporation as
20 defined in paragraph one of subdivision (a) of section 11-640 of this
21 part created or authorized to do business under article six or ten of
22 the banking law, (ii) a banking corporation as defined in paragraph two
23 or seven of subdivision (a) of section 11-640 of this part which is
24 doing a business substantially similar to the business which a corpo-
25 ration or association may be created to do under article six or ten of
26 the banking law or any business which a corporation or association is
27 authorized by such article to do, or (iii) a banking corporation as
28 defined in paragraph four or five of subdivision (a) of section 11-640
29 of this part.

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

1 security which represents ownership of a fractional undivided interest
2 in a trust, the assets of which consist primarily of mortgage loans,
3 provided that the real property which serves as security for the loans
4 is, or from the proceeds of the loan, will become, the type of property
5 described in clause (iv) of this subparagraph and any collateralized
6 mortgage obligation, the security for which consists primarily of mort-
7 gage loans, provided that the real property which serves as security for
8 the loans is, or from the proceeds of the loan, will become, the type of
9 property described in clause (iv) of this subparagraph; (viii) certifi-
10 cates of deposit in, or obligations of, a corporation organized under a
11 state law which specifically authorizes such corporation to insure the
12 deposits or share accounts of member associations; (ix) loans secured by
13 an interest in real property located within any urban renewal area to be
14 developed for predominantly residential use under an urban renewal plan
15 approved by the Secretary of Housing and Urban Development under part A
16 or part B of title I of the Housing Act of nineteen hundred forty-nine,
17 as amended, or located within any area covered by a program eligible for
18 assistance under section one hundred three of the Demonstration Cities
19 and Metropolitan Development Act of nineteen hundred sixty-six, as
20 amended, and loans made for the improvement of any such real property;
21 (x) loans secured by an interest in educational, health, or welfare
22 institutions or facilities, including structures designed or used prima-
23 rily for residential purposes for students, residents, and persons under
24 care, employees, or members of the staff of such institutions or facili-
25 ties; (xi) loans made for the payment of expenses of college or univer-
26 sity education or vocational training; (xii) property used by the
27 taxpayer in the conduct of business which consists principally of
28 acquiring the savings of the public and investing in loans; (xiii) loans
29 for which the taxpayer is the creditor and which are wholly secured by
30 loans described in clause (iv) of this subparagraph, but excluding loans
31 for which the taxpayer is the creditor to any banking corporation
32 described in paragraphs one through seven of subdivision (a) of section
33 11-640 of this part or a real estate investment trust, as such term is
34 defined in section eight hundred fifty-six of the internal revenue code,
35 and excluding loans which are treated by the taxpayer as subsidiary
36 capital for purposes of the deductions provided by paragraph eleven of
37 subdivision (e) of this section; (xiv) small business loans or small
38 farm loans located in low-income or moderate-income census tracts or
39 block numbering areas delineated by the United States bureau of the
40 census in the most recent decennial census; and (xv) community develop-
41 ment loans or community development investments. For purposes of clause
42 (xv) of this subparagraph, a "community development loan" is a loan that
43 (I) has as its primary purpose community development, (II) has not been
44 reported or collected by the taxpayer for consideration in the taxpay-
45 er's community reinvestment act evaluation pursuant to the federal
46 community reinvestment act of nineteen hundred seventy-seven, as
47 amended, or section twenty-eight-b of the banking law as a mortgage loan
48 described in clause (iv) of this subparagraph or a small business loan,
49 small farm loan, or consumer loan, (III) benefits the taxpayer's assess-
50 ment area or areas for purposes of the federal community reinvestment
51 act of nineteen hundred seventy-seven, as amended or section twenty-
52 eight-b of the banking law or a broader statewide or regional area that
53 includes the taxpayer's assessment area, and (IV) is identified in the
54 taxpayer's books and records as a community development loan for
55 purposes of its community reinvestment act evaluation pursuant to the
56 federal community reinvestment act of nineteen hundred seventy-seven, as

1 amended or section twenty-eight-b of the banking law. For purposes of
2 clause (xv) of this subparagraph, a "community development investment"
3 is an investment in a security which has as its primary purpose communi-
4 ty development and which is identified in the taxpayer's books and
5 records as a qualified investment for purposes of its community rein-
6 vestment act evaluation pursuant to the federal community reinvestment
7 act of nineteen hundred seventy-seven, as amended or section twenty-
8 eight-b of the banking law. For purposes of this subparagraph, "communi-
9 ty development" means (I) affordable housing, including multifamily
10 rental housing for low-income or moderate-income individuals; (II)
11 community services targeted to low-income or moderate-income individ-
12 uals; (III) activities that promote economic development by financing
13 businesses or farms that meet the size eligibility standards of the
14 small business administration's development company or small business
15 investment company programs or have gross annual revenues of one million
16 dollars or less; (IV) activities that revitalize or stabilize low-income
17 or moderate-income census tracts or block numbering areas delineated by
18 the United States bureau of the census in the most recent decennial
19 census; or (V) activities that seek to prevent defaults and/or foreclo-
20 sures in loans included in items (I) and (III) of this subclause.

21 (C) At the election of the taxpayer, the percentage specified in
22 subparagraph (B) of this paragraph shall be applied on the basis of the
23 average assets outstanding during the taxable year, in lieu of the close
24 of the taxable year. For purposes of clause (iv) of subparagraph (B) of
25 this paragraph, if a multifamily structure securing a loan is used in
26 part for nonresidential use purposes, the entire loan is deemed a resi-
27 dential real property loan if the planned residential use exceeds eighty
28 percent of the property's planned use, determined as of the time the
29 loan is made. Also, for purposes of clause (iv) of subparagraph (B) of
30 this paragraph, loans made to finance the acquisition or development of
31 land shall be deemed to be loans secured by an interest in residential
32 real property if there is a reasonable assurance that the property will
33 become residential real property within a period of three years from the
34 date of acquisition of such land; but this shall not apply for any taxa-
35 ble year unless, within such three year period, such land becomes resi-
36 dential real property. For purposes of determining whether any interest
37 in a REMIC qualifies under clause (vi) of subparagraph (B) of this para-
38 graph, any regular interest in another REMIC held by such REMIC shall be
39 treated as a loan described in clauses (i), (ii), (iii), (iv) or (v) of
40 subparagraph (B) of this paragraph under principles similar to the prin-
41 ciple of such clause (vi); except that if such REMICS are part of a
42 tiered structure, they shall be treated as one REMIC for purposes of
43 such clause (vi).

44 (2) For taxable years beginning before January first, two thousand
45 ten, a thrift institution must exclude from the computation of its
46 entire net income any amount allowed as a deduction for federal income
47 tax purposes pursuant to section one hundred sixty-six, five hundred
48 eight-five or five hundred ninety-three of the internal revenue code.

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

53 (A) the amount determined to be a reasonable addition to the reserve
54 for losses on nonqualifying loans, computed in the same manner as is
55 provided with respect to additions to the reserves for losses on loans
56 of banks under paragraph one of subdivision (i) of this section, plus

1 (B) the amount determined by the taxpayer to be a reasonable addition
2 to the reserve for losses on qualifying real property loans, but such
3 amount shall not exceed the amount determined under paragraph four or
4 five of this subdivision, whichever is the larger, but the amount deter-
5 mined under this subparagraph shall in no case be greater than the larg-
6 er of:

7 (i) the amount determined under paragraph five of this subdivision, or
8 (ii) the amount which, when added to the amount determined under
9 subparagraph (A) of this paragraph, equals the amount by which twelve
10 percent of the total deposits or withdrawable accounts of depositors of
11 the taxpayer at the close of such year exceeds the sum of its surplus,
12 undivided profits and reserves at the beginning of such year, taking
13 into account any portion thereof attributable to the period before the
14 first taxable year beginning after December thirty-first, nineteen
15 hundred fifty-one.

16 The taxpayer must include in its tax return for each year a computa-
17 tion of the amount of the addition to the bad debt reserve determined
18 under this subdivision. The use of a particular method in the return for
19 a taxable year is not a binding election by the taxpayer.

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

24 (B) The amount determined under subparagraph (A) of this paragraph
25 shall be reduced, but not below zero, by the amount determined under
26 subparagraph (A) of paragraph three of this subdivision.

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

31 (D) For purposes of this paragraph, entire net income shall be
32 computed

33 (i) by excluding from income any amount included therein by reason of
34 subparagraph (B) of paragraph eight of this subdivision,

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

37 (iii) by excluding from income an amount equal to the net gain for the
38 taxable year arising from the sale or exchange of stock of a corporation
39 or of obligations the interest on which is excludable from gross income
40 under section one hundred three of the internal revenue code.

41 (iv) Whenever a thrift institution is properly includable in a
42 combined return, entire net income, for purposes of this paragraph,
43 shall not exceed the lesser of the thrift institution's separately
44 computed entire net income as adjusted pursuant to clauses (i) through
45 (iii) of this subparagraph or the combined group's entire net income as
46 adjusted pursuant to clauses (i) through (iii) of this subparagraph.

47 (5) The amount determined under this paragraph for the taxable year
48 shall be computed in the same manner as is provided under paragraph one
49 of subdivision (i) of this section with respect to additions to reserves
50 for losses on loans of banks. Provided, however, that for any taxable
51 year beginning after nineteen hundred ninety-five, for purposes of such
52 computation, the base year shall be the later of (A) the last taxable
53 year beginning in nineteen hundred ninety-five or (B) the last taxable
54 year before the current year in which the amount determined under the
55 provisions of subparagraph (B) of paragraph three of this subdivision
56 exceeded the amount allowable under this paragraph.

1 (6) (A) (i) Each taxpayer described in paragraph one of this subdivi-
2 sion shall establish and maintain a New York reserve for losses on qual-
3 ifying real property loans, a New York reserve for losses on nonqualify-
4 ing loans and a supplemental reserve for losses on loans. Such reserves
5 shall be maintained for all subsequent taxable years that this subdivi-
6 sion applies to the taxpayer.

7 (ii) For purposes of this subdivision, such reserves shall be treated
8 as reserves for bad debts, but no deduction shall be allowed for any
9 addition to the supplemental reserve for losses on loans.

10 (iii) Except as provided in this clause, the balances of each such
11 reserve at the beginning of the first day of the first taxable year
12 beginning after December thirty-first, nineteen hundred ninety-five
13 shall be the same as the balances maintained for federal income tax
14 purposes in accordance with paragraph one of subdivision (c) of section
15 five hundred ninety-three of the internal revenue code as in existence
16 on December thirty-first, nineteen hundred ninety-five for the last day
17 of the last tax year beginning before January first, nineteen hundred
18 ninety-six. A taxpayer which maintained a New York reserve for loan
19 losses on qualifying real property loans in the last tax year beginning
20 before January first, nineteen hundred ninety-six shall have a continua-
21 tion of such New York reserve balance in lieu of the amount determined
22 under this clause.

23 (iv) Notwithstanding clause (ii) of this subparagraph, any amount
24 allocated to the reserve for losses on qualifying real property loans
25 pursuant to paragraph five of subdivision (c) of section five hundred
26 ninety-three of the internal revenue code as in effect immediately prior
27 to the enactment of the Tax Reform Act of nineteen hundred seventy six
28 shall not be treated as a reserve for bad debts for any purpose other
29 than determining the amount referred to in subparagraph (B) of paragraph
30 three of this subdivision, and for such purpose such amount shall be
31 treated as remaining in such reserve.

32 (B) Any debt becoming worthless or partially worthless in respect of a
33 qualifying real property loan shall be charged to the reserve for losses
34 on such loans and any debt becoming worthless or partially worthless in
35 respect of a nonqualifying loan shall be charged to the reserve for
36 losses on nonqualifying loans, except that any such debt may, at the
37 election of the taxpayer, be charged in whole or in part to the supple-
38 mental reserve for losses on loans.

39 (C) The New York reserve for losses on qualifying real property loans
40 shall be increased by the amount determined under subparagraph (B) of
41 paragraph three of this subdivision and the New York reserve for losses
42 on nonqualifying loans shall be increased by the amount determined under
43 subparagraph (A) of paragraph three of this subdivision.

44 (7)(A) For purposes of this subdivision, the term "qualifying real
45 property loan" shall mean any loan secured by an interest in improved
46 real property or secured by an interest in real property which is to be
47 improved out of the proceeds of the loan. Such term shall include any
48 mortgage-backed security which represents ownership of a fractional
49 undivided interest in a trust, the assets of which consist primarily of
50 mortgage loans, provided that the real property which serves as security
51 for the loans is, or from the proceeds of the loan, will become, the
52 type of property described in clauses (i) through (v) of subparagraph
53 (B) of paragraph one of this subdivision. However, such term shall not
54 include: (i) any loan evidenced by a security, as defined in subpara-
55 graph (C) of paragraph two of subdivision (g) of section one hundred
56 sixty-five of the internal revenue code; (ii) any loan, whether or not

1 evidenced by a security, as defined in such subparagraph (C) of para-
2 graph two of subdivision (g) of section one hundred sixty-five, the
3 primary obligor of which is (I) a government or political subdivision or
4 instrumentality thereof, (II) a banking corporation, or (III) any corpo-
5 ration sixty-five percent or more of whose voting stock is owned or
6 controlled, directly or indirectly, by the taxpayer or by a banking
7 corporation or bank holding company that owns or controls, directly or
8 indirectly, sixty-five percent or more of the voting stock of the
9 taxpayer; (iii) any loan, to the extent secured by a deposit in or share
10 of the taxpayer; or (iv) any loan which, within a sixty-day period
11 beginning in one taxable year of the creditor and ending in its next
12 taxable year, is made or acquired and then repaid or disposed of, unless
13 the transactions by which such loan was made or acquired and then repaid
14 or disposed of are established to be for bona fide business purposes.

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

17 (C) For purposes of this subdivision, the term "loan" shall mean debt,
18 as the term "debt" is used in section one hundred sixty-six of the
19 internal revenue code.

20 (D) A regular or residual interest in a REMIC, as such term is defined
21 in section eight hundred sixty-D of the internal revenue code, shall be
22 treated as a qualifying real property loan, except that, if less than
23 ninety-five percent of the assets of such REMIC are qualifying real
24 property loans, determined as if the taxpayer held the assets of the
25 REMIC, such interest shall be so treated only in the proportion which
26 the assets of such REMIC consist of such loans. For purposes of deter-
27 mining whether any interest in a REMIC qualifies under the provisions of
28 this paragraph, any interest in another REMIC held by such REMIC shall
29 be treated as a qualifying real property loan under principles similar
30 to the principles of this paragraph, except that if such REMICS are part
31 of a tiered structure, they shall be treated as one REMIC for purposes
32 of this paragraph.

33 (8)(A) Any distribution of property, as defined in subdivision (a) of
34 section three hundred seventeen of the internal revenue code, by a
35 thrift institution to a shareholder with respect to its stock, if such
36 distribution is not allowable as a deduction under section five hundred
37 ninety-one of such code, shall be treated as made

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

41 (ii) then out of the New York reserve for losses on qualifying real
42 property loans, to the extent additions to such reserve exceed the addi-
43 tions which would have been allowed under paragraph five of this subdivi-
44 sion,

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

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

48 This subparagraph shall apply in the case of any distribution in redemp-
49 tion of stock or in partial or complete liquidation of a thrift institu-
50 tion, except that any such distribution shall be treated as made first
51 out of the amount referred to in clause (ii) of this subparagraph,
52 second out of the amount referred to in clause (iii) of this subpara-
53 graph, third out of the amount referred to in clause (i) of this subpar-
54 agraph and then out of such other accounts as may be proper. This
55 subparagraph shall not apply to any transaction to which section three
56 hundred eighty-one of such code, relating to carryovers and certain

1 corporate acquisitions, applies, or to any distribution to the federal
2 savings and loan insurance corporation or the federal deposit insurance
3 corporation in redemption of an interest in an association or institu-
4 tion, if such interest was originally received by the federal savings
5 and loan insurance corporation or the federal deposit insurance corpo-
6 ration in exchange for financial assistance pursuant to subdivision (f)
7 of section four hundred six of the federal national housing act or
8 pursuant to subsection (c) of section thirteen of the federal deposit
9 insurance act.

10 (B) If any distribution is treated under subparagraph (A) of this
11 paragraph as having been made out of the reserves described in clauses
12 (ii) and (iii) of such subparagraph, the amount charged against such
13 reserve shall be the amount which, when reduced by the amount of tax
14 imposed under the internal revenue code and attributable to the inclu-
15 sion of such amount in gross income, is equal to the amount of such
16 distribution; and the amount so charged against such reserve shall be
17 included in the entire net income of the taxpayer.

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

22 (ii) For purposes of computing under this subdivision the amount of a
23 reasonable addition to the New York reserve for losses on qualifying
24 real property loans for any taxable year, the amount charged during any
25 year to such reserve pursuant to the provisions of subparagraph (B) of
26 this paragraph shall not be taken into account.

27 (9) A taxpayer which maintains a New York reserve for losses on quali-
28 fying real property loans and which ceases to meet the definition of a
29 thrift institution as defined in paragraph one of this subdivision, must
30 include in its entire net income for the last taxable year such para-
31 graph applied the excess of its New York reserve for losses on qualify-
32 ing real property loans over the greater of (A) its reserve for losses
33 on qualifying real property loans as of the last day of the last taxable
34 year such reserve is maintained for federal income tax purposes or (B)
35 the balance of the New York reserve for losses on qualifying real prop-
36 erty loans which would be allowable to the taxpayer for the last taxable
37 year such taxpayer met such definition of a thrift institution if the
38 taxpayer had computed its reserve balance pursuant to the method
39 described in subparagraph (A) of paragraph one of subdivision (i) of
40 this section.

41 (i) (1) For taxable years beginning before January first, two thousand
42 ten, a taxpayer subject to the provisions of subdivision (c) of section
43 five hundred eighty-five of the internal revenue code and not subject to
44 subdivision (h) of this section may, in computing entire net income,
45 deduct an amount equal to or less than the amount determined pursuant to
46 subparagraph (A) of this paragraph or subparagraph (B) of this para-
47 graph, whichever is greater. Provided, however, in no event shall the
48 deduction be less than the amount determined pursuant to such subpara-
49 graph (A).

50 (A) The amount determined pursuant to this subparagraph shall be the
51 amount necessary to increase the balance of its New York reserve for
52 losses on loans, at the close of the taxable year, to the amount which
53 bears the same ratio to loans outstanding at the close of the taxable
54 year as (i) the total bad debts sustained during the taxable year and
55 the five preceding taxable years, or, with the approval of the commis-
56 sioner of finance, a shorter period, adjusted for recoveries of bad

1 debts during such period, bears to (ii) the sum of the loans outstanding
2 at the close of such six or fewer taxable years.

3 (B)(i) The amount determined pursuant to this subparagraph shall be
4 the amount necessary to increase the balance of its New York reserve for
5 losses on loans, at the close of the taxable year, to the lower of:

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

7 (II) if the amount of loans outstanding at the close of the taxable
8 year is less than the amount of loans outstanding at the close of the
9 base year, the amount which bears the same ratio to loans outstanding at
10 the close of the taxable year as the balance of the reserve at the close
11 of the base year bears to the amount of loans outstanding at the close
12 of the base year.

13 (ii) For purposes of this paragraph, the base year shall be (I) for
14 taxable years beginning in nineteen hundred eighty-seven, the last tax-
15 able year before the most recent adoption of the experience method for
16 federal income tax purposes or for purposes of this part, whichever is
17 earlier, and (II) for taxable years beginning after nineteen hundred
18 eighty-seven, the last taxable year beginning before nineteen hundred
19 eighty-eight.

20 (2) (A) For taxable years beginning before January first, two thousand
21 ten, each taxpayer described in paragraph one of this subdivision shall
22 establish and maintain a New York reserve for losses on loans. Such
23 reserve shall be maintained for all subsequent taxable years. The
24 balance of the New York reserve for losses on loans at the beginning of
25 the first day of the first taxable year the taxpayer becomes subject to
26 this subdivision shall be the same as the balance at the beginning of
27 such day of the reserve for losses on loans maintained for federal
28 income tax purposes. The New York reserve for losses on loans shall be
29 reduced by an amount equal to the deduction allowed, but not more than
30 the amount allowable, for worthless debts for federal income tax
31 purposes pursuant to section one hundred sixty-six of the internal
32 revenue code plus the amount, if any, charged against its reserve for
33 losses on loans pursuant to paragraph four of subdivision (c) of section
34 five hundred eighty-five of such code.

35 (B) For purposes of subparagraph (A) of this paragraph, a taxpayer
36 which had previously been subject to the provisions of subdivision (h)
37 of this section shall establish a New York reserve for losses on loans
38 equal to the sum of (i) the greater of (I) the balance of its federal
39 reserve for losses on qualifying real property loans as of the first day
40 of the first taxable year the taxpayer becomes subject to the provisions
41 of this subdivision or (II) the greater of the amounts determined under
42 subparagraphs (A) and (B) of paragraph nine of subdivision (h) of this
43 section in the year such paragraph applied to the taxpayer, (ii) the
44 greater of (I) the balance in its federal reserve for losses on nonqual-
45 ifying loans as of the first day of the first taxable year the taxpayer
46 becomes subject to this subdivision or (II) the balance in its New York
47 reserve for losses on nonqualifying loans as of the last date the
48 taxpayer was subject to the provisions of subdivision (h) of this
49 section, and (iii) the balance in its supplemental reserve for losses on
50 loans as of the last date the taxpayer was subject to the provisions of
51 subdivision (h) of this section.

52 (3) The determination and treatment of the New York reserve balance,
53 including any additions thereto, subtractions therefrom, or recapture
54 thereof, for:

1 (A) any banking corporation which was subject to tax for federal
2 income tax purposes but not subject to tax under this part for prior
3 taxable years,

4 (B) any taxpayer which ceases to be subject to tax under this part, or

5 (C) any other unusual circumstances,

6 shall be determined by the commissioner of finance. Provided, however,
7 any banking corporation which was subject to tax for federal income tax
8 purposes but not subject to tax under this part for prior taxable years
9 shall have as its opening New York reserve for losses on loans the
10 amount determined by applying the provisions of subparagraph (A) of
11 paragraph one of this subdivision to loans outstanding at the close of
12 its last taxable year for federal income tax purposes ending prior to
13 the first taxable year for which the taxpayer is subject to tax under
14 this part and provided, further, that the provisions of subparagraph (B)
15 of paragraph one of this subdivision shall not apply.

16 (j) (1) For any taxable year beginning in nineteen hundred seventy-
17 three or for any period for which a tax is imposed under subdivision (b)
18 of section 11-639 of this part, entire net income shall be computed
19 without regard to the amount allowable as a deduction for bad debts or
20 an addition to a reserve for bad debts in computing federal taxable
21 income for the taxable year, but, in lieu thereof, a deduction shall be
22 allowed to the extent and in the manner authorized by subdivision five
23 of section 11-621 or subdivision (e) of section 11-629 of this subchap-
24 ter as if such provisions were set forth in full in this part and by
25 treating such provisions as applicable under this part.

26 (2) In the case of property placed in service prior to January first,
27 nineteen hundred seventy-three, for which the taxpayer properly adopted
28 a different method of computing depreciation under section 11-621 or
29 section 11-629 of this subchapter than was adopted for federal income
30 tax purposes with respect to such property, entire net income under this
31 part shall be computed without regard to the amount allowable as a
32 deduction for depreciation of such property in computing federal taxable
33 income for the taxable year but, in lieu thereof, shall be computed as
34 if such deduction were determined by the method of depreciation adopted
35 with respect to such property under section 11-621 or 11-629 of this
36 subchapter.

37 (3) In computing entire net income, the amount allowable as a
38 deduction for charitable contributions for federal income tax purposes
39 shall be: (a) increased for the first taxable year or period beginning
40 in nineteen hundred seventy-three by the amount of any contributions
41 made during such taxable year or period which were not allowable as a
42 deduction for charitable contributions for federal income tax purposes
43 for such taxable year or period because of an election pursuant to para-
44 graph two of subsection (a) of section one hundred seventy of the inter-
45 nal revenue code and which were not deductible in computing the tax due
46 under part one or two of this subchapter, and (b) decreased by any
47 amount allowed as a deduction for federal income tax purposes for the
48 taxable year under section one hundred seventy of the internal revenue
49 code as a carryover of excess contributions which are not made in such
50 taxable year and which were deductible in computing the tax due under
51 part one or two of this subchapter.

52 (4) There shall be excluded from the computation of entire net income
53 any amount allowed as a deduction for federal income tax purposes for
54 the taxable year under section twelve hundred twelve of the internal
55 revenue code as a capital loss carry forward to the taxable year, which

1 was deductible as a loss in computing the tax due under part one or two
2 of this subchapter.

3 (5) There shall be excluded from the computation of entire net income
4 the amount of any income or gain from the sale of real or personal prop-
5 erty which is includible in determining federal taxable income for the
6 taxable year pursuant to the installment method under section four
7 hundred fifty-three of the internal revenue code, to the extent that
8 such income or gain was includible in the computation of the tax due
9 under part one or two of this subchapter.

10 (6) To the extent not otherwise provided in this part, there shall be
11 excluded from entire net income the amount necessary to prevent the
12 taxation under this part of any other amount of income or gain which was
13 properly included in income or gain and was taxable under part one or
14 two of this subchapter and there shall be disallowed as a deduction in
15 computing entire net income any amount which was allowed as a deduction
16 in computing the tax due under such parts.

17 (k) (1) At the election of the taxpayer, there shall be deducted from
18 the portion of its entire net income allocated within the city, depreci-
19 ation with respect to any property such as described in paragraph two of
20 this subdivision, not exceeding twice the depreciation allowed with
21 respect to the same property for federal income tax purposes. Such
22 deduction shall be allowed only upon condition that entire net income be
23 computed without any deduction for depreciation or amortization of the
24 same property, and the total of all deductions allowed under parts one
25 and two of this subchapter three and this part in any taxable year or
26 years with respect to the depreciaton of any such property shall not
27 exceed its cost or other basis.

28 (2) Such deduction shall be allowed only with respect to tangible
29 property which is depreciable pursuant to section one hundred sixty-sev-
30 en of the internal revenue code, having a situs in this city and used in
31 the taxpayer's business, (i) constructed, reconstructed or erected after
32 December thirty-first, nineteen hundred sixty-five, pursuant to a
33 contract which was, on or before December thirty-first, nineteen hundred
34 sixty-seven, and at all times thereafter, binding on the taxpayer or,
35 property, the physical construction, reconstruction or erection of which
36 began on or before December thirty-first, nineteen hundred sixty-seven
37 or which began after such date pursuant to an order placed on or before
38 December thirty-first, nineteen hundred sixty-seven, and then only with
39 respect to that portion of the basis thereof which is properly attribut-
40 able to such construction, reconstruction or erection after December
41 thirty-first, nineteen hundred sixty-five, or (ii) acquired after Decem-
42 ber thirty-first, nineteen hundred sixty-five, pursuant to a contract
43 which was, on or before December thirty-first, nineteen hundred sixty-
44 seven, and at all times thereafter, binding on the taxpayer or pursuant
45 to an order placed on or before December thirty-first, nineteen hundred
46 sixty-seven, by purchase as defined in subdivision (d) of section one
47 hundred seventy-nine of the internal revenue code, if the original use
48 of such property commenced with the taxpayer, commenced in this city and
49 commenced after December thirty-first, nineteen hundred sixty-five, or
50 (iii) acquired, constructed, reconstructed, or erected subsequent to
51 December thirty-first, nineteen hundred sixty-seven, if such acquisi-
52 tion, construction, reconstruction or erection is pursuant to a plan of
53 the taxpayer which was in existence December thirty-first, nineteen
54 hundred sixty-seven and not thereafter substantially modified, and such
55 acquisition, construction, reconstruction or erection would qualify
56 under the rules in paragraph four, five or six of subsection (h) of

1 section forty-eight of the internal revenue code provided all references
2 in such paragraphs four, five and six to the dates October nine, nine-
3 teen hundred sixty-six, and October ten, nineteen hundred sixty-six,
4 shall be read as December thirty-first, nineteen hundred sixty-seven. A
5 taxpayer shall be allowed a deduction under clause (i), (ii) or (iii) of
6 this paragraph only if the tangible property shall be delivered or the
7 construction, reconstruction or erection shall be completed on or before
8 December thirty-first, nineteen hundred sixty-nine, except in the case
9 of tangible property which is acquired, constructed, reconstructed or
10 erected pursuant to a contract which was, on or before December thirty-
11 first, nineteen hundred sixty-seven, and at all times thereafter, bind-
12 ing on the taxpayer. Provided, however, for any taxable year beginning
13 on or after January first, nineteen hundred sixty-eight, a taxpayer
14 shall not be allowed a deduction under paragraph one of this subdivision
15 with respect to tangible personal property leased by it to any other
16 person or corporation, provided, that any contract or agreement to lease
17 or rent or for a license to use such property shall be considered a
18 lease. With respect to property which the taxpayer uses itself for
19 purposes other than leasing for part of a taxable year and leases for a
20 part of a taxable year, the taxpayer shall be allowed a deduction under
21 paragraph one of this subdivision in proportion to the part of the year
22 it uses such property.

23 (3) If the deduction allowable for any taxable year pursuant to this
24 subdivision exceeds the portion of the taxpayer's entire net income
25 allocated to this city for such year, the excess may be carried over to
26 the following taxable year or years and may be deducted from the portion
27 of the taxpayer's entire net income allocated to this city for such year
28 or years.

29 (4) In any taxable year when property is sold or otherwise disposed
30 of, with respect to which a deduction has been allowed pursuant to this
31 subdivision, subdivision twelve of section 11-621 or subdivision (j) of
32 section 11-629 of this subchapter, the gain or loss entering into the
33 computation of federal taxable income shall be disregarded in computing
34 entire net income, and there shall be added or subtracted from the
35 portion of entire net income allocated within the city the gain or loss
36 upon such sale or other disposition. In computing such gain or loss the
37 basis of the property sold or disposed of shall be adjusted to reflect
38 the deduction allowed with respect to such property pursuant to para-
39 graph one of this subdivision. Provided, however, that no loss shall be
40 recognized for the purposes of this paragraph with respect to a sale or
41 other disposition of property to a person whose acquisition thereof is
42 not a purchase as defined in subdivision (d) of section one hundred
43 seventy-nine of the internal revenue code.

44 (k-1) A net operating loss deduction shall be allowed which shall be
45 presumably the same as the net operating loss deduction allowed under
46 section one hundred seventy-two of the internal revenue code, except
47 that in every instance where such deduction is allowed under this
48 subchapter:

49 (1) any net operating loss included in determining such deduction
50 shall be adjusted to reflect the inclusions and exclusions from entire
51 net income required by the other provisions of this section;

52 (2) such deduction shall not include any net operating loss sustained
53 during any taxable year beginning prior to January first, two thousand
54 nine, or during any taxable year in which the taxpayer was not subject
55 to the tax imposed by this subchapter;

1 (3) such deduction shall not exceed the deduction for the taxable year
2 allowed under section one hundred seventy-two of the internal revenue
3 code augmented by the excess of the amount allowed as a deduction pursu-
4 ant to subdivision (h) or (i) of this section, whichever is applicable,
5 over the amount allowed as a deduction pursuant to section one hundred
6 sixty-six or five hundred eighty-five of the internal revenue code, for
7 each taxable year in which the taxpayer had a net operating loss which
8 is carried to the taxable year of the deduction under this provision, in
9 the aggregate, except to the extent such excess was previously deducted
10 in computing entire net income; and

11 (4) the net operating loss deduction allowed under section one hundred
12 seventy-two of the internal revenue code shall for purposes of this
13 subdivision be determined as if the taxpayer had elected under such
14 section to relinquish the entire carryback period with respect to net
15 operating losses.

16 (k-2) Notwithstanding any other provision of this section to the
17 contrary, for taxable years beginning before January first, two thousand
18 twenty-one, any amendment to section one hundred seventy-two of the
19 internal revenue code made after March first, two thousand twenty shall
20 not apply to this part.

21 (1) If the period covered by a return under this part is other than
22 the period covered by the return to the United States treasury depart-
23 ment, entire net income and alternative entire net income shall be
24 determined by multiplying the taxable income reported to such depart-
25 ment, as adjusted pursuant to the provisions of this part, by the number
26 of calendar months or major parts thereof covered by the return under
27 this part and dividing by the number of calendar months or major parts
28 thereof covered by the return to such department. If it shall appear
29 that such method of determining entire net income or alternative entire
30 net income does not properly reflect the taxpayer's income during the
31 period covered by the return under this part, the commissioner of
32 finance shall be authorized in his or her discretion to determine such
33 entire net income or alternative entire net income solely on the basis
34 of the taxpayer's income during the period covered by its return under
35 this part.

36 (m) The commissioner of finance, may, whenever necessary in order to
37 properly reflect the entire net income of any taxpayer, determine the
38 year or period in which any item of income or deduction shall be
39 included, without regard to the method of accounting employed by the
40 taxpayer.

41 (n) Notwithstanding any other provision of this subchapter, for taxa-
42 ble years beginning on or after August first, two thousand two, in the
43 case of a taxpayer that is a partner in a partnership subject to the tax
44 imposed by chapter eleven of this title as a utility, as defined in
45 subdivision six of section 11-1101 of such chapter, entire net income
46 shall not include the taxpayer's distributive or pro rata share for
47 federal income tax purposes of any item of income, gain, loss or
48 deduction of such partnership, or any item of income, gain, loss or
49 deduction of such partnership that the taxpayer is required to take into
50 account separately for federal income tax purposes.

51 (n-1) for taxable years ending after September tenth, two thousand
52 one, in the case of qualified property described in paragraph two of
53 subsection k of section one hundred sixty-eight of the internal revenue
54 code, other than qualified resurgence zone property described in subdi-
55 vision (p) of this section, and other than qualified New York Liberty
56 Zone property described in paragraph two of subsection b of section

1 fourteen hundred-L of the internal revenue code, without regard to
2 clause (i) of subparagraph (C) of such paragraph, a taxpayer shall be
3 allowed with respect to such property the depreciation deduction allow-
4 able under section one hundred sixty-seven as such section would have
5 applied to such property had it been acquired by the taxpayer on Septem-
6 ber tenth, two thousand one, provided, however, that for taxable years
7 beginning on or after January first, two thousand four, in the case of a
8 passenger motor vehicle or a sport utility vehicle subject to the
9 provisions of subdivision (r) of this section, the limitation under
10 clause (i) of subparagraph (A) of paragraph one of subdivision (a) of
11 section two hundred eighty-F of the internal revenue code applicable to
12 the amount allowed as a deduction under this paragraph shall be deter-
13 mined as of the date such vehicle was placed in service and not as of
14 September tenth, two thousand one.

15 (o) for taxable years ending after September tenth, two thousand one,
16 upon the disposition of property to which subdivision (n) of this
17 section applies, the amount of any gain or loss includible in entire net
18 income shall be adjusted to reflect the inclusions and exclusions from
19 entire net income pursuant to paragraph thirteen of subdivision (b) and
20 subdivision (n) of this section attributable to such property.

21 (p) for purposes of subdivisions (n) and (o) of this section, quali-
22 fied resurgence zone property shall mean qualified property described in
23 paragraph two of subsection k of section one hundred sixty-eight of the
24 internal revenue code substantially all of the use of which is in the
25 resurgence zone, as defined below, and is in the active conduct of a
26 trade or business by the taxpayer in such zone, and the original use of
27 which in the resurgence zone commences with the taxpayer after September
28 tenth, two thousand one. The resurgence zone shall mean the area of New
29 York county bounded on the south by a line running from the intersection
30 of the Hudson River with the Holland Tunnel, and running thence east to
31 Canal Street, then running along the centerline of Canal Street to the
32 intersection of the Bowery and Canal Street, running thence in a south-
33 easterly direction diagonally across Manhattan Bridge Plaza, to the
34 Manhattan Bridge, and thence along the centerline of the Manhattan
35 Bridge to the point where the centerline of the Manhattan Bridge would
36 intersect with the easterly bank of the East River, and bounded on the
37 north by a line running from the intersection of the Hudson River with
38 the Holland Tunnel and running thence north along West Avenue to the
39 intersection of Clarkson Street then running east along the centerline
40 of Clarkson Street to the intersection of Washington Avenue, then
41 running south along the centerline of Washington Avenue to the inter-
42 section of West Houston Street, then east along the centerline of West
43 Houston Street, then at the intersection of the Avenue of the Americas
44 continuing east along the centerline of East Houston Street to the east-
45 erly bank of the East River.

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

51 (B) Effective rate of tax. "Effective rate of tax" means, as to any
52 city, the maximum statutory rate of tax imposed by the city on or meas-
53 ured by a related member's net income multiplied by the apportionment
54 percentage, if any, applicable to the related member under the laws of
55 said jurisdiction. For purposes of this definition, the effective rate
56 of tax as to any city is zero where the related member's net income tax

1 liability in said city is reported on a combined or consolidated return
2 including both the taxpayer and the related member where the reported
3 transactions between the taxpayer and the related member are eliminated
4 or offset. Also, for purposes of this definition, when computing the
5 effective rate of tax for a city in which a related member's net income
6 is eliminated or offset by a credit or similar adjustment that is
7 dependent upon the related member either maintaining or managing intan-
8 gible property or collecting interest income in that city, the maximum
9 statutory rate of tax imposed by said city shall be decreased to reflect
10 the statutory rate of tax that applies to the related member as effec-
11 tively reduced by such credit or similar adjustment.

12 (C) Royalty payments. Royalty payments are payments directly connected
13 to the acquisition, use, maintenance or management, ownership, sale,
14 exchange, or any other disposition of licenses, trademarks, copyrights,
15 trade names, trade dress, service marks, mask works, trade secrets,
16 patents and any other similar types of intangible assets as determined
17 by the commissioner of finance, and include amounts allowable as inter-
18 est deductions under section one hundred sixty-three of the internal
19 revenue code to the extent such amounts are directly or indirectly for,
20 related to or in connection with the acquisition, use, maintenance or
21 management, ownership, sale, exchange or disposition of such intangible
22 assets.

23 (D) Valid business purpose. A valid business purpose is one or more
24 business purposes, other than the avoidance or reduction of taxation,
25 which alone or in combination constitute the primary motivation for some
26 business activity or transaction, which activity or transaction changes
27 in a meaningful way, apart from tax effects, the economic position of
28 the taxpayer. The economic position of the taxpayer includes an increase
29 in the market share of the taxpayer, or the entry by the taxpayer into
30 new business markets.

31 (2) Royalty expense add backs. (A) For the purpose of computing entire
32 net income, a taxpayer must add back royalty payments directly or indi-
33 rectly paid, accrued, or incurred in connection with one or more direct
34 or indirect transactions with one or more related members during the
35 taxable year to the extent deductible in calculating federal taxable
36 income.

37 (B) Exceptions. (i) The adjustment required in this subdivision shall
38 not apply to the portion of the royalty payment that the taxpayer estab-
39 lishes, by clear and convincing evidence of the type and in the form
40 specified by the commissioner of finance, meets all of the following
41 requirements: (I) the related member was subject to tax in this city or
42 another city within the United States or a foreign nation or some combi-
43 nation thereof on a tax base that included the royalty payment paid,
44 accrued or incurred by the taxpayer; (II) the related member during the
45 same taxable year directly or indirectly paid, accrued or incurred such
46 portion to a person that is not a related member; and (III) the trans-
47 action giving rise to the royalty payment between the taxpayer and the
48 related member was undertaken for a valid business purpose.

49 (ii) The adjustment required in this subdivision shall not apply if
50 the taxpayer establishes, by clear and convincing evidence of the type
51 and in the form specified by the commissioner of finance, that: (I) the
52 related member was subject to tax on or measured by its net income in
53 this city or another city within the United States, or some combination
54 thereof; (II) the tax base for such tax included the royalty payment
55 paid, accrued or incurred by the taxpayer; and (III) the aggregate
56 effective rate of tax applied to the related member in those jurisdic-

1 tions is no less than eighty percent of the statutory rate of tax that
2 applied to the taxpayer under section 11-643.5 of this part for the
3 taxable year.

4 (iii) The adjustment required in this subdivision shall not apply if
5 the taxpayer establishes, by clear and convincing evidence of the type
6 and in the form specified by the commissioner of finance, that: (I) the
7 royalty payment was paid, accrued or incurred to a related member organ-
8 ized under the laws of a country other than the United States; (II) the
9 related member's income from the transaction was subject to a comprehen-
10 sive income tax treaty between such country and the United States; (III)
11 the related member was subject to tax in a foreign nation on a tax base
12 that included the royalty payment paid, accrued or incurred by the
13 taxpayer; (IV) the related member's income from the transaction was
14 taxed in such country at an effective rate of tax at least equal to that
15 imposed by this city; and (V) the royalty payment was paid, accrued or
16 incurred pursuant to a transaction that was undertaken for a valid busi-
17 ness purpose and using terms that reflect an arm's length relationship.

18 (iv) The adjustment required in this subdivision shall not apply if
19 the taxpayer and the commissioner of finance agree in writing to the
20 application or use of alternative adjustments or computations. The
21 commissioner of finance may, in his or her discretion, agree to the
22 application or use of alternative adjustments or computations when he or
23 she concludes that in the absence of such agreement the income of the
24 taxpayer would not be properly reflected.

25 (r) For taxable years beginning on or after January first, two thou-
26 sand four, in the case of a taxpayer that is not an eligible farmer as
27 defined in subsection (n) of section six hundred six of the tax law, a
28 taxpayer shall be allowed with respect to a sport utility vehicle that
29 is not a passenger automobile as defined in paragraph five of subsection
30 (d) of section two hundred eighty-F of the internal revenue code, the
31 deductions allowable under sections one hundred seventy-nine, one
32 hundred sixty-seven and one hundred sixty-eight of the internal revenue
33 code, determined as if such sport utility vehicle were a passenger auto-
34 mobile as defined in such paragraph five.

35 (s) Upon the disposition of property to which subdivision (r) of this
36 section applies, the amount of any gain or loss includible in entire net
37 income shall be adjusted to reflect the modification provided in such
38 subdivision attributable to such property.

39 (t) Entire net income shall not include the amount of any grant
40 received through either the COVID-19 pandemic small business recovery
41 grant program, pursuant to section sixteen-ff of the New York state
42 urban development corporation act, or the small business resilience
43 grant program administered by the department of small business services,
44 to the extent the amount of either such grant is included in federal
45 taxable income.

46 § 11-641.1 Computation of alternative entire net income. (a) Alterna-
47 tive entire net income means entire net income as determined pursuant to
48 section 11-641 of this part, except that the deductions described in
49 paragraphs eleven and twelve of subdivision (e) of section 11-641 of
50 this part shall not be allowed.

51 (b) Any election made pursuant to paragraph two of subdivision (b) of
52 section 11-642 of this part with respect to the modification provided
53 for in subdivision (f) of section 11-641 of this part shall be deemed to
54 have been made for purposes of computing alternative entire net income.

55 § 11-642 Allocation. (a) In general. If a taxpayer's entire net
56 income, alternative entire net income, or taxable assets are derived

1 from business carried on within and without the city, the taxpayer shall
2 for purposes of computing allocation percentages compute payroll,
3 receipts, and deposits percentages in accordance with the following
4 rules:

5 (1) The taxpayer shall ascertain the percentage which eighty percent
6 of the total wages, salaries and other personal service compensation
7 during the taxable year of employees within the city, except wages,
8 salaries and other personal service compensation of general executive
9 officers, bears to the total wages, salaries and other personal service
10 compensation during the taxable year of all the taxpayer's employees
11 within and without the city, except wages, salaries and other personal
12 service compensation of general executive officers.

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

15 (i) loans, including a taxpayer's portion of a participation in a
16 loan, and financing leases within the city, and all other business
17 receipts earned within the city, bear to

18 (ii) the total amount of the taxpayer's receipts from loans, including
19 a taxpayer's portion of a participation in a loan, and financing leases
20 and all other business receipts within and without the city.

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

24 (i) In the case of a taxpayer described in paragraph one, two, three,
25 four, five or seven of subdivision (a) of section 11-640 of this part, a
26 loan or financing lease attributed by such taxpayer to a branch without
27 the city shall be presumed to be properly so attributed provided that
28 such presumption may be rebutted if the commissioner of finance demon-
29 strates that the greater portion of income producing activity related to
30 the loan or financing lease did not occur at such branch. Where such
31 presumption has been rebutted, the loan or financing lease shall be
32 presumed to be within the city if the taxpayer had a branch within the
33 city at the time the loan or financing lease was made. The taxpayer may
34 rebut such presumption by demonstrating that the greater portion of
35 income producing activity related to the loan or financing lease did not
36 occur within the city. In the case of a loan or financing lease which is
37 recorded on the books of a place without the city which is not a branch,
38 it shall be presumed that the greater portion of income producing activ-
39 ity related to such loan or financing lease occurred within the city if
40 the taxpayer had a branch within the city at the time the loan or
41 financing lease was made. The taxpayer may rebut such presumption by
42 demonstrating that the greater portion of income producing activity
43 related to the loan or financing lease did not occur within the city.

44 (ii) In the case of a taxpayer described in paragraph six or nine of
45 subdivision (a) of section 11-640 of this part, a loan or financing
46 lease attributed by such taxpayer to a bona fide office without the city
47 shall be presumed to be properly so attributed provided that such
48 presumption may be rebutted if the commissioner of finance demonstrates
49 that the greater portion of income producing activity related to the
50 loan or financing lease did not occur without the city.

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

54 (D) (i) Interest, and fees and penalties in the nature of interest,
55 from bank, credit, travel and entertainment card receivables are earned

1 within the city if the mailing address of the card holder in the records
2 of the taxpayer is in the city; and

3 (ii) Service charges and fees from such cards are earned within the
4 city if the card is serviced in the city; and

5 (iii) Receipts from merchant discounts are earned within the city if
6 the merchant is located within the city.

7 (E) The portion of total net gains and other income from trading
8 activities, including but not limited to foreign exchange, options and
9 financial futures, and from investment activities which is attributed
10 within the city shall be ascertained by multiplying such total net gains
11 and other income by a fraction the numerator of which is the average
12 value of the trading assets and investment assets attributable to the
13 city and the denominator of which is the average value of all trading
14 and investment assets. A trading asset or investment asset is attribut-
15 able to the city if the greater portion of income producing activity
16 related to the trading asset or investment asset occurred within the
17 city.

18 (F) Fees or charges from the issuance of letters of credit, travelers
19 checks and money orders are earned within the city if such letters of
20 credit, travelers checks or money orders are issued within the city.

21 (G) Rules for receipts from certain services to investment companies.

22 (1) For taxable years beginning on or after January first, two thousand
23 one, the portion of receipts received from an investment company arising
24 from the sale of management, administration or distribution services to
25 such investment company determined in accordance with clause two of this
26 subparagraph shall be deemed to arise from services performed within the
27 city, such portion referred to herein as the Staten Island city portion.

28 (2) The Staten Island city portion shall be the product of (i) the
29 total of such receipts from the sale of such services and (ii) a frac-
30 tion. The numerator of that fraction is the sum of the monthly percent-
31 ages, as defined hereinafter, determined for each month of the invest-
32 ment company's taxable year for federal income tax purposes which
33 taxable year ends within the taxable year of the taxpayer, but excluding
34 any month during which the investment company had no outstanding shares.
35 The monthly percentage for each such month is determined by dividing (i)
36 the number of shares in the investment company which are owned on the
37 last day of the month by shareholders that are domiciled in the city by
38 (ii) the total number of shares in the investment company outstanding on
39 that date. The denominator of the fraction is the number of such monthly
40 percentages.

41 (3)(i) For purposes of this subparagraph, the term "domicile", in the
42 case of an individual, shall have the meaning as in chapter seventeen of
43 this title; an estate or trust is domiciled in the city if it is a city
44 resident estate or trust as defined in paragraph three of subdivision
45 (b) of section 11-1705 of this code; a business entity is domiciled in
46 the city if the location of the actual seat of management or control is
47 in the city. It shall be presumed that the domicile of a shareholder,
48 with respect to any month, is his, her or its mailing address on the
49 records of the investment company as of the last day of such month.

50 (ii) For purposes of this subparagraph, the term "investment company"
51 means a regulated investment company, as defined in section eight
52 hundred fifty-one of the internal revenue code, and a partnership to
53 which subdivision (a) of section seven thousand seven hundred four of
54 the internal revenue code applies, by virtue of paragraph three of
55 subdivision (c) of section seven thousand seven hundred four of such
56 code, and that meets the requirements of subdivision (b) of section

1 eight hundred fifty-one of such code. This shall be applied to the
2 taxable year for federal income tax purposes of the business entity that
3 is asserted to constitute an investment company that ends within the
4 taxable year of the taxpayer.

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

9 (iv) For purposes of this subparagraph, the term "management services"
10 means the rendering of investment advice to an investment company,
11 making determinations as to when sales and purchases of securities are
12 to be made on behalf of an investment company, or the selling or
13 purchasing of securities constituting assets of an investment company,
14 and related activities, but only where such activity or activities are
15 performed pursuant to a contract with the investment company entered
16 into pursuant to subdivision (a) of section fifteen of the federal
17 investment company act of nineteen hundred forty, as amended.

18 (v) For purposes of this subparagraph, the term "distribution
19 services" means the services of advertising, servicing investor
20 accounts, including redemptions, marketing shares or selling shares of
21 an investment company, but, in the case of advertising, servicing inves-
22 tor accounts, including redemptions, or marketing shares, only where
23 such service is performed by a person who is, or was, in the case of a
24 closed end company, also engaged in the service of selling such shares.
25 In the case of an open end company, such service of selling shares must
26 be performed pursuant to a contract entered into pursuant to subdivision
27 (b) of section fifteen of the federal investment company act of nineteen
28 hundred forty, as amended.

29 (vi) For purposes of this subparagraph, the term "administration
30 services" includes clerical, accounting, bookkeeping, data processing,
31 internal auditing, legal and tax services performed for an investment
32 company but only if the provider of such service or services during the
33 taxable year in which such service or services are sold also sells
34 management or distribution services, as defined in clause (v) of this
35 subparagraph, to such investment company.

36 (H) All receipts from the performance of services not described in
37 this paragraph are earned within the city if the services are performed
38 in the city. When a service is performed both within and without the
39 city, the receipts shall be allocated within and without the city in
40 accordance with rules and regulations of the commissioner of finance.

41 (I) All other receipts not described in subparagraphs (B) through (H)
42 of this paragraph shall be attributable within and without the city in
43 accordance with rules and regulations issued by the commissioner of
44 finance.

45 (3) The taxpayer shall ascertain the percentage which the average
46 value of deposits maintained at branches within the city during the
47 taxable year, bears to the average value of all the taxpayer's deposits
48 maintained at branches within and without the city during the taxable
49 year.

50 (4) Each percentage computed pursuant to this subsection shall be
51 computed on a cash or accrual basis according to the method of account-
52 ing used for the taxable year. The receipts percentage shall include
53 only receipts which are included in alternative entire net income for
54 the taxable year. The deposits and payroll percentages shall include
55 only deposits and payroll the expenses of which are included in the
56 computation of alternative entire net income for the taxable year.

1 (5) For purposes of this section:

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

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

11 (6) If it shall appear to the commissioner of finance that the allo-
12 cation percentage determined in subdivision (b), (c), or (d) of this
13 section does not properly reflect the activity, business, income or
14 assets of a taxpayer within the city, the commissioner of finance shall
15 be authorized in his discretion to adjust it by (1) excluding one or
16 more of the factors therein, (2) including one or more other factors, or
17 (3) any other similar or different method calculated to effect a fair
18 and proper allocation of the income or assets reasonably attributable to
19 the city.

20 (7) The commissioner of finance from time to time shall publish all
21 rulings of general public interest with respect to any application of
22 the provisions of paragraph six of this subdivision.

23 (b) Allocation of entire net income.

24 (1) If a taxpayer's entire net income is derived from business carried
25 on both within and without the city, the portion thereof which is
26 derived from business carried on within the city shall be determined by
27 multiplying its entire net income by the income allocation percentage
28 determined as follows: add the percentages ascertained under paragraphs
29 one, two and three of subdivision (a) of this section, plus an addi-
30 tional percentage equal to the receipts percentage ascertained under
31 paragraph two of such subdivision and an additional percentage equal to
32 the deposits percentage ascertained under paragraph three of such subdivi-
33 sion, and divide the result by the number of percentages so added
34 together.

35 (1-a) Notwithstanding the provisions of paragraph one of this subdivi-
36 sion, each banking corporation described in paragraph nine of subdivi-
37 sion (a) of section 11-640 of this part subject to the tax imposed by
38 this part that substantially provides management, administrative or
39 distribution services to an investment company, as such terms are
40 defined in subparagraph (G) of paragraph two of subdivision (a) of this
41 section, shall determine the portion of its entire net income derived
42 from business carried on within the city by multiplying such income by
43 an income allocation percentage obtained as follows:

44 (A) For taxable years beginning in two thousand nine, the income allo-
45 cation percentage shall be determined by adding together the following
46 percentages:

47 (i) the product of eighteen percent and the percentage determined
48 under paragraph one of subdivision (a) of this section,

49 (ii) the product of forty-six percent and the percentage determined
50 under paragraph two of subdivision (a) of this section, and

51 (iii) the product of thirty-six percent and the percentage determined
52 under paragraph three of subdivision (a) of this section.

53 (B) For taxable years beginning in two thousand ten, the income allo-
54 cation percentage shall be determined by adding together the following
55 percentages:

1 (i) the product of sixteen percent and the percentage determined under
2 paragraph one of subdivision (a) of this section,

3 (ii) the product of fifty-two percent and the percentage determined
4 under paragraph two of subdivision (a) of this section, and

5 (iii) the product of thirty-two percent and the percentage determined
6 under paragraph three of subdivision (a) of this section.

7 (C) For taxable years beginning in two thousand eleven, the income
8 allocation percentage shall be determined by adding together the follow-
9 ing percentages:

10 (i) the product of fourteen percent and the percentage determined
11 under paragraph one of subdivision (a) of this section,

12 (ii) the product of fifty-eight percent and the percentage determined
13 under paragraph two of subdivision (a) of this section, and

14 (iii) the product of twenty-eight percent and the percentage deter-
15 mined under paragraph three of subdivision (a) of this section.

16 (D) For taxable years beginning in two thousand twelve, the income
17 allocation percentage shall be determined by adding together the follow-
18 ing percentages:

19 (i) the product of twelve percent and the percentage determined under
20 paragraph one of subdivision (a) of this section,

21 (ii) the product of sixty-four percent and the percentage determined
22 under paragraph two of subdivision (a) of this section, and

23 (iii) the product of twenty-four percent and the percentage determined
24 under paragraph three of subdivision (a) of this section.

25 (E) For taxable years beginning in two thousand thirteen, the income
26 allocation percentage shall be determined by adding together the follow-
27 ing percentages:

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

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

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

34 (F) For taxable years beginning in two thousand fourteen, the income
35 allocation percentage shall be determined by adding together the follow-
36 ing percentages:

37 (i) the product of eight percent and the percentage determined under
38 paragraph one of subdivision (a) of this section,

39 (ii) the product of seventy-six percent and the percentage determined
40 under paragraph two of subdivision (a) of this section, and

41 (iii) the product of sixteen percent and the percentage determined
42 under paragraph three of subdivision (a) of this section.

43 (G) For taxable years beginning in two thousand fifteen, the income
44 allocation percentage shall be determined by adding together the follow-
45 ing percentages:

46 (i) the product of six percent and the percentage determined under
47 paragraph one of subdivision (a) of this section,

48 (ii) the product of eighty-two percent and the percentage determined
49 under paragraph two of subdivision (a) of this section, and

50 (iii) the product of twelve percent and the percentage determined
51 under paragraph three of subdivision (a) of this section.

52 (H) For taxable years beginning in two thousand sixteen, the income
53 allocation percentage shall be determined by adding together the follow-
54 ing percentages:

55 (i) the product of four percent and the percentage determined under
56 paragraph one of subdivision (a) of this section,

1 (ii) the product of eighty-eight percent and the percentage determined
2 under paragraph two of subdivision (a) of this section, and

3 (iii) the product of eight percent and the percentage determined under
4 paragraph three of subdivision (a) of this section.

5 (I) For taxable years beginning in two thousand seventeen, the income
6 allocation percentage shall be determined by adding together the follow-
7 ing percentages:

8 (i) the product of two percent and the percentage determined under
9 paragraph one of subdivision (a) of this section,

10 (ii) the product of ninety-four percent and the percentage determined
11 under paragraph two of subdivision (a) of this section, and

12 (iii) the product of four percent and the percentage determined under
13 paragraph three of subdivision (a) of this section.

14 (J) For taxable years beginning after two thousand seventeen, the
15 income allocation percentage shall be the percentage determined under
16 paragraph two of subdivision (a) of this section.

17 (K) The commissioner shall promulgate rules necessary to implement the
18 provisions of this paragraph under such circumstances where any of the
19 percentages to be determined under paragraph one, two or three of subdivi-
20 sion (a) of this section cannot be determined because the taxpayer has
21 no compensation, receipts or deposits within or without the city.

22 (2) (A) In lieu of the modification provided for in subdivision (f) of
23 section 11-641 of this part, relating to a modification for the adjusted
24 eligible net income of an international banking facility, a taxpayer
25 may, in the manner prescribed by the commissioner of finance, elect to
26 modify on an annual basis its income allocation percentage in the manner
27 described in clauses (i), (ii) and (iii) of this paragraph below:

28 (i) wages, salaries and other personal service compensation properly
29 attributable to the production of eligible gross income of the taxpay-
30 er's international banking facility shall not be included in the compu-
31 tation of wages, salaries and other personal service compensation of
32 employees within the city,

33 (ii) receipts properly attributable to the production of eligible
34 gross income of the taxpayer's international banking facility shall not
35 be included in the computation of receipts within the city, and

36 (iii) deposits from foreign persons which are properly attributable to
37 the production of eligible gross income of the taxpayer's international
38 banking facility shall not be included in the computation of deposits
39 maintained at branches within the city.

40 (B) For purposes of this paragraph, the term "eligible gross income"
41 refers to such term as set out in subdivision (f) of section 11-641 of
42 this part except that the term "foreign person" as defined in paragraph
43 eight of such subdivision (f) shall not include a foreign branch of the
44 taxpayer and in no event shall transactions between the taxpayer's
45 international banking facility and its foreign branches be considered.

46 (c) Allocation of alternative entire net income. If a taxpayer's
47 alternative entire net income is derived from business carried on both
48 within and without the city, the portion thereof which is derived from
49 business carried on within the city shall be determined by multiplying
50 its alternative entire net income by the alternative entire net income
51 allocation percentage determined as follows:

52 (1) Recompute the payroll percentage under paragraph one of subdivi-
53 sion (a) of this section without giving consideration to the phrase
54 "eighty percent of," add to the resulting percentage the percentages
55 ascertained under paragraphs two and three of such subdivision, and
56 divide the result by the number of percentages so added together.

1 (2) When an election has been made pursuant to paragraph two of subdi-
2 vision (b) of this section, relating to international banking facili-
3 ties, the taxpayer shall make the modifications described in such para-
4 graph for purposes of its alternative entire net income allocation
5 percentage.

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

15 § 11-643 Computation of tax for taxable years ending on or before
16 December thirty-first, nineteen hundred seventy-three. For taxable
17 years ending on or before December thirty-first, nineteen hundred seven-
18 ty-three, the tax imposed by section 11-639 of this part shall be the
19 greater of the following computations:

20 (a) Basic tax. Five and sixty-three one-hundredths percent of the
21 taxpayer's entire net income, or the portion thereof allocated to this
22 city, for the taxable year or part thereof.

23 (b) Alternative minimum tax. If the tax under subdivision (a) of this
24 section is less than any of the following amounts, the tax shall be the
25 largest of the following amounts:

26 (1) Except for a savings bank and savings and loan association, one
27 and one-quarter mills upon each dollar of such part of the taxpayer's
28 issued capital stock on the last day of the taxable year, at its face
29 value, but if such taxpayer has stock without par value, such stock
30 shall be taken at its actual or market value, and not less than five
31 dollars per share, as may be determined by the commissioner of finance,
32 as the gross income of such taxpayer derived from business carried on
33 within the city, during such taxable year, bears to its gross income
34 derived from all business, both within and without the city during said
35 year; except that if the period covered by the return is other than
36 twelve months, the tax shall be prorated on the basis of the number of
37 months or major portions thereof included in the return. For purposes of
38 this paragraph, the term "gross income" shall have the same meaning as
39 it has in the laws of the United States relating to federal income
40 taxes.

41 (2) For a savings bank and savings and loan association, one and
42 forty-three one-hundredths percent of the interest or dividends credited
43 by it to depositors or shareholders during the taxable year, provided
44 that, in determining such amount, each interest or dividend credit to a
45 depositor or shareholder shall be deemed to be the interest or dividend
46 actually credited or the interest or dividend which would have been
47 credited if it had been computed and credited at the rate of three and
48 one-half percent per annum, whichever is less.

49 (3) Twelve and one-half dollars.

50 § 11-643.1 Computation of tax for taxable years beginning on or after
51 January first, nineteen hundred seventy-four and ending on or before
52 December thirty-first, nineteen hundred seventy-four. For taxable years
53 beginning on or after January first, nineteen hundred seventy-four and
54 ending on or before December thirty-first, nineteen hundred seventy-
55 four, the tax imposed by section 11-639 of this part shall be the great-
56 er of the following computations:

1 (a) Basic tax. Six and seven hundred fifty-six one-thousandths
2 percent of the taxpayer's entire net income, or the portion thereof
3 allocated to this city, for the taxable year, or part thereof.

4 (b) Alternative minimum tax. If the tax under subdivision (a) of
5 this section is less than any of the following amounts, the tax shall be
6 the largest of the following amounts:

7 (1) Except for a savings bank and savings and loan association, one
8 and one-half mills upon each dollar of such part of the taxpayer's
9 issued capital stock on the last day of the taxable year, at its face
10 value, but if such taxpayer has stock without par value, such stock
11 shall be taken at its actual or market value, and not less than five
12 dollars per share, as may be determined by the commissioner of finance,
13 as the gross income of such taxpayer derived from business carried on
14 within the city, during such taxable year bears to its gross income
15 derived from all business, both within and without the city during said
16 year; except that if the period covered by the return is other than
17 twelve months, the tax shall be prorated on the basis of the number of
18 months or major portions thereof included in the return. For purposes
19 of this paragraph, the term "gross income" shall have the same meaning
20 as it has in the laws of the United States relating to federal income
21 taxes.

22 (2) For a savings bank and savings and loan association, one and seven
23 hundred sixteen one-thousandths percent of the interest or dividends
24 credited by it to depositors or shareholders during the taxable year,
25 provided that, in determining such amount, each interest or dividend
26 credit to a depositor or shareholder shall be deemed to be the interest
27 or dividend actually credited or the interest or dividend which would
28 have been credited if it had been computed and credited at the rate of
29 three and one-half percent per annum, whichever is less.

30 (3) Fifteen dollars.

31 § 11-643.2 Computation of tax for taxable years beginning in nineteen
32 hundred seventy-three and ending in nineteen hundred seventy-four. For
33 each taxable year beginning in nineteen hundred seventy-three and ending
34 in nineteen hundred seventy-four, two tentative taxes shall be computed,
35 the first as provided in section 11-643 and the second as provided in
36 section 11-643.1 of this part, and the tax for each such year shall be
37 the sum of that proportion of each tentative tax which the number of
38 days in nineteen hundred seventy-three and the number of days in nine-
39 teen hundred seventy-four, respectively, which fall within the taxable
40 year, bears to the number of days in the entire taxable year.

41 § 11-643.3 Computation of tax for taxable years beginning on or after
42 January first, nineteen hundred seventy-five and before January first,
43 nineteen hundred eighty-five. For taxable years beginning on or after
44 January first, nineteen hundred seventy-five and before January first,
45 nineteen hundred eighty-five, the tax imposed by section 11-639 of this
46 part shall be the greater of the following computations:

47 (a) Basic tax. (1) Except for a savings bank and savings and loan
48 association, thirteen and eight hundred twenty-three one-thousandths
49 percent of the taxpayer's entire net income, or the portion thereof
50 allocated to this city, for the taxable year, or part thereof.

51 (2) For a savings bank and savings and loan association, twelve and
52 one hundred thirty-four thousandths percent of the taxpayer's entire net
53 income, or the portion thereof allocated to this city, for the taxable
54 year, or part thereof.

1 (b) Alternative minimum tax. If the tax under subdivision (a) of
2 this section is less than any of the following amounts, the tax shall be
3 the largest of the following amounts:

4 (1) Except for a savings bank and savings and loan association, two
5 and six-tenths mills upon each dollar of such part of the taxpayer's
6 issued capital stock on the last day of the taxable year, at its face
7 value, but if such taxpayer has stock without par value, such stock
8 shall be taken at its actual or market value, and not less than five
9 dollars per share, as may be determined by the commissioner of finance,
10 as the gross income of such taxpayer derived from business carried on
11 within the city during such taxable year bears to its gross income
12 derived from all business, both within and without the city during said
13 year; except that if the period covered by the return is other than
14 twelve months, the tax shall be prorated on the basis of the number of
15 months or major portions thereof included in the return. For purposes
16 of this paragraph, the term "gross income" shall have the same meaning
17 as it has in the laws of the United States relating to federal income
18 taxes.

19 (2) Except as otherwise provided in paragraph three of this subdivi-
20 sion, for a savings bank and savings and loan association, two and five
21 hundred seventy-four one-thousandths percent of the interest or divi-
22 dends credited by it to depositors or shareholders during any taxable
23 year, provided that, in determining such amount, each interest or divi-
24 dend credit to a depositor or shareholder shall be deemed to be the
25 interest or dividend actually credited or the interest or dividend which
26 would have been credited if it had been computed and credited at the
27 rate of three and one-half percent per annum, whichever is less.

28 (3) (i) For a savings bank and savings and loan association, for any
29 quarterly accounting period in which such savings bank or savings and
30 loan association credits or pays dividends to its depositors or share-
31 holders on or after the first day of October, nineteen hundred eighty-
32 one but before the first day of July, nineteen hundred eighty-six, and
33 after such credit or payment the net worth of such savings bank or
34 savings and loan association is less than five percent of the amount due
35 depositors, one and eight hundred twenty-four one-thousandths percent of
36 the interest or dividends credited by it to a depositor or shareholder
37 during such accounting period, provided that, in determining such
38 amount, each interest or dividend credit to depositors or shareholders
39 shall be deemed to be the interest or dividend actually credited or the
40 interest or dividend which would have been credited if it had been
41 computed and credited at the rate of three and one-half percent per
42 annum, whichever is less. In determining the lesser of the amount of
43 interest or dividends actually credited to depositors or shareholders or
44 the amount of interest or dividends which would have been credited if
45 such interest or dividends had been computed and credited at the rate of
46 three and one-half percent per annum, the provisions of subparagraph
47 (ii) of this paragraph shall not be considered.

48 (ii) For purposes of the computation provided for in subparagraph (i)
49 of this paragraph, except where the tax computed under subparagraph (i)
50 of this paragraph is computed as if the interest or dividends were
51 computed and credited at the rate of three and one-half percent per
52 annum, that portion of the interest or dividends credited on or after
53 the first day of October, nineteen hundred eighty-one but before the
54 first day of July, nineteen hundred eighty-six by:

55 (A) a savings bank to a depositor or shareholder which is attributable
56 to an increase or a deemed increase in the gross earnings, surplus fund,

1 or net worth of the savings bank, which increase became available for
2 interest or dividends upon the prior written approval of the superinten-
3 dent of banks pursuant to the provisions of subdivision four of section
4 two hundred forty-four of the banking law; or

5 (B) a savings and loan association to a depositor or shareholder which
6 is attributable to an increase or a deemed increase in gross income,
7 undivided profits, surplus account or net worth of the savings and loan
8 association, which increase became available for interest or dividends
9 upon the prior written approval of the superintendent of banks pursuant
10 to the provisions of subdivision two of section three hundred eighty-
11 seven of the banking law; or

12 (C) a federal savings bank or a federal savings and loan association
13 to a depositor or shareholder, which would have required and received
14 prior written approval of the superintendent of banks in respect to
15 increases in gross income, gross earnings, undivided profits, surplus
16 funds, surplus accounts or net worth available for dividends pursuant to
17 the provisions of subdivision four of section two hundred forty-four of
18 the banking law and subdivision two of section three hundred eighty-sev-
19 en of the banking law, respectively, were the provisions of sections two
20 hundred forty-four and three hundred eighty-seven of the banking law
21 applicable to federal savings banks and federal savings and loan associ-
22 ations shall not be considered to have been credited to depositors or
23 shareholders. Where the tax computed under subparagraph (i) of this
24 paragraph is computed as if the interest or dividends were computed and
25 credited at the rate of three and one-half percent per annum, the amount
26 of interest or dividends which shall not be considered to have been
27 credited to depositors or shareholders is an amount which bears the same
28 ratio to the interest or dividends which would have been credited at the
29 rate of three and one-half percent per annum as the amount of that
30 portion of the interest or dividends paid or credited on or after the
31 first day of October, nineteen hundred eighty-one but before the first
32 day of July, nineteen hundred eighty-six, which is attributable to an
33 increase or deemed increase in gross income, gross earnings, undivided
34 profits, surplus funds, surplus account or net worth available for divi-
35 dends pursuant to the provisions of subdivision four of section two
36 hundred forty-four of the banking law or subdivision two of section
37 three hundred eighty-seven of the banking law, bears to the amount of
38 interest or dividends actually credited. For purposes of this clause,
39 the determination of whether a federal savings bank or federal savings
40 and loan association would have required and received prior written
41 approval of the superintendent of banks shall be made by the superinten-
42 dent of banks, upon application and upon such forms as he or she may
43 require, by applying the provision of subdivision four of section two
44 hundred forty-four of the banking law, as if such provisions were appli-
45 cable to federal savings banks, and subdivision two of section three
46 hundred eighty-seven of the banking law, as if such provisions were
47 applicable to federal savings and loan associations, and the superinten-
48 dent of banks may require and examine such information as he or she may
49 deem necessary to make such determinations.

50 (4) (i) Except for a savings bank and savings and loan association,
51 twenty-five dollars.

52 (ii) For a savings bank and savings and loan association, twenty
53 dollars.

54 § 11-643.4 Computation of tax for taxable years beginning in nineteen
55 hundred seventy-four and ending in nineteen hundred seventy-five. For
56 each taxable year beginning in nineteen hundred seventy-four and ending

1 in nineteen hundred seventy-five, two tentative taxes shall be computed,
2 the first as provided in section 11-643.1 and the second as provided in
3 section 11-643.3 of this part, and the tax for each such year shall be
4 the sum of that proportion of each tentative tax which the number of
5 days in nineteen hundred seventy-four and the number of days in nineteen
6 hundred seventy-five, respectively, which fall within the taxable year,
7 bears to the number of days in the entire taxable year.

8 § 11-643.5 Computation of tax for taxable years beginning on or after
9 January first, nineteen hundred eighty-five. For taxable years beginning
10 on or after January first, nineteen hundred eighty-five, the tax imposed
11 by section 11-639 of this part shall be the greater of the following
12 computations:

13 (a) Basic tax. Nine percent of the taxpayer's entire net income, or
14 the portion thereof allocated to the city, for the taxable year or part
15 thereof.

16 (b) Alternative minimum tax. If the tax under subdivision (a) of this
17 section is less than any of the following amounts, the tax shall be the
18 larger of the following amounts:

19 (1) For taxable years beginning before two thousand eleven, except in
20 the case of a corporation organized under the laws of a country other
21 than the United States, one-tenth of a mill upon each dollar of taxable
22 assets, or the portion thereof allocated to the city. For taxable years
23 beginning after two thousand ten, except in the case of a taxpayer
24 described in clause (i), (ii), or (iii) of this subparagraph, one-tenth
25 of a mill upon each dollar of taxable assets, or the portion thereof
26 allocated to the city.

27 (i) In the case of a taxpayer whose net worth ratio is less than five
28 percent but greater than or equal to four percent and whose total assets
29 are comprised of thirty-three percent or more of mortgages, one-twenty-
30 fifth of a mill upon each dollar of taxable assets, or the portion ther-
31 eof allocated to the city.

32 (ii) In the case of a taxpayer whose net worth ratio is less than four
33 percent and whose total assets are comprised of thirty-three percent or
34 more of mortgages, one-fiftieth of a mill upon each dollar of taxable
35 assets, or the portion thereof allocated to the city.

36 (iii) A taxpayer, whether or not a qualified institution as defined in
37 subparagraph (B) of paragraph five of subsection (f) of section four
38 hundred six of the federal national housing act, as amended, or as
39 defined in paragraph two of subsection (i) of section thirteen of the
40 federal deposit insurance act, as amended, shall not be subject to the
41 provisions of this paragraph for that portion of the taxable year in
42 which it had outstanding net worth certificates issued in accordance
43 with paragraph five of subsection (f) of section four hundred six of the
44 federal national housing act, as amended, or issued in accordance with
45 subsection (i) of section thirteen of the federal deposit insurance act,
46 as amended.

47 (iv) For the purposes of this part: (A) the term "taxable assets"
48 shall mean the average value of total assets reduced by any amount of
49 money or other property received from or attributable to amounts
50 received from the federal deposit insurance corporation pursuant to
51 subsection (c) of section thirteen of the federal deposit insurance act,
52 as amended, or the federal savings and loan insurance corporation pursu-
53 ant to paragraph one, two, three or four of subsection (f) of section
54 four hundred six of the federal national housing act, as amended. Total
55 assets are those assets which are properly reflected on a balance sheet
56 the income or expenses of which are properly reflected, or would have

1 been properly reflected if not fully depreciated or expensed or depreci-
2 ated or expensed to a nominal amount, in the computation of alternative
3 entire net income for the taxable year or in the computation of the
4 eligible net income of the taxpayer's international banking facility for
5 the taxable year.

6 (B) The term "net worth ratio" shall mean the percentage of net worth
7 to assets on the last day of the taxable year. The term "net worth"
8 means the sum of preferred stock, common stock, surplus, capital
9 reserves, undivided profits, mutual capital certificates, reserve for
10 contingencies, reserve for loan losses and reserve for security losses
11 minus assets classified loss. The term "assets" means the sum of mort-
12 gage loans, nonmortgage loans, repossessed assets, real estate held for
13 development or investment or resale, cash, deposits, investment securi-
14 ties, fixed assets and other assets, such as financial futures, goodwill
15 and other intangible assets, minus assets classified loss. In no event
16 shall assets be reduced by reserves for losses.

17 (C) The term "mortgages" shall mean loans secured by real property
18 within or without the state, participations in and securities collater-
19 alized by pools of residential mortgages, whether or not issued or guar-
20 anteed by a United States government agency, and loans secured by stock
21 in a cooperative housing corporation. The percentage of total assets
22 comprised of mortgages shall be an amount equal to the ratio of the
23 average of the four quarterly balances of such mortgages ending within
24 the taxable year, to the average of the four quarterly balances of all
25 assets ending within the taxable year. Such quarterly balances shall be
26 computed in the same manner as the report of condition required for
27 federal deposit insurance corporation or federal savings and loan insur-
28 ance corporation purposes, whether or not such report is required. For
29 taxable periods of less than one year, the taxpayer shall compute such
30 ratio using the number of such quarterly balances ending within such
31 taxable period.

32 (2) For taxable years beginning before two thousand eleven, in the
33 case of a corporation organized under the laws of a country other than
34 the United States, (i) two and six-tenths mills upon each dollar of such
35 part of the taxpayer's issued capital stock on the last day of the taxa-
36 ble year, at its face value, but if such taxpayer has stock without par
37 value, such stock shall be taken at its actual or market value, and not
38 less than five dollars per share, as may be determined by the commis-
39 sioner of finance, or (ii) if the taxpayer does not have issued capital
40 stock, two and six-tenths mills upon each dollar of such part of the
41 amount by which its average total assets exceeds its average total
42 liabilities, as the gross income of such taxpayer derived from business
43 carried on within the city during such taxable year bears to its gross
44 income derived from all business, both within and without the city
45 during said year; except that if the period covered by the return is
46 other than twelve months, the tax shall be prorated on the basis of the
47 number of months or major portions thereof included in the return. For
48 purposes of this paragraph, the term "gross income" shall have the same
49 meaning as it has in the laws of the United States relating to federal
50 income taxes.

51 (3) Three percent of the taxpayer's alternative entire net income, or
52 portion thereof allocated to the city, for the taxable year, or part
53 thereof.

54 (4) One hundred twenty-five dollars.

55 § 11-643.7. Relocation and employment assistance credit. (a) In addi-
56 tion to any other credit allowed by this part, a taxpayer that has

1 obtained the certifications required by chapter six-B of title twenty-
2 two of the code of the preceding municipality shall be allowed a credit
3 against the tax imposed by this part. The amount of the credit shall be
4 the amount determined by multiplying five hundred dollars or, in the
5 case of a taxpayer that has obtained pursuant to chapter six-B of such
6 title twenty-two a certification of eligibility dated on or after July
7 first, nineteen hundred ninety-five, one thousand dollars or, in the
8 case of an eligible business that has obtained pursuant to chapter six-B
9 of such title twenty-two a certification of eligibility dated on or
10 after July first, two thousand, for a relocation to eligible premises
11 located within a revitalization area defined in subdivision (n) of
12 section 22-621 of the code of the preceding municipality, three thousand
13 dollars, by the number of eligible aggregate employment shares main-
14 tained by the taxpayer during the taxable year with respect to partic-
15 ular premises to which the taxpayer has relocated; provided, however,
16 with respect to a relocation for which no application for a certificate
17 of eligibility is submitted prior to July first, two thousand three to
18 eligible premises that are not within a revitalization area, if the date
19 of such relocation as determined pursuant to subdivision (j) of section
20 22-621 of the code of the preceding municipality is before July first,
21 nineteen hundred ninety-five, the amount to be multiplied by the number
22 of eligible aggregate employment shares shall be five hundred dollars,
23 and with respect to a relocation for which no application for a certif-
24 icate of eligibility is submitted prior to July first, two thousand
25 three, to eligible premises that are within a revitalization area, if
26 the date of such relocation as determined pursuant to subdivision (j) of
27 such section is before July first, nineteen hundred ninety-five, the
28 amount to be multiplied by the number of eligible aggregate employment
29 shares shall be five hundred dollars, and if the date of such relocation
30 as determined pursuant to subdivision (j) of such section is on or after
31 July first, nineteen hundred ninety-five, and before July first, two
32 thousand, one thousand dollars; provided, however, that no credit shall
33 be allowed for the relocation of any retail activity or hotel services;
34 and provided that in the case of an eligible business that has obtained
35 pursuant to chapter six-B of such title twenty-two certifications of
36 eligibility for more than one relocation, the portion of the total
37 amount of eligible aggregate employment shares to be multiplied by the
38 dollar amount specified in this subdivision for each such certification
39 of a relocation shall be the number of total attributed eligible aggre-
40 gate employment shares determined with respect to such relocation pursu-
41 ant to subdivision (o) of section 22-621 of the code of the preceding
42 municipality. For purposes of this section, the terms "eligible aggre-
43 gate employment shares," "relocate," "retail activity" and "hotel
44 services" shall have the meanings ascribed by section 22-621 of the code
45 of the preceding municipality.

46 (b) The credit allowed under this section with respect to eligible
47 aggregate employment shares maintained with respect to particular prem-
48 ises to which the taxpayer has relocated shall be allowed for the first
49 taxable year during which such eligible aggregate employment shares are
50 maintained with respect to such premises and for any of the twelve
51 succeeding taxable years during which eligible aggregate employment
52 shares are maintained with respect to such premises; provided that the
53 credit allowed for the twelfth succeeding taxable year shall be calcu-
54 lated by multiplying the number of eligible aggregate employment shares
55 maintained with respect to such premises in the twelfth succeeding taxa-
56 ble year by the lesser of one and a fraction the numerator of which is

1 such number of days in the taxable year of relocation less the number of
2 days the eligible business maintained employment shares in the eligible
3 premises in the taxable year of relocation and the denominator of which
4 is the number of days in such twelfth succeeding taxable year during
5 which such eligible aggregate employment shares are maintained with
6 respect to such premises. Except as provided in subdivision (d) of this
7 section, if the amount of the credit allowable under this section for
8 any taxable year exceeds the tax imposed for such year, the excess may
9 be carried over, in order, to the five immediately succeeding taxable
10 years and, to the extent not previously deductible, may be deducted from
11 the taxpayer's tax for such years.

12 (c) The credit allowable under this section shall be deducted after
13 the credit allowed by section 11-643.8, but prior to the deduction of
14 any other credit allowed by this part.

15 (d) In the case of a taxpayer that has obtained a certification of
16 eligibility pursuant to chapter six-B of title twenty-two of the code of
17 the preceding municipality dated on or after July first, two thousand
18 for a relocation to eligible premises located within the revitalization
19 area defined in subdivision (n) of section 22-621 of the code of the
20 preceding municipality, the credits allowed under this section, or in
21 the case of a taxpayer that has relocated more than once, the portion of
22 such credits attributed to such certification of eligibility pursuant to
23 subdivision (a) of this section, against the tax imposed by this chapter
24 for the taxable year of such relocation and for the four taxable years
25 immediately succeeding the taxable year of such relocation, shall be
26 deemed to be overpayments of tax by the taxpayer to be credited or
27 refunded, without interest, in accordance with the provisions of section
28 11-677 of this chapter. For such taxable years, such credits or portions
29 thereof may not be carried over to any succeeding taxable year;
30 provided, however, that this subdivision shall not apply to any relo-
31 cation for which an application for a certification of eligibility was
32 not submitted prior to July first, two thousand three, unless the date
33 of such relocation is on or after July first, two thousand.

34 § 11-643.8 Credit relating to certain distributions from partnerships.

35 (a) If a banking corporation is a partner in an unincorporated business
36 taxable under chapter five of this title, and is required to include in
37 entire net income its distributive share of income, gain, loss and
38 deductions of, or guaranteed payments from, such unincorporated busi-
39 ness, such banking corporation shall be allowed a credit against the tax
40 imposed by this part equal to the lesser of the amounts determined in
41 paragraphs one and two of this subdivision:

42 (1) The amount determined in this paragraph is the product of (A) the
43 sum of (i) the tax imposed by chapter five of this title on the unincor-
44 porated business for its taxable year ending within or with the taxable
45 year of the banking corporation and paid by the unincorporated business
46 and (ii) the amount of any credit or credits taken by the unincorporated
47 business under section 11-503 of this title, except the credit allowed
48 by subdivision (b) of such section, for its taxable year ending within
49 or with the taxable year of the banking corporation, to the extent that
50 such credits do not reduce such unincorporated business's tax below
51 zero, and (B) a fraction, the numerator of which is the net total of the
52 banking corporation's distributive share of income, gain, loss and
53 deductions of, and guaranteed payments from, the unincorporated business
54 for such taxable year and the denominator of which is the sum, for such
55 taxable year, of the net total distributive shares of income, gain, loss
56 and deductions of, and guaranteed payments to, all partners of the unin-

1 corporated business for whom or which such net total, as separately
2 determined for each partner, is greater than zero.

3 (2) The amount determined in this paragraph is the product of (A) the
4 excess of (i) the basic tax computed pursuant to subdivision (a) of
5 section 11-643.5 of this part, without allowance of any credits allowed
6 by this part, over (ii) the basic tax so computed, determined as if the
7 banking corporation had no such distributive share or guaranteed
8 payments with respect to the unincorporated business, and (B) a frac-
9 tion, the numerator of which is four and the denominator of which is
10 nine, provided, however, that the amounts computed in clauses (i) and
11 (ii) of this paragraph shall be computed with the following modifica-
12 tions:

13 (I) if, prior to taking into account any distributive share or guaran-
14 teed payments from any unincorporated business, the entire net income of
15 the partner is less than zero, such entire net income shall be treated
16 as zero; and

17 (II) if such partner's net total distributive share of income, gain,
18 loss and deductions of, and guaranteed payments from any unincorporated
19 business is less than zero, such net total shall be treated as zero.

20 The amount determined in this paragraph shall not be less than zero.

21 (b) (1) Notwithstanding anything to the contrary in subdivision (a) of
22 this section, in the case of a banking corporation that, before the
23 application of this section or any other credit allowed by this part, is
24 liable for the basic tax computed under subdivision (a) of section
25 11-643.5 of this part, the credit or the sum of the credits that may be
26 taken by such banking corporation for a taxable year under this section
27 with respect to an unincorporated business or unincorporated businesses
28 in which it is a partner shall not exceed the tax so computed, without
29 allowance of any credits allowed by this part, multiplied by a fraction
30 the numerator of which is four and the denominator of which is nine. If
31 the credit allowed under this subdivision or the sum of such credits
32 exceeds the product of such tax and such fraction, the amount of the
33 excess may be carried forward, in order, to each of the seven immediate-
34 ly succeeding taxable years and, to the extent not previously taken,
35 shall be allowed as a credit in each of such years. In applying such
36 provisions, the credit determined for the taxable year under subdivision
37 (a) of this section shall be taken before taking any credit carryforward
38 pursuant to this paragraph and the credit carryforward attributable to
39 the earliest taxable year shall be taken before taking a credit carry-
40 forward attributable to a subsequent taxable year.

41 (2) Notwithstanding anything to the contrary in subdivision (a) of
42 this section, in the case of a banking corporation that, before the
43 application of this section or any other credit allowed by this part, is
44 liable for the alternative minimum tax on alternative entire net income
45 under paragraph three of subdivision (b) of section 11-643.5 of this
46 part, the maximum credit that may be taken in any taxable year is the
47 amount that will reduce the tax so computed, without allowance of any
48 credits allowed by this part, to zero. For purposes of this paragraph
49 each dollar of credit shall be applied so as to reduce such tax by
50 seventy-five cents. If the amount of credit allowed under this section
51 or the sum of such credits exceeds the amount that may be taken against
52 such tax, the amount of the excess may be carried forward, in order, to
53 each of the seven immediately succeeding taxable years and, to the
54 extent not previously taken, shall be allowed as a credit in each of
55 such years. In applying such provisions, the credit determined for the
56 taxable year under subdivision (a) of this section shall be taken before

1 taking any credit carryforward pursuant to this subdivision and the
2 credit carryforward attributable to the earliest taxable year shall be
3 taken before taking a credit carryforward attributable to a subsequent
4 taxable year.

5 (3) No credit under this section may be taken in a taxable year by a
6 taxpayer that, in the absence of such credit, would be liable for the
7 tax computed on the basis of taxable assets under paragraph one of this
8 subdivision, the tax computed on the basis of issued capital stock under
9 paragraph two of this subdivision or the fixed-dollar minimum tax under
10 paragraph four of subdivision (b) of section 11-643.5 of this part.

11 (c) For banking corporations that file a report on a combined basis
12 pursuant to subdivision (f) of section 11-646 of this part, the credit
13 allowed by this section shall be computed as if the combined group were
14 the partner in each unincorporated business from which any of the
15 members of such group had a distributive share or guaranteed payments,
16 provided, however, if more than one member of the combined group is a
17 partner in the same unincorporated business, for purposes of the calcu-
18 lation required in paragraph one of subdivision (a) of this section, the
19 numerator of the fraction described in subparagraph (B) of such para-
20 graph one shall be the sum of the net total distributive shares of
21 income, gain, loss and deductions of, and guaranteed payments from, the
22 unincorporated business of all of the partners of the unincorporated
23 business within the combined group for which such net total, as sepa-
24 rately determined for each partner, is greater than zero, and the denom-
25 inator of such fraction shall be the sum of the net total distributive
26 shares of income, gain, loss and deductions of, and guaranteed payments
27 from, the unincorporated business of all partners in the unincorporated
28 business for whom or which such net total, as separately determined for
29 each partner, is greater than zero.

30 (d) The credit allowed by this section shall not be allowed to a part-
31 ner in an unincorporated business with respect to any tax paid by the
32 unincorporated business under chapter five of this title for any taxable
33 year beginning before July first, nineteen hundred ninety-four.

34 (e) Notwithstanding any other provisions of this part, the credit
35 allowable under this section shall be taken prior to the taking of any
36 other credit allowed by this part. Notwithstanding any other provisions
37 of this part, the application of this section shall not change the basis
38 on which the taxpayer's tax is computed under subdivision (a) or (b) of
39 section 11-643.5 of this part.

40 § 11-644 Declarations of estimated tax. (a) Requirements of declara-
41 tion. Every taxpayer subject to the tax imposed by subdivision (a) of
42 section 11-639 of this part shall make a declaration of its estimated
43 tax for the current taxable year, containing such information as the
44 commissioner of finance may prescribe by regulations or instructions, if
45 such estimated tax can reasonably be expected to exceed one thousand
46 dollars.

47 (b) Definition of estimated tax. The term "estimated tax" means the
48 amount which a taxpayer estimates to be the tax imposed by subdivision
49 (a) of section 11-639 of this part for the current taxable year, less
50 the amount which it estimates to be the sum of any credits allowable
51 against the tax.

52 (c) Time for filing declaration. A declaration of estimated tax shall
53 be filed on or before June fifteenth of the current taxable year in the
54 case of a taxpayer which reports on the basis of a calendar year, except
55 that if the requirements of subdivision (a) of this section are first
56 met:

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

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

7 (d) Amendments of declaration. A taxpayer may amend a declaration
8 under regulations of the commissioner of finance.

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

14 (1) such return shall be considered as its declaration if no declara-
15 tion was required to be filed during the taxable year for which the tax
16 was imposed, but is otherwise required to be filed on or before December
17 fifteenth pursuant to paragraph two of subdivision (c) of this section,
18 and

19 (2) such return shall be considered as the amendment permitted by
20 subdivision (d) of this section to be filed on or before December
21 fifteenth if the tax shown on the return is greater than the estimated
22 tax shown on a declaration previously made.

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

26 (g) Short taxable period. If the taxable period for which a tax is
27 imposed by subdivision (a) of section 11-639 of this part is less than
28 twelve months, every taxpayer required to make a declaration of esti-
29 mated tax for such taxable period shall make such a declaration in
30 accordance with regulations of the commissioner of finance.

31 (h) Extension of time. The commissioner of finance may grant a
32 reasonable extension of time, not to exceed three months, for the filing
33 of any declaration required pursuant to this section, on such terms and
34 conditions as the commissioner may require.

35 § 11-645 Payments of estimated tax. (a) Every taxpayer subject to
36 the tax imposed by section 11-639 of this part shall pay an amount equal
37 to twenty-five percent of the preceding year's tax, if such preceding
38 year's tax exceeded one thousand dollars. Such amount shall be paid
39 with the return required to be filed for the preceding taxable year or
40 with an application for the extension of the time for filing such
41 return. Provided, however, that for the first taxable year or period
42 commencing on or after January first, nineteen hundred seventy-three,
43 the installment required by this subdivision shall be paid with the
44 return required to be filed for the tax imposed pursuant to part one or
45 two of this subchapter three computed on the basis of net income for the
46 calendar year nineteen hundred seventy-two, or under the minimum tax
47 provisions of section 11-612 of this subchapter.

48 (b) Other installments. The estimated tax for each taxable year with
49 respect to which a declaration of estimated tax is required to be filed
50 under this part shall be paid, in the case of a taxpayer which reports
51 on the basis of a calendar year, as follows:

52 (1) If the declaration is filed on or before June fifteenth, the esti-
53 mated tax shown thereon, after applying thereto the amount, if any, paid
54 during the same taxable year pursuant to subdivision (a) of this
55 section, shall be paid in three equal installments. One of such
56 installments shall be paid at the time of the filing of the declaration,

1 one shall be paid on the following September fifteenth, and one on the
2 following December fifteenth.

3 (2) If the declaration is filed after June fifteenth and not after
4 September fifteenth of such taxable year, and is not required to be
5 filed on or before June fifteenth of such year, the estimated tax shown
6 on such declaration, after applying thereto the amount, if any, paid
7 during the same taxable year pursuant to subdivision (a) of this
8 section, shall be paid in two equal installments. One of such install-
9 ments shall be paid at the time of the filing of the declaration and one
10 shall be paid on the following December fifteenth.

11 (3) If the declaration is filed after September fifteenth of such
12 taxable year, and is not required to be filed on or before September
13 fifteenth of such year, the estimated tax shown on such declaration,
14 after applying thereto the amount, if any, paid in respect of such year
15 pursuant to subdivision (a) of this section, shall be paid in full at
16 the time of the filing of the declaration.

17 (4) If the declaration is filed after the time prescribed therefor,
18 or after the expiration of any extension of time therefor, paragraphs
19 two and three of this subdivision shall not apply and there shall be
20 paid at the time of such filing all installments of estimated tax paya-
21 ble at or before such time, and the remaining installments shall be paid
22 at the times at which, and in the amounts in which, they would have been
23 payable if the declaration had been filed when due.

24 (c) Amendments of declarations. If any amendment of a declaration is
25 filed, the remaining installments, if any, shall be ratably increased or
26 decreased, as the case may be, to reflect any increase or decrease in
27 the estimated tax by reason of such amendment, and if any amendment is
28 made after September fifteenth of the taxable year, any increase in the
29 estimated tax by reason thereof shall be paid at the time of making such
30 amendment.

31 (d) Application of installments based on the preceding year's tax.
32 Any amount paid pursuant to subdivision (a) of this section shall be
33 applied as a first installment against the estimated tax of the taxpayer
34 for the taxable year shown on the declaration required to be filed
35 pursuant to section 11-644 of this part, or if no declaration of esti-
36 mated tax is required to be filed by the taxpayer pursuant to such
37 section, any such amount shall be considered a payment on account of the
38 tax shown on the return required to be filed by the taxpayer for such
39 taxable year.

40 (e) Interest on certain installments based on the preceding year's
41 tax. Notwithstanding the provisions of section 11-679 of this chapter or
42 of section three-a of the general municipal law, if an amount paid
43 pursuant to subdivision (a) of this section exceeds the tax shown on the
44 return required to be filed by the taxpayer for the taxable year during
45 which the amount was paid, interest shall be allowed and paid on the
46 amount by which the amount so paid pursuant to such subdivision exceeds
47 such tax, at the overpayment rate set by the commissioner of finance
48 pursuant to section 11-687 of this chapter, or, if no rate is set, at
49 the rate of six percent per annum from the date of payment of the amount
50 so paid pursuant to such subdivision to the fifteenth day of the third
51 month following the close of the taxable year, provided, however, that
52 no interest shall be allowed or paid under this subdivision if the
53 amount thereof is less than one dollar.

54 (f) The preceding year's tax defined. As used in this section, "the
55 preceding year's tax" means the tax imposed upon the taxpayer by subdi-
56 vision (a) of section 11-639 of this part for the preceding taxable

1 year, or, for purposes of computing the first installment of estimated
2 tax when an application has been filed for extension of the time for
3 filing the return required to be filed for such preceding taxable year,
4 the amount properly estimated pursuant to paragraph one of subdivision b
5 of section 11-647 of this part as the tax imposed upon the taxpayer for
6 such taxable year. Provided, however, that for the first taxable year
7 or period commencing on or after January first, nineteen hundred seven-
8 ty-three, the term "preceding year's tax" as used in this section shall
9 mean the tax imposed upon the taxpayer pursuant to part one or two of
10 this subchapter three which was computed on the basis of net income for
11 the calendar year nineteen hundred seventy-two, or under the minimum tax
12 provisions of subdivision two of section 11-612 of this subchapter, or
13 for purposes of computing the first installment of estimated tax for
14 such first taxable year or period when an application has been filed for
15 an extension of the time for filing the return required to be filed for
16 the tax imposed pursuant to part one or two of this subchapter three
17 which was computed on the basis of net income for the calendar year
18 nineteen hundred seventy-two, or under the minimum tax provisions of
19 section 11-612 of this subchapter, the amount of tax properly estimated
20 for purposes of such part one or two pursuant to section 11-635 of this
21 subchapter.

22 (g) Application to short taxable period. This section shall apply to
23 a taxable period of less than twelve months in accordance with regu-
24 lations of the commissioner of finance.

25 (h) Fiscal year. The provisions of this section shall apply to taxa-
26 ble years of twelve months other than a calendar year by the substi-
27 tution of the months of such fiscal year for the corresponding months
28 specified in such provisions.

29 (i) Extension of time. The commissioner of finance may grant a
30 reasonable extension of time, not to exceed six months, for payment of
31 any installment of estimated tax required pursuant to this section, on
32 such terms and conditions as the commissioner may require, including the
33 furnishing of a bond or other security by the taxpayer in an amount not
34 exceeding twice the amount for which any extension of time for payment
35 is granted, provided, however that interest at the underpayment rate set
36 by the commissioner of finance pursuant to section 11-687 of this chap-
37 ter, or, if no rate is set, at the rate of seven and one-half percent
38 per annum for the period of the extension shall be charged and collected
39 on the amount for which any extension of time for payment is granted
40 under this subdivision.

41 (j) Payment of installments in advance. A taxpayer may elect to pay
42 any installment of estimated tax prior to the date prescribed in this
43 section for payment thereof.

44 § 11-646 Returns. (a) Every taxpayer shall annually on or before
45 the fifteenth day of the third month following the close of each of its
46 taxable years transmit to the commissioner of finance a return in a form
47 prescribed by the commissioner setting forth such information as the
48 commissioner of finance may prescribe and every taxpayer which ceases to
49 exercise its franchise in the city or to be subject to the tax imposed
50 by this part shall transmit to the commissioner of finance a return on
51 the date of such cessation or at such other time as the commissioner of
52 finance may require covering each year or period for which no return was
53 therefore filed.

54 (b) Every taxpayer shall also transmit such other returns and such
55 facts and information as the commissioner of finance may require in the
56 administration of this part.

1 (c) The commissioner of finance may grant a reasonable extension of
2 time for filing returns whenever good cause exists. An automatic exten-
3 sion of six months for the filing of its annual return shall be allowed
4 any taxpayer, if within the time prescribed by subdivision (a) of this
5 section, such taxpayer files with the commissioner of finance an appli-
6 cation for extension in such form as said commissioner of finance may
7 prescribe by regulation and pays on or before the date of such filing
8 the amount properly estimated as its tax.

9 (d) Every return shall have annexed thereto a certification by the
10 president, vice president, treasurer, assistant treasurer, chief
11 accounting officer or any other officer of the taxpayer duly authorized
12 so to act to the effect that the statements contained therein are true.
13 The fact that an individual's name is signed on a certification of the
14 return shall be prima facie evidence that such individual is authorized
15 to sign and certify the return on behalf of the corporation.

16 (e) If the amount of taxable income, alternative minimum taxable
17 income or other basis of tax for any year of any taxpayer, or of any
18 shareholder of any taxpayer that has elected to be taxed under subchap-
19 ter s of chapter one of the internal revenue code or of any shareholder
20 of any taxpayer with respect to which an election has been made to be
21 treated as a qualified subchapter s subsidiary under paragraph three of
22 subsection (b) of section thirteen hundred sixty-one of the internal
23 revenue code as returned to the United States treasury department or the
24 New York state commissioner of taxation and finance is changed or
25 corrected by the commissioner of internal revenue or other officer of
26 the United States or the New York state commissioner of taxation and
27 finance or other competent authority, or if a taxpayer or such share-
28 holder of a taxpayer, pursuant to subsection (d) of section sixty-two
29 hundred thirteen of the internal revenue code, executes a notice of
30 waiver of the restrictions provided in subsection (a) of said section,
31 or if a taxpayer or such shareholder of a taxpayer, pursuant to
32 subsection (f) of section one thousand eighty-one of the tax law,
33 executes a notice of waiver of the restrictions provided in subsection
34 (c) of such section, such taxpayer shall report such changed or
35 corrected taxable income, alternative minimum taxable income or other
36 basis of tax or such execution of such notice of waiver and the changes
37 or corrections of the taxpayer's federal or New York state taxable
38 income, alternative minimum taxable income or other basis of tax on
39 which it is based, within ninety days, or one hundred twenty days, in
40 the case of a taxpayer making a combined return under this subchapter
41 for such year, after such execution or the final determination of such
42 change or correction, or as required by the commissioner of finance, and
43 shall concede the accuracy of such determination or state wherein it is
44 erroneous. The allowance of a tentative carryback adjustment based upon
45 a net capital loss carryback pursuant to section sixty-four hundred
46 eleven of the internal revenue code, shall be treated as a final deter-
47 mination for purposes of this subdivision. Any taxpayer filing an
48 amended return with such department shall also file within ninety days,
49 or one hundred twenty days, in the case of a taxpayer making a combined
50 return under this subchapter for such year, thereafter an amended return
51 with the commissioner of finance which shall contain such information as
52 the commissioner shall require.

53 (f) (1) For purposes of this subdivision, the term "bank holding
54 company" means any corporation subject to article three-A of the banking
55 law, or registered under the federal bank holding company act of nine-
56 teen hundred fifty-six, as amended, or registered as a savings and loan

1 holding company, but excluding a diversified savings and loan holding
2 company, under the federal national housing act, as amended.

3 (2) (i) Any banking corporation or bank holding company which is doing
4 business in the city in a corporate or organized capacity, and

5 (A) which owns or controls, directly or indirectly, eighty percent or
6 more of the voting stock of one or more banking corporations or bank
7 holding companies, or

8 (B) whose voting stock is eighty percent or more owned or controlled,
9 directly or indirectly, by a banking corporation or a bank holding
10 company,

11 shall make a return on a combined basis under this part covering
12 itself and such corporations described in clause (A) or (B) of this
13 subparagraph and shall set forth such information as the commissioner of
14 finance may require unless the taxpayer or the commissioner of finance
15 shows that the inclusion of such a corporation in the combined return
16 fails to properly reflect the tax liability of such corporation under
17 this part. Provided, however, that no banking corporation or bank hold-
18 ing company not a taxpayer shall be subject to the requirements of this
19 subparagraph unless the commissioner of finance deems that the applica-
20 tion of such requirements is necessary in order to properly reflect the
21 tax liability under this part, because of intercompany transactions or
22 some agreement, understanding, arrangement or transaction of the type
23 referred to in subdivision (g) of this section.

24 (ii) In the discretion of the commissioner of finance, any banking
25 corporation or bank holding company which is doing business in the city
26 in a corporate or organized capacity, and

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

30 (B) whose voting stock is sixty-five percent or more owned or
31 controlled, directly or indirectly, by a banking corporation or a bank
32 holding company, may be required or permitted to make a return on a
33 combined basis under this part covering itself and such corporations
34 described in clause (A) or (B) of this subparagraph and shall set forth
35 such information as the commissioner of finance may require; provided,
36 however, that no combined return shall be required or permitted unless
37 the commissioner of finance deems such report necessary in order to
38 properly reflect the tax liability under this part of any one or more of
39 such banking corporations or bank holding companies.

40 (iii) In the discretion of the commissioner of finance, banking corpo-
41 rations or bank holding companies which are each sixty-five percent or
42 more owned or controlled, directly or indirectly, by the same interest
43 may be permitted or required to make a return on a combined basis under
44 this part and shall set forth such information as the commissioner of
45 finance may require, if at least one such banking corporation or bank
46 holding company is doing business in the city in a corporate or organ-
47 ized capacity. No combined return shall be required or permitted unless
48 the commissioner of finance deems such report necessary in order to
49 properly reflect the tax liability under this part of any one or more of
50 such banking corporations or bank holding companies.

51 (iv) (A) Notwithstanding any provision of this paragraph, any bank
52 holding company exercising its corporate franchise or doing business in
53 the city may make a return on a combined basis without seeking the
54 permission of the commissioner with any banking corporation exercising
55 its corporate franchise or doing business in the city in a corporate or
56 organized capacity sixty-five percent or more of whose voting stock is

1 owned or controlled, directly or indirectly, by such bank holding compa-
2 ny, for the first taxable year beginning on or after January first, two
3 thousand and before January first, two thousand twenty during which such
4 bank holding company registers for the first time under the federal bank
5 holding company act, as amended, and also elects to be a financial hold-
6 ing company. In addition, for each subsequent taxable year beginning
7 after January first, two thousand and before January first, two thousand
8 twenty, any such bank holding company may file on a combined basis with-
9 out seeking the permission of the commissioner with any banking corpo-
10 ration that is exercising its corporate franchise or doing business in
11 the city and sixty-five percent or more of whose voting stock is owned
12 or controlled, directly or indirectly, by such bank holding company if
13 either such banking corporation is exercising its corporate franchise or
14 doing business in the city in a corporate or organized capacity for the
15 first time during such subsequent taxable year, or sixty-five percent or
16 more of the voting stock of such banking corporation is owned or
17 controlled, directly or indirectly, by such bank holding company for the
18 first time during such subsequent taxable year. Provided however, for
19 each subsequent taxable year beginning after January first, two thousand
20 and before January first, two thousand twenty, a banking corporation
21 described in this clause which filed on a combined basis with any such
22 bank holding company in a previous taxable year, must continue to file
23 on a combined basis with such bank holding company if such banking
24 corporation, during such subsequent taxable year, continues to exercise
25 its corporate franchise or do business in the city in a corporate or
26 organized capacity and sixty-five percent or more of such banking corpo-
27 ration's voting stock continues to be owned or controlled, directly or
28 indirectly, by such bank holding company, unless the permission of the
29 commissioner has been obtained to file on a separate basis for such
30 subsequent taxable year. Provided further, however, for each subsequent
31 taxable year beginning after January first, two thousand and before
32 January first, two thousand twenty, a banking corporation described in
33 this clause which did not file on a combined basis with any such bank
34 holding company in a previous taxable year, may not file on a combined
35 basis with such bank holding company during any such subsequent taxable
36 year unless the permission of the commissioner has been obtained to file
37 on a combined basis for such subsequent taxable year.

38 (B) Notwithstanding any provision of this paragraph other than clause
39 (A) of this subparagraph, the commissioner may not require a bank hold-
40 ing company which, during a taxable year beginning on or after January
41 first, two thousand and before January first, two thousand twenty,
42 registers for the first time during such taxable year under the federal
43 bank holding company act, as amended, and also elects to be a financial
44 holding company, to make a return on a combined basis for any taxable
45 year beginning on or after January first, two thousand and before Janu-
46 ary first, two thousand twenty with a banking corporation sixty-five
47 percent or more of whose voting stock is owned or controlled, directly
48 or indirectly, by such bank holding company.

49 (v)(A) For purposes of this subparagraph, the term "closest control-
50 ling stockholder" means the corporation that indirectly owns or controls
51 over fifty percent of the voting stock of a captive REIT or captive RIC,
52 is subject to tax under this subchapter or otherwise required to be
53 included in a combined return under this chapter and is the fewest tiers
54 of corporations away in the ownership structure from the captive REIT or
55 captive RIC. The commissioner is authorized to prescribe by regulation

1 or published guidance the criteria for determining the closest control-
2 ling stockholder.

3 (B) A captive REIT or a captive RIC must be included in a combined
4 return with the banking corporation or bank holding company that direct-
5 ly owns or controls over fifty percent of the voting stock of the
6 captive REIT or captive RIC if that banking corporation or bank holding
7 company is subject to tax or required to be included in a combined
8 return under this subchapter.

9 (C) If over fifty percent of the voting stock of a captive REIT or
10 captive RIC is not directly owned or controlled by a banking corporation
11 or bank holding company that is subject to tax or required to be
12 included in a combined return under this subchapter, then the captive
13 REIT or captive RIC must be included in a combined return with the
14 corporation that is the closest controlling stockholder of the captive
15 REIT or captive RIC. If the closest controlling stockholder of the
16 captive REIT or captive RIC is a banking corporation or bank holding
17 company that is subject to tax or otherwise required to be included in a
18 combined return under this subchapter, then the captive REIT or captive
19 RIC must be included in a combined return under this subchapter.

20 (D) If the corporation which directly owns or controls the voting
21 stock of the captive REIT or captive RIC is described in subparagraph
22 (ii) of paragraph four of this subdivision as a corporation not permit-
23 ted to make a combined return, then the provisions in clause (C) of this
24 subparagraph must be applied to determine the corporation in whose
25 combined return the captive REIT or captive RIC should be included. If,
26 under clause (C) of this subparagraph, the corporation that is the clos-
27 est controlling stockholder of the captive REIT or captive RIC is
28 described in subparagraph (ii) or (iv) of paragraph four of this subdivi-
29 sion as a corporation not permitted to make a combined return, then
30 that corporation is deemed to not be in the ownership structure of the
31 captive REIT or captive RIC, and the closest controlling stockholder
32 will be determined without regard to that corporation.

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

38 (F) If a captive REIT or a captive RIC is required under this subpara-
39 graph to be included in a combined return with another corporation, and
40 that other corporation is required to be included in a combined return
41 with another corporation under other provisions of this subdivision, the
42 captive REIT or captive RIC must be included in that combined return
43 with those corporations.

44 (G) If the banking corporation or bank holding company that directly
45 or indirectly owns or controls over fifty percent of the voting stock of
46 the captive REIT or captive RIC and is the closest controlling stock-
47 holder of the captive REIT or captive RIC is a member of an affiliated
48 group (1) that does not include any corporation that is engaged in a
49 business that a subsidiary of a bank holding company would not be
50 permitted to engage in, unless such business is de minimis, and (2)
51 whose members own assets the combined average value of which does not
52 exceed eight billion dollars, then the captive REIT or captive RIC must
53 not be included in a combined return under this subchapter. In that
54 instance, the captive REIT or captive RIC is subject to the provisions
55 of subdivision seven or eight of section 11-603 of this chapter. The
56 term "affiliated group" means "affiliated group" as defined in section

1 fifteen hundred four of the internal revenue code, but without regard to
2 the exceptions provided for in subsection (b) of such section.

3 (vi) For taxable years beginning on or after January first two thou-
4 sand eleven, a banking corporation doing business in the city solely
5 because it meets one or more of the tests in subparagraphs (i) through
6 (v) of paragraph one of subdivision (c) of section 11-639 of this chap-
7 ter, referred to in this subparagraph as the "credit card bank", will
8 not be included in a combined return pursuant to subparagraph (i) of
9 this paragraph with another banking corporation or bank holding company
10 which is doing business in the city unless the credit card bank or the
11 commissioner shows that the inclusion of the credit card bank in the
12 combined return is necessary to properly reflect the tax liability of
13 the credit card bank, the banking corporation or bank holding company
14 under this subchapter. However, any banking corporation that meets one
15 or more of the tests in subparagraphs (i) through (v) of paragraph one
16 of subsection (c) of section 11-639 of this chapter and was included in
17 a combined return for its last taxable year beginning before January
18 first, two thousand eleven may continue to be included in a combined
19 return for future taxable years, provided that once that banking corpo-
20 ration has been included in a combined return for any taxable year
21 beginning on or after January first, two thousand eleven, it must
22 continue to be included in a combined return until it obtains the
23 consent of the commissioner to cease being included in a combined return
24 because the combined return no longer properly reflects the tax liabil-
25 ity under this subchapter of any of the corporations included in the
26 combined return. Further, the credit card bank will be included in a
27 combined return with (A) any banking corporation not subject to tax
28 under this subchapter sixty-five percent or more of whose voting stock
29 is owned or controlled, directly or indirectly, by the credit card bank,
30 or (B) any banking corporation or bank holding company not subject to
31 tax under this subchapter which owns or controls, directly or indirect-
32 ly, sixty-five percent or more of the voting stock of the credit card
33 bank, or (C) any banking corporation not subject to tax under this
34 subchapter sixty-five percent or more of the voting stock of which is
35 owned or controlled, directly or indirectly, by the same corporation or
36 corporations that own or control, directly or indirectly, sixty-five
37 percent or more of the voting stock of the credit card bank, if the
38 corporation or corporations described in clauses (A), (B) and (C) of
39 this subparagraph provide services for or support to the credit card
40 bank's operations, unless the credit card bank or the commissioner shows
41 that the inclusion of any of those corporations in the combined return
42 fails to properly reflect the tax liability of the credit card bank. For
43 purposes of this subparagraph, services for or support to the credit
44 card bank's operations include such activities as billing, credit inves-
45 tigation and reporting, marketing, research, advertising, mailing,
46 customer service, information technology, lending and financing
47 services, and communications services, but will not include accounting,
48 legal or personnel services.

49 (3) (i) In the case of a combined return, the tax shall be measured by
50 the combined entire net income, combined alternative entire net income
51 or combined assets of all the corporations included in the return,
52 including any captive REIT or captive RIC. The allocation percentage
53 shall be computed based on the combined factors with respect to all the
54 corporations included in the combined return. In computing combined
55 entire net income and alternative entire net income intercorporate divi-
56 dends and all other intercorporate transactions shall be eliminated and

1 in computing combined assets intercorporate stockholdings and intercorporate bills, notes and accounts receivable and payable and other intercorporate indebtedness shall be eliminated.

4 (ii) In the case of a captive REIT required under this subdivision to be included in a combined return, "entire net income" means "real estate investment trust taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-seven, as modified by section eight hundred fifty-eight, of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-seven of that code, subject to the modifications required by section 11-641 of this chapter. In the case of a captive RIC required under this subdivision to be included in a combined return, "entire net income" means "investment company taxable income" as defined in paragraph two of subdivision (b) of section eight hundred fifty-two, as modified by section eight hundred fifty-five, of the internal revenue code, plus the amount taxable under paragraph three of subdivision (b) of section eight hundred fifty-two of such code, subject to the modifications required by section 11-641 of this chapter. However, the deduction under the internal revenue code for dividends paid by the captive REIT or captive RIC to any member of the affiliated group that includes the corporation that directly or indirectly owns over fifty percent of the voting stock of the captive REIT or captive RIC shall be limited to twenty-five percent for taxable years beginning on or after January first, two thousand nine and before January first, two thousand eleven and shall not be allowed for taxable years beginning on or after January first, two thousand eleven. The term "affiliated group" means "affiliated group" as defined in section fifteen hundred four of the internal revenue code, but without regard to the exceptions provided for in subsection (b) of such section.

30 (4) (i) In no event shall an item of income or expense of a corporation organized under the laws of a country other than the United States be included in a combined return unless it is includible in entire net income or alternative entire net income, as the case may be, nor shall an asset of such a corporation be included in a combined return unless it is included in taxable assets.

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

40 (iii) In no event shall a corporation which has made an election pursuant to subdivision (d) of section 11-640 of this part to be subject to the tax imposed by subchapter two of this chapter be included in a combined return for those taxable years for which it is subject to the tax imposed by subchapter two of this chapter.

45 (5) Tax liability under this part may be deemed to be improperly reflected because of intercompany transactions or some agreement, understanding, arrangement or transaction referred to in subdivision (g) of this section.

49 (g) In case it shall appear to the commissioner of finance that any agreement, understanding or arrangement exists between the taxpayer and any other corporation or any person or firm, whereby the activity, business, income or assets of the taxpayer within the city is improperly or inaccurately reflected, the commissioner of finance is authorized and empowered, in his or her discretion and in such manner as he or she may determine, to adjust items of income or deductions in computing entire net income or alternative entire net income and to adjust assets, and to

1 adjust wages, salaries and other personal service compensation, receipts
2 or deposits in computing any allocation percentage, provided only that
3 entire net income or alternative entire net income be adjusted accord-
4 ingly and that any asset directly traceable to the elimination of any
5 receipt be eliminated from assets so as to accurately determine the tax.
6 If however, in the determination of the commissioner of finance, such
7 adjustments do not, or cannot effectively provide for the accurate
8 determination of the tax, the commissioner of finance shall be author-
9 ized to require the filing of a combined report by the taxpayer and any
10 such other corporations. Where (1) any taxpayer conducts its activity or
11 business under any agreement, arrangement or understanding in such
12 manner as either directly or indirectly to benefit its members or stock-
13 holders, or any of them, or any person or persons directly or indirectly
14 interested in such activity or business, by entering into any trans-
15 action at more or less than a fair price which, but for such agreement,
16 arrangement or understanding, might have been paid or received therefor,
17 or (2) any taxpayer enters into any transaction with another corporation
18 on such terms as to create an improper loss or net income, the commis-
19 sioner of finance may include in the entire net income or alternative
20 entire net income of the taxpayer the fair profits which, but for such
21 agreement, arrangement or understanding, the taxpayer might have derived
22 from such transaction.

23 § 11-647 Payment of tax. (a) To the extent the tax imposed for
24 section 11-639 of this part shall not have been previously paid pursuant
25 to section 11-645 of this part:

26 (1) such tax, or the balance thereof, shall be payable to the commis-
27 sioner of finance in full at the time its return is required to be
28 filed, and

29 (2) such tax, or the balance thereof, imposed on any taxpayer which
30 ceased to exercise its franchise or to be subject to the tax imposed by
31 this part shall be payable to the commissioner of finance at the time
32 the return is required to be filed, provided such tax of a domestic
33 corporation which continues to possess its franchise shall be subject to
34 adjustment as the circumstances may require; all other taxes of any such
35 taxpayer, which pursuant to the provisions of this subdivision would
36 otherwise be payable subsequent to the time such return is required to
37 be filed, shall nevertheless be payable at such time.

38 (b) If the taxpayer, within the time prescribed by subdivision (c) of
39 section 11-646 of this part, shall have applied for an automatic exten-
40 sion of time to file its annual return and shall have paid to the
41 commissioner of finance on or before the date of such application is
42 filed an amount properly estimated as provided by said subdivision the
43 only amount payable in addition to the tax shall be interest at the
44 underpayment rate set by the commissioner of finance pursuant to section
45 11-687 of this chapter, or, if no rate is set, at the rate of seven and
46 one-half percent per annum upon the amount by which the tax, or portion
47 thereof payable on or before the date the return was required to be
48 filed, exceeds the amount so paid, provided that:

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

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

1 (c) The commissioner of finance may grant a reasonable extension of
 2 time for payment of any tax imposed by this part under such conditions
 3 as the commissioner deems just and proper.

4 SUBCHAPTER 3-A
 5 CORPORATE TAX OF 2015

6 Section 11-651 Applicability.
 7 11-652 Definitions.
 8 11-653 Imposition of tax; exemptions.
 9 11-654 Computation of tax.
 10 11-654.1 Net operating loss.
 11 11-654.2 Receipts allocation.
 12 11-654.3 Combined reports.
 13 11-655 Reports.
 14 11-656 Payment and lien of tax.
 15 11-657 Declaration of estimated tax.
 16 11-658 Payments on account of estimated tax.
 17 11-659 Collection of taxes.
 18 11-660 Limitations of time.

19 § 11-651 Applicability. 1. Notwithstanding anything to the contrary in
 20 this chapter, this subchapter shall apply to corporations for tax years
 21 commencing on or after January first, two thousand fifteen, except that
 22 it shall not apply to any corporation that (a) has an election in effect
 23 under subsection (a) of section thirteen hundred sixty-two of the inter-
 24 nal revenue code, as amended, or (b) is a qualified subchapter S subsid-
 25 iary within the meaning of paragraph three of subsection (b) of section
 26 thirteen hundred sixty-one of the internal revenue code, as amended, in
 27 any tax year commencing on or after such date. Subchapters two and three
 28 of this chapter shall not apply to corporations to which this subchapter
 29 applies for tax years commencing on or after January first, two thousand
 30 fifteen, except to the extent provided in this subchapter and to the
 31 extent that the effect of the application of subchapters two and three
 32 to tax years commencing prior to January first, two thousand fifteen
 33 carries over to tax years commencing on or after January first, two
 34 thousand fifteen.

35 2. Each reference in the tax law or this code to subchapters two or
 36 three of this chapter, or any of the provisions thereof, shall be deemed
 37 a reference also to this subchapter, and any of the applicable
 38 provisions thereof, where appropriate and with all necessary modifica-
 39 tions.

40 § 11-652 Definitions. 1. (a) The term "corporation" includes (1) an
 41 association within the meaning of paragraph three of subsection (a) of
 42 section seventy-seven hundred one of the internal revenue code, includ-
 43 ing, when applicable, a limited liability company, (2) a joint-stock
 44 company or association, (3) a publicly traded partnership treated as a
 45 corporation for purposes of the internal revenue code pursuant to
 46 section seventy-seven hundred four thereof and (4) any business
 47 conducted by a trustee or trustees wherein interest or ownership is
 48 evidenced by certificate or other written instrument;

49 (b) (1) Notwithstanding paragraph (a) of this subdivision, an unincor-
 50 porated organization that (i) is described in subparagraph one or three
 51 of paragraph (a) of this subdivision, (ii) was subject to the provisions
 52 of chapter five of this title for its taxable year beginning in nineteen
 53 hundred ninety-five, and (iii) made a one-time election not to be treat-
 54 ed as a corporation and, instead, to continue to be subject to the
 55 provisions of chapter five of this title for its taxable years beginning

1 in nineteen hundred ninety-six and thereafter, shall continue to be
2 subject to the provisions of chapter five of this title for its taxable
3 years beginning in nineteen hundred ninety-six.

4 (2) An election under this paragraph shall continue to be in effect
5 until revoked by the unincorporated organization. An election under this
6 paragraph shall be revoked by the filing of a return under this subchap-
7 ter for the first taxable year with respect to which revocation is
8 to be effective. Such return shall be filed on or before the due date,
9 determined with regard to extensions, for filing such return. In no
10 event shall such election or revocation be for a part of a taxable year.

11 (c) Notwithstanding paragraph (a) of this subdivision, a corporation
12 shall not include an entity classified as a partnership for federal
13 income tax purposes.

14 2. The term "subsidiary" means a corporation of which over fifty per
15 centum of the number of shares of stock entitling the holders thereof to
16 vote for the election of directors or trustees is owned by the taxpayer.

17 2-a. The term "taxpayer" means any corporation subject to tax under
18 this subchapter.

19 3. Intentionally omitted.

20 3-a. The term "stock" means an interest in a corporation that is
21 treated as equity for federal income tax purposes.

22 4. (a) The term "investment capital" means investments in stocks that:
23 (i) satisfy the definition of a capital asset under section one thousand
24 two hundred twenty-one of the internal revenue code at all times the
25 taxpayer owned such stocks during the taxable year; (ii) are held by the
26 taxpayer for investment for more than one year; (iii) the dispositions
27 of which are, or would be, treated by the taxpayer as generating long-
28 term capital gains or losses under the internal revenue code; (iv) for
29 stocks acquired on or after January first, two thousand fifteen, at any
30 time after the close of the day in which they are acquired, have never
31 been held for sale to customers in the regular course of business; and
32 (v) before the close of the day on which the stock was acquired, are
33 clearly identified in the taxpayer's records as stock held for invest-
34 ment in the same manner as required under paragraph one of subdivision
35 (a) of section one thousand two hundred thirty-six of the internal
36 revenue code for the stock of a dealer in securities to be eligible for
37 capital gain treatment, whether or not the taxpayer is a dealer of secu-
38 rities subject to section one thousand two hundred thirty-six, provided,
39 however, that for stock acquired prior to October first, two thousand
40 fifteen that was not subject to subdivision (a) of section one thousand
41 two hundred thirty-six of the internal revenue code, such identification
42 in the taxpayer's records must occur before October first, two thousand
43 fifteen. Stock in a corporation that is conducting a unitary business
44 with the taxpayer, stock in a corporation that is included in a combined
45 report with the taxpayer pursuant to the commonly owned group election
46 in subdivision three of section 11-654.3 of this subchapter, and stock
47 issued by the taxpayer shall not constitute investment capital. For
48 purposes of this subdivision, if the taxpayer owns or controls, directly
49 or indirectly, less than twenty percent of the voting power of the stock
50 of a corporation, that corporation will be presumed to be conducting a
51 business that is not unitary with the business of the taxpayer.

52 (b) There shall be deducted from investment capital any liabilities
53 which are directly or indirectly attributable to investment capital. If
54 the amount of those liabilities exceeds the amount of investment capi-
55 tal, the amount of investment capital shall be zero.

1 (c) Investment capital shall not include any such investments the
2 income from which is excluded from entire net income pursuant to the
3 provisions of paragraph (c-1) of subdivision eight of this section, and
4 that investment capital shall be computed without regard to liabilities
5 directly or indirectly attributable to such investments, but only if air
6 carriers organized in the United States and operating in the foreign
7 country or countries in which the taxpayer has its major base of oper-
8 ations and in which it is organized, resident or headquartered, if not
9 in the same country as its major base of operations, are not subject to
10 any tax based on or measured by capital imposed by such foreign country
11 or countries or any political subdivision thereof, or if taxed, are
12 provided an exemption, equivalent to that provided for herein, from any
13 tax based on or measured by capital imposed by such foreign country or
14 countries and from any such tax imposed by any political subdivision
15 thereof.

16 (d) If a taxpayer acquires stock that is a capital asset under section
17 one thousand two hundred twenty-one of the internal revenue code during
18 the taxable year and owns that stock on the last day of the taxable
19 year, it will be presumed, solely for the purposes of determining wheth-
20 er that stock should be classified as investment capital after it is
21 acquired, that the taxpayer held that stock for more than one year.
22 However, if the taxpayer does not in fact own that stock at the time it
23 actually files its original report for the taxable year in which it
24 acquired the stock, then such presumption shall not apply and the actual
25 period of time during which the taxpayer owned the stock shall be used
26 to determine whether the stock should be classified as investment capi-
27 tal after it is acquired. If the taxpayer relies on such presumption but
28 does not own the stock for more than one year, the taxpayer must
29 increase its total business capital in the immediately succeeding taxa-
30 ble year by the amount included in investment capital for that stock,
31 net of any liabilities attributable to that stock computed as provided
32 in paragraph (b) of this subdivision and must increase its business
33 income in the immediately succeeding taxable year by the amount of
34 income and net gains, but not less than zero, from that stock included
35 in investment income, less any interest deductions directly or indirect-
36 ly attributable to that stock, as provided in subdivision five of this
37 section.

38 (e) When income or gain from a debt obligation or other security
39 cannot be allocated to the city using the business allocation percentage
40 as a result of the United States constitutional principles, the debt
41 obligation or other security will be included in investment capital.

42 5. (a)(i) The term "investment income" means income, including capital
43 gains in excess of capital losses, from investment capital, to the
44 extent included in computing entire net income, less, in the discretion
45 of the commissioner of finance, any interest deductions allowable in
46 computing entire net income which are directly or indirectly attribut-
47 able to investment capital or investment income, provided, however, that
48 in no case shall investment income exceed entire net income.

49 (ii) If the amount of interest deductions subtracted under subpara-
50 graph (i) of this paragraph exceeds investment income, the excess of
51 such amount over investment income must be added back to entire net
52 income.

53 (iii) If the taxpayer's investment income determined without regard to
54 the interest deductions subtracted under subparagraph (i) of this para-
55 graph comprises more than eight percent of the taxpayer's entire net
56 income, investment income determined without regard to such interest

1 deductions cannot exceed eight percent of the taxpayer's entire net
2 income.

3 (b) In lieu of subtracting from investment income the amount of those
4 interest deductions, the taxpayer may make a revocable election to
5 reduce its total investment income, determined after applying the limi-
6 tation in subparagraph (iii) of paragraph (a) of this subdivision, by
7 forty percent. If the taxpayer makes this election, the taxpayer must
8 also make the elections provided for in paragraphs (b) and (c) of subdivi-
9 sion five-a of this section. If the taxpayer subsequently revokes this
10 election, the taxpayer must revoke the elections provided for in para-
11 graphs (b) and (c) of subdivision five-a of this section. A taxpayer
12 that does not make this election because it has no investment capital
13 will not be precluded from making those other elections.

14 (c) Investment income shall not include any amount treated as divi-
15 dends pursuant to section seventy-eight of the internal revenue code.

16 5-a. (a) The term "other exempt income" means the sum of exempt CFC
17 income and exempt unitary corporation dividends.

18 (b) "Exempt CFC income" means (i) except to the extent described in
19 subparagraph (ii) of this paragraph, the income required to be included
20 in the taxpayer's federal gross income pursuant to subsection (a) of
21 section nine hundred fifty-one of the internal revenue code, received
22 from a corporation that is conducting a unitary business with the
23 taxpayer but is not included in a combined report with the taxpayer, and
24 (ii) such income required to be included in the taxpayer's federal gross
25 income pursuant to subsection (a) of such section nine hundred fifty-one
26 of the internal revenue code by reason of subsection (a) of section nine
27 hundred sixty-five of the internal revenue code, as adjusted by
28 subsection (b) of section nine hundred sixty-five of the internal reven-
29 ue code, and without regard to subsection (c) of such section, received
30 from a corporation that is not included in a combined report with the
31 taxpayer, less, (iii) in the discretion of the commissioner of finance,
32 any interest deductions directly or indirectly attributable to that
33 income. In lieu of subtracting from its exempt CFC income the amount of
34 those interest deductions, the taxpayer may make a revocable election to
35 reduce its total exempt CFC income by forty percent. If the taxpayer
36 makes this election, the taxpayer must also make the elections provided
37 for in paragraph (b) of subdivision five of this section and paragraph
38 (c) of this subdivision. If the taxpayer subsequently revokes this
39 election, the taxpayer must revoke the elections provided for in para-
40 graph (b) of subdivision five of this section and paragraph (c) of this
41 subdivision. A taxpayer which does not make this election because it has
42 no exempt CFC income will not be precluded from making those other
43 elections. The income described in subparagraph (ii) of this paragraph
44 shall not constitute investment income.

45 (c) "Exempt unitary corporate dividends" means those dividends from a
46 corporation that is conducting a unitary business with the taxpayer but
47 is not included in a combined report with the taxpayer, less, in the
48 discretion of the commissioner of finance, any interest deductions
49 directly or indirectly attributable to such income. Other than dividend
50 income received from corporations that are taxable under chapter eleven
51 of this title, except for vendors of utility services that are also
52 taxable under this subchapter, or would be taxable under chapter eleven
53 of this title, except for vendors of utility services that are also
54 taxable under this subchapter, if subject to tax and corporations that
55 would have been taxable as insurance corporations under former part IV,
56 title R, chapter forty-six of the administrative code of the city of New

1 York as in effect on June thirtieth, nineteen hundred seventy-four, in
2 lieu of subtracting from this dividend income those interest deductions,
3 the taxpayer may make a revocable election to reduce the total amount of
4 this dividend income by forty percent. If the taxpayer makes this
5 election, the taxpayer must also make the elections provided for in
6 paragraph (b) of subdivision five of this section and paragraph (b) of
7 this subdivision. If the taxpayer subsequently revokes this election,
8 the taxpayer must revoke the elections provided for in paragraph (b) of
9 subdivision five of this section and paragraph (b) of this subdivision.
10 A taxpayer that does not make this election because it has not received
11 any exempt unitary corporation dividends or is precluded from making
12 this election for dividends received from corporations that are taxable
13 under chapter eleven of this title, except for vendors of utility
14 services that are also taxable under this subchapter, or would be taxa-
15 ble under chapter eleven of this title if subject to tax, except for
16 vendors of utility services that are also taxable under this subchapter,
17 shall not be precluded from making those other elections.

18 (d) If the taxpayer attributes interest deductions to other exempt
19 income and the amount deducted exceeds other exempt income, the excess
20 of the interest deductions over other exempt income must be added back
21 to entire net income. In no case shall other exempt income exceed entire
22 net income.

23 (e) Other exempt income shall not include any amount treated as divi-
24 dends pursuant to section seventy-eight of the internal revenue code.

25 6. (a) The term "business capital" means all assets, other than
26 investment capital and stock issued by the taxpayer, less liabilities
27 not deducted from investment capital; provided, however, business capi-
28 tal shall include only those assets the income, loss or expense of which
29 are properly reflected, or would have been properly reflected if not
30 fully depreciated or expensed or depreciated or expensed to a nominal
31 amount, in the computation of entire net income for the taxable year.

32 (b) Provided, further, "business capital" shall not include assets to
33 the extent employed for the purpose of generating income which is
34 excluded from entire net income pursuant to the provisions of paragraph
35 (c-1) of subdivision eight of this section and shall be computed without
36 regard to liabilities directly or indirectly attributable to such
37 assets, but only if air carriers organized in the United States and
38 operating in the foreign country or countries in which the taxpayer has
39 its major base of operations and in which it is organized, resident or
40 headquartered, if not in the same country as its major base of oper-
41 ations, are not subject to any tax based on or measured by capital
42 imposed by such foreign country or countries or any political subdivi-
43 sion thereof, or if taxed, are provided an exemption, equivalent to that
44 provided for herein, from any tax based on or measured by capital
45 imposed by such foreign country or countries and from any such tax
46 imposed by any political subdivision thereof.

47 7. The term "business income" means entire net income minus investment
48 income and other exempt income. In no event shall the sum of investment
49 income and other exempt income exceed entire net income. If the taxpayer
50 makes the election provided for in subparagraph one of paragraph (a) of
51 subdivision five of section 11-654.2 of this subchapter, then all income
52 from qualified financial instruments shall constitute business income.

53 8. The term "entire net income" means total net income from all sourc-
54 es, which shall be presumably the same as the entire taxable income,
55 which, except as hereafter provided in this subdivision,

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

3 (ii) the taxpayer, in the case of a corporation that is exempt from
4 federal income tax, other than the tax on unrelated business taxable
5 income imposed under section five hundred eleven of the internal revenue
6 code, but which is subject to tax under this subchapter, would have been
7 required to report to the United States treasury department but for such
8 exemption, or

9 (iii) in the case of an alien corporation that under any provision of
10 the internal revenue code is not treated as a "domestic corporation" as
11 defined in section seven thousand seven hundred one of such code, is
12 effectively connected with the conduct of a trade or business within the
13 United States as determined under section eight hundred eighty-two of
14 the internal revenue code.

15 (a) Entire net income shall not include:

16 (1) Intentionally omitted;

17 (2) Intentionally omitted;

18 (2-a) any amounts treated as dividends pursuant to section seventy-
19 eight of the internal revenue code to the extent such dividends are not
20 deducted under section two hundred fifty of such code;

21 (3) bona fide gifts;

22 (4) income and deductions with respect to amounts received from school
23 districts and from corporations and associations, organized and operated
24 exclusively for religious, charitable or educational purposes, no part
25 of the net earnings of which inures to the benefit of any private share-
26 holder or individual, for the operation of school buses;

27 (5) any refund or credit of a tax imposed under this chapter, or
28 imposed by article nine, nine-A, twenty-three, or former article thir-
29 ty-two of the tax law, for which tax no exclusion or deduction was
30 allowed in determining the taxpayer's entire net income under this
31 subchapter, subchapter two, or subchapter three of this chapter for any
32 prior year;

33 (6) Intentionally omitted;

34 (7) that portion of wages and salaries paid or incurred for the taxa-
35 ble year for which a deduction is not allowed pursuant to the provisions
36 of section two hundred eighty-C of the internal revenue code;

37 (8) except with respect to property which is a qualified mass commut-
38 ing vehicle described in subparagraph (D) of paragraph eight of
39 subsection (f) of section one hundred sixty-eight of the internal reven-
40 ue code, relating to qualified mass commuting vehicles, and property of
41 a taxpayer principally engaged in the conduct of an aviation, steamboat,
42 ferry or navigation business, or two or more of such businesses, which
43 is placed in service before taxable years beginning in nineteen hundred
44 eighty-nine, any amount which is included in the taxpayer's federal
45 taxable income solely as a result of an election made pursuant to the
46 provisions of such paragraph eight as it was in effect for agreements
47 entered into prior to January first, nineteen hundred eighty-four;

48 (9) except with respect to property which is a qualified mass commut-
49 ing vehicle described in subparagraph (D) of paragraph eight of
50 subsection (f) of section one hundred sixty-eight of the internal reven-
51 ue code, relating to qualified mass commuting vehicles, and property of
52 a taxpayer principally engaged in the conduct of an aviation, steamboat,
53 ferry or navigation business, or two or more of such businesses, which
54 is placed in service before taxable years beginning in nineteen hundred
55 eighty-nine, any amount which the taxpayer could have excluded from
56 federal taxable income had it not made the election provided for in such

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

3 (10) the amount deductible pursuant to paragraph (j) of this subdivi-
4 sion;

5 (11) upon the disposition of property to which paragraph (j) of this
6 subdivision applies, the amount, if any, by which the aggregate of the
7 amounts described in subparagraph eleven of paragraph (b) of this subdivi-
8 sion attributable to such property exceeds the aggregate of the
9 amounts described in paragraph (j) of this subdivision attributable to
10 such property;

11 (12) the amount deductible pursuant to paragraph (k) of this subdivi-
12 sion;

13 (13) the amount deductible pursuant to paragraph (o) of this subdivi-
14 sion;

15 (14) the amount computed pursuant to paragraph (q), (r) or (s) of this
16 subdivision, but only the amount determined pursuant to one of such
17 paragraphs; and

18 (15) the amount computed pursuant to paragraph (t) of this subdivi-
19 sion.

20 (16) The amount of any gain added back to determine entire net income
21 in a previous taxable year pursuant to subparagraph twenty-three of
22 paragraph (b) of subdivision eight of this section is included in feder-
23 al gross income for the taxable year.

24 (17) The amount of any grant received through either the COVID-19
25 pandemic small business recovery grant program, pursuant to section
26 sixteen-ff of the New York state urban development corporation act, or
27 the small business resilience grant program administered by the depart-
28 ment of small business services, to the extent the amount of either such
29 grant is included in federal taxable income.

30 (a-1) Notwithstanding any other provision of this subchapter, in the
31 case of a taxpayer that is a partner in a partnership subject to the tax
32 imposed by chapter eleven of this title as a utility, as defined in
33 subdivision six of section 11-1101 of such chapter, entire net income
34 shall not include the taxpayer's distributive or pro rata share for
35 federal income tax purposes of any item of income, gain, loss or
36 deduction of such partnership, or any item of income, gain, loss or
37 deduction of such partnership that the taxpayer is required to take into
38 account separately for federal income tax purposes.

39 (b) Entire net income shall be determined without the exclusion,
40 deduction or credit of:

41 (1) in the case of an alien corporation that under any provision of
42 the internal revenue code is not treated as a "domestic corporation" as
43 defined in section seven thousand seven hundred one of such code, (i)
44 any part of any income from dividends or interest on any kind of stock,
45 securities or indebtedness, but only if such income is treated as effec-
46 tively connected with the conduct of a trade or business in the United
47 States pursuant to section eight hundred sixty-four of the internal
48 revenue code, (ii) any income exempt from federal taxable income under
49 any treaty obligation of the United States, but only if such income
50 would be treated as effectively connected in the absence of such
51 exemption provided that such treaty obligation does not preclude the
52 taxation of such income by a state, or (iii) any income which would be
53 treated as effectively connected if such income were not excluded from
54 gross income pursuant to subsection (a) of section one hundred three of
55 the internal revenue code;

1 (2) any part of any income from dividends or interest of any kind of
2 stock, securities, or indebtedness;

3 (3) taxes on or measured by profits or income paid or accrued to the
4 United States, any of its possessions, territories or commonwealths,
5 including taxes in lieu of any of the foregoing taxes otherwise general-
6 ly imposed by any possession, territory or commonwealth of the United
7 States, or taxes paid or accrued to the state under article nine,
8 nine-A, thirteen-A or thirty-two of the tax law as in effect on December
9 thirty-first, two thousand fourteen;

10 (3-a) taxes on or measured by profits or income, or which include
11 profits or income as a measure, paid or accrued to any other state of
12 the United States, or any political subdivision thereof, or to the
13 District of Columbia, including taxes expressly in lieu of any of the
14 foregoing taxes otherwise generally imposed by any other state of the
15 United States, or any political subdivision thereof, or the District of
16 Columbia;

17 (4) taxes imposed under this chapter;

18 (4-a) Intentionally omitted;

19 (4-b) the amount allowed as an exclusion or a deduction imposed by the
20 tax law in determining the entire taxable income for a relocation
21 described in subdivision thirteen of section 11-654 of this subchapter
22 which the taxpayer is required to report to the United States treasury
23 department but only such portion of such exclusion or deduction which is
24 not in excess of the amount of the credit allowed pursuant to subdivi-
25 sion thirteen of section 11-654 of this subchapter;

26 (4-c) the amount allowed as an exclusion or a deduction imposed by the
27 tax law for a relocation described in subdivision fourteen of section
28 11-654 of this subchapter in determining the entire taxable income which
29 the taxpayer is required to report to the United States treasury depart-
30 ment but only such portion of such exclusion or deduction which is not
31 in excess of the amount of the credit allowed pursuant to subdivision
32 fourteen of section 11-654 of this subchapter;

33 (4-d) Intentionally omitted;

34 (4-e) Intentionally omitted;

35 (5) Intentionally omitted;

36 (6) any amount allowed as a deduction for the taxable year under
37 section one hundred seventy-two of the internal revenue code, including
38 carryovers of deductions from prior taxable years;

39 (7) any amount by reason of the granting, issuing or assuming of a
40 restricted stock option, as defined in the internal revenue code of
41 nineteen hundred fifty-four, or by reason of the transfer of the share
42 of stock upon the exercise of the option, unless such share is disposed
43 of by the grantee of the option within two years from the date of the
44 granting of the option or within six months after the transfer of such
45 share to the grantee;

46 (8) Intentionally omitted;

47 (9) except with respect to property which is a qualified mass commut-
48 ing vehicle described in subparagraph (D) of paragraph eight of
49 subsection (f) of section one hundred sixty-eight of the internal reven-
50 ue code, relating to qualified mass commuting vehicles, and property of
51 a taxpayer principally engaged in the conduct of an aviation, steamboat,
52 ferry or navigation business, or two or more of such businesses, which
53 is placed in service before taxable years beginning in nineteen hundred
54 eighty-nine, any amount which the taxpayer claimed as a deduction in
55 computing its federal taxable income solely as a result of an election
56 made pursuant to the provisions of such paragraph eight as it was in

1 effect for agreements entered into prior to January first, nineteen
2 hundred eighty-four;

3 (10) except with respect to property which is a qualified mass commut-
4 ing vehicle described in subparagraph (D) of paragraph eight of
5 subsection (f) of section one hundred sixty-eight of the internal reven-
6 ue code, relating to qualified mass commuting vehicles, and property of
7 a taxpayer principally engaged in the conduct of an aviation, steamboat,
8 ferry or navigation business, or two or more of such businesses, which
9 is placed in service before taxable years beginning in nineteen hundred
10 eighty-nine, any amount which the taxpayer would have been required to
11 include in the computation of its federal taxable income had it not made
12 the election permitted pursuant to such paragraph eight as it was in
13 effect for agreements entered into prior to January first, nineteen
14 hundred eighty-four;

15 (11) in the case of property placed in service in taxable years begin-
16 ning before nineteen hundred ninety-four, for taxable years beginning
17 after December thirty-first, nineteen hundred eighty-one, except with
18 respect to property subject to the provisions of section two hundred
19 eighty-F of the internal revenue code, property subject to the
20 provisions of section one hundred sixty-eight of the internal revenue
21 code which is placed in service in this state in taxable years beginning
22 after December thirty-first, nineteen hundred eighty-four and property
23 of a taxpayer principally engaged in the conduct of an aviation, steam-
24 boat, ferry or navigation business, or two or more of such businesses,
25 which is placed in service before taxable years beginning in nineteen
26 hundred eighty-nine, the amount allowable as a deduction determined
27 under section one hundred sixty-eight of the internal revenue code;

28 (12) upon the disposition of property to which paragraph (j) of this
29 subdivision applies, the amount, if any, by which the aggregate of the
30 amounts described in such paragraph (j) attributable to such property
31 exceeds the aggregate of the amounts described in subparagraph eleven of
32 this paragraph attributable to such property;

33 (13) Intentionally omitted;

34 (14) Intentionally omitted;

35 (15) Intentionally omitted;

36 (16) in the case of qualified property described in paragraph two of
37 subsection (k) of section one hundred sixty-eight of the internal reven-
38 ue code, other than qualified resurgence zone property described in
39 paragraph (m) of this subdivision, and other than qualified New York
40 Liberty Zone property described in paragraph two of subsection (b) of
41 section fourteen hundred-L of the internal revenue code, without regard
42 to clause (i) of subparagraph (C) of such paragraph, the amount allow-
43 able as a deduction under section one hundred sixty-seven of the inter-
44 nal revenue code;

45 (17) in the case of a taxpayer that is not an eligible farmer as
46 defined in subsection (n) of section six hundred six of the tax law, the
47 amount allowable as a deduction under sections one hundred seventy-nine,
48 one hundred sixty-seven and one hundred sixty-eight of the internal
49 revenue code with respect to a sport utility vehicle that is not a
50 passenger automobile as defined in paragraph five of subsection (d) of
51 section two hundred eighty-F of the internal revenue code;

52 (18) the amount of any deduction allowed pursuant to section one
53 hundred ninety-nine of the internal revenue code;

54 (19) the amount of any federal deduction for taxes imposed under arti-
55 cle twenty-three of the tax law;

1 (20) the amount of any federal deduction allowed pursuant to
2 subsection (c) of section nine hundred sixty-five of the internal reven-
3 ue code;

4 (21) the amount of any federal deduction allowed pursuant to subpara-
5 graph (A) of paragraph one of subdivision (a) of section two hundred
6 fifty of the internal revenue code.

7 (22) For taxable years beginning in two thousand nineteen and two
8 thousand twenty, the amount of the increase in the federal interest
9 deduction allowed pursuant to paragraph ten of subdivision (j) of
10 section one hundred sixty-three of the internal revenue code.

11 (23) The amount of any gain excluded from federal gross income for the
12 taxable year by subparagraph (A) of paragraph (1) of subsection (a) of
13 section one thousand four hundred-Z-two of the internal revenue code.

14 (c) Intentionally omitted.

15 (c-1)(1) Notwithstanding any other provision of this subchapter, in
16 the case of a taxpayer which is a foreign air carrier holding a foreign
17 air carrier permit issued by the United States department of transporta-
18 tion pursuant to section four hundred two of the federal aviation act of
19 nineteen hundred fifty-eight, as amended, and which is qualified under
20 subparagraph two of this paragraph, entire net income shall not include,
21 and shall be computed without the deduction of, amounts directly or
22 indirectly attributable to, (i) any income derived from the interna-
23 tional operation of aircraft as described in and subject to the
24 provisions of section eight hundred eighty-three of the internal revenue
25 code, (ii) income without the United States which is derived from the
26 operation of aircraft, and (iii) income without the United States which
27 is of a type described in subdivision (a) of section eight hundred
28 eighty-one of the internal revenue code except that it is derived from
29 sources without the United States. Entire net income shall include
30 income described in clauses (i), (ii) and (iii) of this subparagraph in
31 the case of taxpayers not described in the previous sentence;

32 (2) A taxpayer is qualified under this subparagraph if air carriers
33 organized in the United States and operating in the foreign country or
34 countries in which the taxpayer has its major base of operations and in
35 which it is organized, resident or headquartered, if not in the same
36 country as its major base of operations, are not subject to any income
37 tax or other tax based on or measured by income or receipts imposed by
38 such foreign country or countries or any political subdivision thereof,
39 or if so subject to such tax, are provided an exemption from such tax
40 equivalent to that provided for herein.

41 (d) The commissioner of finance may, whenever necessary in order to
42 properly reflect the entire net income of any taxpayer, determine the
43 year or period in which any item of income or deduction shall be
44 included, without regard to the method of accounting employed by the
45 taxpayer.

46 (e) The entire net income of any bridge commission created by act of
47 congress to construct a bridge across an international boundary means
48 its gross income less the expense of maintaining and operating its prop-
49 erties, the annual interest upon its bonds and other obligations, and
50 the annual charge for the retirement of such bonds or obligations at
51 maturity.

52 (f) Intentionally omitted.

53 (g) At the election of the taxpayer, a deduction shall be allowed for
54 expenditures paid or incurred during the taxable year for the
55 construction, reconstruction, erection or improvement of industrial
56 waste treatment facilities and air pollution control facilities.

1 (1)(i) The term "industrial waste treatment facilities" shall mean
2 facilities for the treatment, neutralization or stabilization of indus-
3 trial waste, as the term "industrial waste" is defined in section
4 17-0105 of the environmental conservation law, from a point immediately
5 preceding the point of such treatment, neutralization or stabilization
6 to the point of disposal, including the necessary pumping and transmit-
7 ting facilities, but excluding such facilities installed for the primary
8 purpose of salvaging materials which are usable in the manufacturing
9 process or are marketable.

10 (ii) The term "air pollution control facilities" shall mean facilities
11 which remove, reduce, or render less noxious air contaminants emitted
12 from an air contamination source, as the terms "air contaminant" and
13 "air contamination source" are defined in section 19-0107 of the envi-
14 ronmental conservation law, from a point immediately preceding the point
15 of such removal, reduction or rendering to the point of discharge of
16 air, meeting emission standards as established by the air pollution
17 control board, but excluding such facilities installed for the primary
18 purpose of salvaging materials which are usable in the manufacturing
19 process or are marketable and excluding those facilities which rely for
20 their efficacy on dilution, dispersion or assimilation of air contam-
21 inants in the ambient air after emission.

22 (2) However, such deduction shall be allowed only (i) with respect to
23 tangible property which is depreciable, pursuant to section one hundred
24 sixty-seven of the internal revenue code, having a situs in the city and
25 used in the taxpayer's trade or business, the construction, recon-
26 struction, erection or improvement of which, in the case of industrial
27 waste treatment facilities, is initiated on or after January first,
28 nineteen hundred sixty-six, and only for expenditures paid or incurred
29 prior to January first, nineteen hundred seventy-two, or which, in the
30 case of air pollution control facilities, is initiated on or after Janu-
31 ary first, nineteen hundred sixty-six, and

32 (ii) on condition that such facilities have been certified by the
33 state commissioner of environmental conservation or the state commis-
34 sioner's designated representative, in the same manner as provided for
35 in section 17-0707 or 19-0309 of the environmental conservation law, as
36 applicable, as complying with applicable provisions of the environmental
37 conservation law, the state sanitary code and regulations, permits or
38 orders issued pursuant thereto, and

39 (iii) on condition that entire net income for the taxable year and all
40 succeeding taxable years be computed without any deductions for such
41 expenditures or for depreciation of the same property other than the
42 deductions allowed by this paragraph except to the extent that the basis
43 of the property may be attributable to factors other than such expendi-
44 tures, or in case a deduction is allowable pursuant to this paragraph
45 for only a part of such expenditures, on condition that any deduction
46 allowed for federal income tax purposes for such expenditures or for
47 depreciation of the same property be proportionately reduced in comput-
48 ing entire net income for the taxable year and all succeeding taxable
49 years, and

50 (iv) where the election provided for in paragraph (d) of subdivision
51 three of section 11-604 of this chapter or the election provided for in
52 subdivision (k) of section 11-641 of this chapter has not been exercised
53 in respect to the same property.

54 (3)(i) If expenditures in respect to an industrial waste treatment
55 facility or an air pollution control facility have been deducted as
56 provided herein and if within ten years from the end of the taxable year

1 in which such deduction was allowed such property or any part thereof is
2 used for the primary purpose of salvaging materials which are usable in
3 the manufacturing process or are marketable, the taxpayer shall report
4 such change of use in its report for the first taxable year during which
5 it occurs, and the commissioner of finance may recompute the tax for the
6 year or years for which such deduction was allowed and any carryback or
7 carryover year, and may assess any additional tax resulting from such
8 recomputation within the time fixed by paragraph (h) of subdivision
9 three of section 11-674 of this chapter.

10 (ii) If a deduction is allowed as herein provided for expenditures
11 paid or incurred during any taxable year on the basis of a temporary
12 certificate of compliance issued pursuant to the environmental conserva-
13 tion law and if the taxpayer fails to obtain a permanent certificate of
14 compliance upon completion of the facilities with respect to which such
15 temporary certificate was issued, the taxpayer shall report such failure
16 in its report for the taxable year during which such facilities are
17 completed, and the commissioner of finance may recompute the tax for the
18 year or years for which such deduction was allowed and any carryback or
19 carryover year, and may assess any additional tax resulting from such
20 recomputation within the time fixed by paragraph (h) of subdivision
21 three of section 11-674 of this chapter.

22 (4) In any taxable year when property is sold or otherwise disposed
23 of, with respect to which a deduction has been allowed pursuant to this
24 paragraph, such deduction shall be disregarded in computing gain or
25 loss, and the gain or loss on the sale or other disposition of such
26 property shall be the gain or loss entering into the computation of
27 entire taxable income which the taxpayer is required to report to the
28 United States treasury for such taxable year;

29 (h) With respect to gain derived from the sale or other disposition of
30 any property acquired prior to January first, nineteen hundred sixty-
31 six; which had a federal adjusted basis on such date, or on the date of
32 its sale or other disposition prior to January first, nineteen hundred
33 sixty-six, lower than its fair market value on January first, nineteen
34 hundred sixty-six or the date of its sale or other disposition prior
35 thereto, except property described in subsections one and four of
36 section twelve hundred twenty-one of the internal revenue code, there
37 shall be deducted from entire net income, the difference between (1) the
38 amount of the taxpayer's federal taxable income, and (2) the amount of
39 the taxpayer's federal taxable income, if smaller than the amount
40 described in subparagraph one of this paragraph, computed as if the
41 federal adjusted basis of each such property, on the sale or other
42 disposition of which gain was derived, on the date of the sale or other
43 disposition had been equal to either (i) its fair market value on Janu-
44 ary first, nineteen hundred sixty-six or the date of its sale or other
45 disposition prior to January first, nineteen hundred sixty-six, plus or
46 minus all adjustments to basis made with respect to such property for
47 federal income tax purposes for periods on and after January first,
48 nineteen hundred sixty-six or (ii) the amount realized from its sale or
49 disposition, whichever is lower; provided, however, that the total
50 modification provided by this paragraph shall not exceed the amount of
51 the taxpayer's net gain from the sale or other disposition of all such
52 property.

53 (i) If the period covered by a report under this subchapter is other
54 than the period covered by the report of the United States treasury
55 department, entire net income shall be determined by multiplying the
56 federal taxable income, as adjusted pursuant to the provisions of this

1 subchapter, by the number of calendar months or major parts thereof
2 covered by the report under this subchapter and dividing by the number
3 of calendar months or major parts thereof covered by the report to such
4 department. If it shall appear that such method of determining entire
5 net income does not properly reflect the taxpayer's income during the
6 period covered by the report under this subchapter, the commissioner of
7 finance shall be authorized in his or her discretion to determine such
8 entire net income solely on the basis of the taxpayer's income during
9 the period covered by its report under this subchapter.

10 (j) In the case of property placed in service in taxable years begin-
11 ning before nineteen hundred ninety-four, for taxable years beginning
12 after December thirty-first, nineteen hundred eighty-one, except with
13 respect to property subject to the provisions of section two hundred
14 eighty-F of the internal revenue code and property subject to the
15 provisions of section one hundred sixty-eight of the internal revenue
16 code which is placed in service in this state in taxable years beginning
17 after December thirty-first, nineteen hundred eighty-four, and provided
18 a deduction has not been excluded from entire net income pursuant to
19 subparagraph nine of paragraph (b) of this subdivision, a taxpayer shall
20 be allowed with respect to property which is subject to the provisions
21 of section one hundred sixty-eight of the internal revenue code the
22 depreciation deduction allowable under section one hundred sixty-seven
23 of the internal revenue code as such section would have applied to prop-
24 erty placed in service on December thirty-first, nineteen hundred
25 eighty. This paragraph shall not apply to property of a taxpayer prin-
26 cipally engaged in the conduct of an aviation, steamboat, ferry or navi-
27 gation business, or two or more of such businesses, which is placed in
28 service before taxable years beginning in nineteen hundred eighty-nine.

29 (k) In the case of qualified property described in paragraph two of
30 subsection (k) of section one hundred sixty-eight of the internal reven-
31 ue code, other than qualified resurgence zone property described in
32 paragraph (m) of this subdivision, and other than qualified New York
33 Liberty Zone property described in paragraph two of subsection (b) of
34 section fourteen hundred-L of the internal revenue code, without regard
35 to clause (i) of subparagraph (C) of such paragraph, the depreciation
36 deduction allowable under section one hundred sixty-seven as such
37 section would have applied to such property had it been acquired by the
38 taxpayer on September tenth, two thousand one, provided, however, that
39 for taxable years beginning on or after January first, two thousand
40 four, in the case of a passenger motor vehicle or a sport utility vehi-
41 cle subject to the provisions of paragraph (o) of this subdivision, the
42 limitation under clause (i) of subparagraph (A) of paragraph one of
43 subdivision (a) of section two hundred eighty-F of the internal revenue
44 code applicable to the amount allowed as a deduction under this para-
45 graph shall be determined as of the date such vehicle was placed in
46 service and not as of September tenth, two thousand one.

47 (l) Upon the disposition of property to which paragraph (k) of this
48 subdivision applies, the amount of any gain or loss includible in entire
49 net income shall be adjusted to reflect the inclusions and exclusions
50 from entire net income pursuant to subparagraph twelve of paragraph (a)
51 and subparagraph sixteen of paragraph (b) of this subdivision attribut-
52 able to such property.

53 (m) For purposes of this paragraph and paragraph (l) of this subdivi-
54 sion, qualified resurgence zone property shall mean qualified property
55 described in paragraph two of subsection (k) of section one hundred
56 sixty-eight of the internal revenue code substantially all of the use of

1 which is in the resurgence zone, as defined below, and is in the active
2 conduct of a trade or business by the taxpayer in such zone, and the
3 original use of which in the resurgence zone commences with the taxpayer
4 after September tenth, two thousand one. The resurgence zone shall mean
5 the area of New York county bounded on the south by a line running from
6 the intersection of the Hudson River with the Holland Tunnel, and
7 running thence east to Canal Street, then running along the centerline
8 of Canal Street to the intersection of the Bowery and Canal Street,
9 running thence in a southeasterly direction diagonally across Manhattan
10 Bridge Plaza, to the Manhattan Bridge, and thence along the centerline
11 of the Manhattan Bridge to the point where the centerline of the Manhat-
12 tan Bridge would intersect with the easterly bank of the East River, and
13 bounded on the north by a line running from the intersection of the
14 Hudson River with the Holland Tunnel and running thence north along West
15 Avenue to the intersection of Clarkson Street then running east along
16 the centerline of Clarkson Street to the intersection of Washington
17 Avenue, then running south along the centerline of Washington Avenue to
18 the intersection of West Houston Street, then east along the centerline
19 of West Houston Street, then at the intersection of the Avenue of the
20 Americas continuing east along the centerline of East Houston Street to
21 the easterly bank of the East River.

22 (n) Related members expense add back. (1) For purposes of this para-
23 graph: (i) "Related member" means a related person as defined in subpar-
24 agraph (c) of paragraph three of subsection (b) of section four hundred
25 sixty-five of the internal revenue code, except that "fifty percent"
26 shall be substituted for "ten percent".

27 (ii) "Effective rate of tax" means, as to any city, the maximum statu-
28 tory rate of tax imposed by the city on or measured by a related
29 member's net income multiplied by the allocation percentage, if any,
30 applicable to the related member under the laws of said jurisdiction.
31 For purposes of this definition, the effective rate of tax as to any
32 city is zero where the related member's net income tax liability in said
33 city is reported on a combined or consolidated return including both the
34 taxpayer and the related member where the reported transactions between
35 the taxpayer and the related member are eliminated or offset. Also, for
36 purposes of this definition, when computing the effective rate of tax
37 for a city in which a related member's net income is eliminated or
38 offset by a credit or similar adjustment that is dependent upon the
39 related member either maintaining or managing intangible property or
40 collecting interest income in that city, the maximum statutory rate of
41 tax imposed by said city shall be decreased to reflect the statutory
42 rate of tax that applies to the related member as effectively reduced by
43 such credit or similar adjustment.

44 (iii) Royalty payments are payments directly connected to the acquisi-
45 tion, use, maintenance or management, ownership, sale, exchange, or any
46 other disposition of licenses, trademarks, copyrights, trade names,
47 trade dress, service marks, mask works, trade secrets, patents and any
48 other similar types of intangible assets as determined by the commis-
49 sioner of finance, and include amounts allowable as interest deductions
50 under section one hundred sixty-three of the internal revenue code to
51 the extent such amounts are directly or indirectly for, related to or in
52 connection with the acquisition, use, maintenance or management, owner-
53 ship, sale, exchange or disposition of such intangible assets.

54 (iv) A valid business purpose is one or more business purposes, other
55 than the avoidance or reduction of taxation, which alone or in combina-
56 tion constitute the primary motivation for some business activity or

1 transaction, which activity or transaction changes in a meaningful way,
2 apart from tax effects, the economic position of the taxpayer. The
3 economic position of the taxpayer includes an increase in the market
4 share of the taxpayer, or the entry by the taxpayer into new business
5 markets.

6 (2) Royalty expense add backs. (i) Except where a taxpayer is included
7 in a combined report pursuant to section 11-654.3 of this subchapter
8 with the applicable related member, for the purpose of computing entire
9 net income or other applicable taxable basis, a taxpayer must add back
10 royalty payments directly or indirectly paid, accrued, or incurred in
11 connection with one or more direct or indirect transactions with one or
12 more related members during the taxable year to the extent deductible in
13 calculating federal taxable income.

14 (ii) Exceptions. (A) The adjustment required in this paragraph shall
15 not apply to the portion of the royalty payment that the taxpayer estab-
16 lishes, by clear and convincing evidence of the type and in the form
17 specified by the commissioner of finance, meets all of the following
18 requirements: (I) the related member was subject to tax in this city or
19 another city within the United States or a foreign nation or some combi-
20 nation thereof on a tax base that included the royalty payment paid,
21 accrued or incurred by the taxpayer; (II) the related member during the
22 same taxable year directly or indirectly paid, accrued or incurred such
23 portion to a person that is not a related member; and (III) the trans-
24 action giving rise to the royalty payment between the taxpayer and the
25 related member was undertaken for a valid business purpose.

26 (B) The adjustment required in this paragraph shall not apply if the
27 taxpayer establishes, by clear and convincing evidence of the type and
28 in the form specified by the commissioner of finance, that: (I) the
29 related member was subject to tax on or measured by its net income in
30 this city or another city within the United States, or some combination
31 thereof; (II) the tax base for said tax included the royalty payment
32 paid, accrued or incurred by the taxpayer; and (III) the aggregate
33 effective rate of tax applied to the related member in those jurisdic-
34 tions is no less than eighty percent of the statutory rate of tax that
35 applied to the taxpayer under section 11-604 of this chapter for the
36 taxable year.

37 (C) The adjustment required in this paragraph shall not apply if the
38 taxpayer establishes, by clear and convincing evidence of the type and
39 in the form specified by the commissioner of finance, that: (I) the
40 royalty payment was paid, accrued or incurred to a related member organ-
41 ized under the laws of a country other than the United States; (II) the
42 related member's income from the transaction was subject to a comprehen-
43 sive income tax treaty between such country and the United States; (III)
44 the related member was subject to tax in a foreign nation on a tax base
45 that included the royalty payment paid, accrued or incurred by the
46 taxpayer; (IV) the related member's income from the transaction was
47 taxed in such country at an effective rate of tax at least equal to that
48 imposed by this city; and (V) the royalty payment was paid, accrued or
49 incurred pursuant to a transaction that was undertaken for a valid busi-
50 ness purpose and using terms that reflect an arm's length relationship.

51 (D) The adjustment required in this paragraph shall not apply if the
52 taxpayer and the commissioner of finance agree in writing to the appli-
53 cation or use of alternative adjustments or computations. The commis-
54 sioner of finance may, in his or her discretion, agree to the applica-
55 tion or use of alternative adjustments or computations when he or she

1 concludes that in the absence of such agreement the income of the
2 taxpayer would not be properly reflected.

3 (o) In the case of a taxpayer that is not an eligible farmer as
4 defined in subsection (n) of section six hundred six of the tax law, the
5 deductions allowable under sections one hundred seventy-nine, one
6 hundred sixty-seven and one hundred sixty-eight of the internal revenue
7 code with respect to a sport utility vehicle that is not a passenger
8 automobile as defined in paragraph five of subsection (d) of section two
9 hundred eighty-F of the internal revenue code, determined as if such
10 sport utility vehicle were a passenger automobile as defined in such
11 paragraph five. For purposes of subparagraph sixteen of paragraph (b)
12 and paragraph (k) of this subdivision, the terms qualified resurgence
13 zone property and qualified New York Liberty Zone property described in
14 paragraph two of subsection b of section fourteen hundred-L of the
15 internal revenue code shall not include any sport utility vehicle that
16 is not a passenger automobile as defined in paragraph five of subsection
17 (d) of section two hundred eighty-F of the internal revenue code.

18 (p) Upon the disposition of property to which paragraph (o) of this
19 subdivision applies, the amount of any gain or loss includible in entire
20 net income shall be adjusted to reflect the inclusions and exclusions
21 from entire net income pursuant to subparagraph thirteen of paragraph
22 (a) and subparagraph seventeen of paragraph (b) of this subdivision
23 attributable to such property.

24 (q) Subtraction modification for community banks and small thrifts.
25 (1) A taxpayer that is a qualified community bank as defined in subpara-
26 graph two of this paragraph or a small thrift institution as defined in
27 subparagraph two-a of this paragraph shall be allowed a deduction in
28 computing entire net income equal to the amount computed under subpara-
29 graph three of this paragraph.

30 (2) To be a qualified community bank, a taxpayer must satisfy the
31 following conditions:

32 (i) It is a bank or trust company organized under or subject to the
33 provisions of article three of the banking law or a comparable provision
34 of the laws of another state, or a national banking association.

35 (ii) The average value during the taxable year of the assets of the
36 taxpayer, or, if the taxpayer is included in a combined report, the
37 assets of the combined reporting group of the taxpayer under section
38 11-654.3 of this subchapter, must not exceed eight billion dollars.

39 (2-a) To be a small thrift institution, a taxpayer must satisfy the
40 following conditions:

41 (i) It is a savings bank, a savings and loan association, or other
42 savings institution chartered and supervised as such under federal or
43 state law.

44 (ii) The average value during the taxable year of the assets of the
45 taxpayer, or, if the taxpayer is included in a combined report, the
46 assets of the combined reporting group of the taxpayer under section
47 11-654.3 of this subchapter, must not exceed eight billion dollars.

48 (3)(i) The subtraction modification shall be computed as follows:

49 (A) Multiply the taxpayer's net interest income from loans during the
50 taxable year by a fraction, the numerator of which is the gross interest
51 income during the taxable year from qualifying loans and the denominator
52 of which is the gross interest income during the taxable year from all
53 loans.

54 (B) Multiply the amount determined in subclause (A) of this clause by
55 fifty percent. This product is the amount of the deduction allowed under
56 this paragraph.

1 (ii)(A) Net interest income from loans shall mean gross interest
2 income from loans less gross interest expense from loans. Gross interest
3 expense from loans is determined by multiplying gross interest expense
4 by a fraction, the numerator of which is the average total value of
5 loans owned by the thrift institution or community bank during the taxa-
6 ble year and the denominator of which is the average total assets of the
7 thrift institution or community bank during the taxable year.

8 (B) Measurement of assets. For purposes of this clause: (I) Total
9 assets are those assets that are properly reflected on a balance sheet,
10 computed in the same manner as is required by the banking regulator of
11 the taxpayers included in the combined return. In addition, total assets
12 includes leased real property that is not properly reflected on a
13 balance sheet.

14 (II) Assets will only be included if the income or expenses of which
15 are properly reflected, or would have been properly reflected if not
16 fully depreciated or expensed, or depreciated or expensed to a nominal
17 amount, in the computation of the taxpayer's entire net income for the
18 taxable year. Assets will not include deferred tax assets and intangible
19 assets identified as "goodwill".

20 (III) Tangible real and personal property, such as buildings, land,
21 machinery, and equipment, shall be valued at cost. Leased real property
22 that is not properly reflected on the balance sheet will be valued at
23 the annual lease payment multiplied by eight. Intangible property, such
24 as loans and investments, shall be valued at book value exclusive of
25 reserves.

26 (IV) Average assets are computed using the assets measured on the
27 first day of the taxable year, and on the last day of each subsequent
28 quarter of the taxable year or month or day during the taxable year.

29 (iii) A qualifying loan is a loan that meets the conditions specified
30 in subclause (A) of this clause and subclause (B) of this clause.

31 (A) The loan is originated by the qualified community bank or small
32 thrift institution or purchased by the qualified community bank or small
33 thrift institution immediately after its origination in connection with
34 a commitment to purchase made by the bank or thrift institution prior to
35 the loan's origination.

36 (B) The loan is a small business loan or a residential mortgage loan,
37 the principal amount of which loan is five million dollars or less, and
38 either the borrower is located in this city as determined under section
39 11-654.2 of this subchapter and the loan is not secured by real proper-
40 ty, or the loan is secured by real property located in the city.

41 (C) A loan that meets the definition of a qualifying loan in a prior
42 taxable year, including years prior to the effective date of this para-
43 graph, remains a qualifying loan in taxable years during and after which
44 such loan is acquired by another corporation in the taxpayer's combined
45 reporting group under section 11-654.3 of this subchapter.

46 (r) A small thrift institution or a qualified community bank, as
47 defined in paragraph (q) of this subdivision, that maintained a captive
48 REIT on April first, two thousand fourteen shall utilize a REIT
49 subtraction equal to one hundred sixty percent of the dividends paid
50 deductions allowed to that captive REIT for the taxable year for federal
51 income tax purposes and shall not be allowed to utilize the subtraction
52 modification for community banks and small thrifts under paragraph (q)
53 of this subdivision or the subtraction modification for qualified resi-
54 dential loan portfolios under paragraph (s) of this subdivision in any
55 tax year in which such thrift institution or community bank maintains
56 that captive REIT.

1 (s) Subtraction modification for qualified residential loan portfo-
2 lios. (1)(i) A taxpayer that is either a thrift institution as defined
3 in subparagraph three of this paragraph or a qualified community bank as
4 defined in subparagraph two of paragraph (q) of this subdivision and
5 maintains a qualified residential loan portfolio as defined in subpara-
6 graph two of this paragraph shall be allowed as a deduction in computing
7 entire net income the amount, if any, by which (A) thirty-two percent of
8 its entire net income determined without regard to this paragraph
9 exceeds (B) the amounts deducted by the taxpayer pursuant to sections
10 one hundred sixty-six and five hundred eighty-five of the internal
11 revenue code less any amounts included in federal taxable income as a
12 result of a recovery of a loan.

13 (ii)(A) If the taxpayer is in a combined report under section 11-654.3
14 of this subchapter, this deduction will be computed on a combined basis.
15 In that instance, the entire net income of the combined reporting group
16 for purposes of this paragraph shall be multiplied by a fraction, the
17 numerator of which is the average total assets of all the thrift insti-
18 tutions and qualified community banks included in the combined report
19 and the denominator of which is the average total assets of all the
20 corporations included in the combined report.

21 (B) Measurement of assets. For purposes of this paragraph: (I) Total
22 assets are those assets that are properly reflected on a balance sheet,
23 computed in the same manner as is required by the banking regulator of
24 the taxpayers included in the combined return. In addition, total assets
25 includes leased real property that is not properly reflected on a
26 balance sheet.

27 (II) Assets will only be included if the income or expenses of which
28 are properly reflected, or would have been properly reflected if not
29 fully depreciated or expensed, or depreciated or expensed to a nominal
30 amount, in the computation of the combined group's entire net income for
31 the taxable year. Assets will not include deferred tax assets and intan-
32 gible assets identified as "goodwill".

33 (III) Tangible real and personal property, such as buildings, land,
34 machinery, and equipment shall be valued at cost. Leased real property
35 that is not properly reflected on a balance sheet will be valued at the
36 annual lease payment multiplied by eight. Intangible property, such as
37 loans and investments, shall be valued at book value exclusive of
38 reserves.

39 (IV) Intercorporate stockholdings and bills, notes and accounts
40 receivable, and other intercorporate indebtedness between the corpo-
41 rations included in the combined report shall be eliminated.

42 (V) Average assets are computed using the assets measured on the first
43 day of the taxable year, and on the last day of each subsequent quarter
44 of the taxable year or month or day during the taxable year.

45 (2) Qualified residential loan portfolio. (i) A taxpayer maintains a
46 qualified residential loan portfolio if at least sixty percent of the
47 amount of the total assets at the close of the taxable year of the
48 thrift institution or qualified community bank consists of the assets
49 described in subclauses (A) through (L) of this clause, with the appli-
50 cation of the rule in the last undesignated subclause of this clause. If
51 the taxpayer is a member of a combined group, the determination of
52 whether there is a qualified residential loan portfolio will be made by
53 aggregating the assets of the thrift institutions and qualified communi-
54 ty banks that are members of the combined group. Assets: (A) cash, which
55 includes cash and cash equivalents including cash items in the process
56 of collection, deposits with other financial institutions, including

1 corporate credit unions, balances with federal reserve banks and federal
2 home loan banks, federal funds sold, and cash and cash equivalents on
3 hand. Cash shall not include any balances serving as collateral for
4 securities lending transactions; (B) obligations of the United States or
5 of a state or political subdivision thereof, and stock or obligations of
6 a corporation which is an instrumentality or a government sponsored
7 enterprise of the United States or of a state or political subdivision
8 thereof; (C) loans secured by a deposit or share of a member; (D) loans
9 secured by an interest in real property which is, or, from the proceeds
10 of the loan, will become, residential real property or real property
11 used primarily for church purposes, loans made for the improvement of
12 residential real property or real property used primarily for church
13 purposes, provided that for purposes of this subclause, residential real
14 property shall include single or multi-family dwellings, facilities in
15 residential developments dedicated to public use or property used on a
16 nonprofit basis for residents, and mobile homes not used on a transient
17 basis; (E) property acquired through the liquidation of defaulted loans
18 described in subclause (D) of this clause; (F) any regular or residual
19 interest in a REMIC, as such term is defined in section eight hundred
20 sixty-D of the internal revenue code, but only in the proportion which
21 the assets of such REMIC consist of property described in subclauses (A)
22 through (E) of this clause, except that if ninety-five percent or more
23 of the assets of such REMIC are assets described in such subclauses, the
24 entire interest in the REMIC shall qualify; (G) any mortgage-backed
25 security which represents ownership of a fractional undivided interest
26 in a trust, the assets of which consist primarily of mortgage loans,
27 provided that the real property which serves as security for the loans
28 is, or from the proceeds of the loan, will become, the type of property
29 described in subclause (D) of this clause and any collateralized mort-
30 gage obligation, the security for which consists primarily of mortgage
31 loans that maintain as security the type of property described in
32 subclause (D) of this clause; (H) certificates of deposit in, or obli-
33 gations of, a corporation organized under a state law which specifically
34 authorizes such corporation to insure the deposits or share accounts of
35 member associations; (I) loans secured by an interest in educational,
36 health, or welfare institutions or facilities, including structures
37 designed or used primarily for residential purposes for students, resi-
38 dents, and persons under care, employees, or members of the staff of
39 such institutions or facilities; (J) loans made for the payment of
40 expenses of college or university education or vocational training; (K)
41 property used by the taxpayer in support of business which consists
42 principally of acquiring the savings of the public and investing in
43 loans; and (L) loans for which the taxpayer is the creditor and which
44 are wholly secured by loans described in subclause (D) of this clause.

45 The value of accrued interest receivable and any loss-sharing commit-
46 ment or other loan guaranty by a governmental agency will be considered
47 part of the basis in the loans to which the accrued interest or loss
48 protection applies.

49 (ii) At the election of the taxpayer, the percentage specified in
50 clause (i) of this subparagraph shall be applied on the basis of the
51 average assets outstanding during the taxable year, in lieu of the close
52 of the taxable year. The taxpayer can elect to compute an average using
53 the assets measured on the first day of the taxable year and on the last
54 day of each subsequent quarter, or month or day during the taxable year.
55 This election may be made annually.

1 (iii) For purposes of subclause (D) of clause (i) of this subpara-
2 graph, if a multifamily structure securing a loan is used in part for
3 nonresidential use purposes, the entire loan is deemed a residential
4 real property loan if the planned residential use exceeds eighty percent
5 of the property's planned use, measured, at the taxpayer's election, by
6 using square footage or gross rental revenue, and determined as of the
7 time the loan is made.

8 (iv) For purposes of subclause (D) of clause (i) of this subparagraph,
9 loans made to finance the acquisition or development of land shall be
10 deemed to be loans secured by an interest in residential real property
11 if there is a reasonable assurance that the property will become resi-
12 dential real property within a period of three years from the date of
13 acquisition of such land; provided, however, this shall not apply for
14 any taxable year unless, within such three-year period, such land
15 becomes residential real property. For purposes of determining whether
16 any interest in a REMIC qualifies under subclause (F) of clause (i) of
17 this subparagraph, any regular interest in another REMIC held by such
18 REMIC shall be treated as a loan described in subclauses (A) through (E)
19 under principles similar to the principle of such subclause (F), except
20 that if such REMICs are part of a tiered structure, they shall be treat-
21 ed as one REMIC for purposes of such subclause (F).

22 (3) For purposes of this paragraph, a "thrift institution" is a
23 savings bank, a savings and loan association, or other savings institu-
24 tion chartered and supervised as such under federal or state law.

25 (t) Subtraction modification for qualified affordable housing and low
26 income community loans.

27 (1) A taxpayer that owns a qualifying loan within the meaning of
28 clause (iii) of subparagraph two of this paragraph shall be allowed a
29 deduction in computing entire net income equal to the amount computed
30 under subparagraph two of this paragraph.

31 (2)(i) The deduction allowed in subparagraph one of this paragraph
32 shall be equal to:

33 (A) if the total average value during the taxable year of the assets
34 of the taxpayer, or if the taxpayer is included in a combined report,
35 the assets of the combined reporting group of the taxpayer under section
36 11-654.3 of this subchapter, does not exceed one hundred billion
37 dollars, the taxpayer's net interest income from qualifying loans, or

38 (B) if the total average value during the taxable year of the assets
39 of the taxpayer, or if the taxpayer is included in a combined report,
40 the assets of the combined reporting group of the taxpayer under section
41 11-654.3 of this subchapter, exceeds one hundred billion dollars but is
42 less than one hundred fifty billion dollars, the taxpayer's net interest
43 income from qualifying loans multiplied by a fraction, the numerator of
44 which is one hundred fifty billion dollars minus the total average value
45 during the taxable year of the assets of the taxpayer, or if the taxpay-
46 er is included in a combined report, the assets of the combined report-
47 ing group of the taxpayer under section 11-654.3 of this subchapter, and
48 the denominator of which is fifty billion dollars.

49 (ii)(A) Net interest income from qualifying loans shall mean the
50 taxpayer's net interest income from loans during the taxable year multi-
51 plied by a fraction, the numerator of which is the gross interest income
52 during the taxable year from qualifying loans and the denominator of
53 which is the gross interest income from all loans.

54 (B) Net interest income from loans shall mean gross interest income
55 during the taxable year from loans less gross interest expense from
56 loans. Gross interest expense from loans is determined by multiplying

1 gross interest expense by a fraction, the numerator of which is the
2 average total value of loans owned by the taxpayer during the taxable
3 year and the denominator of which is the average total assets of the
4 taxpayer for the year.

5 (C) Measurement of assets. For purposes of this paragraph:

6 (I) Total assets are those assets that are properly reflected on a
7 balance sheet, computed in the same manner as is required by the banking
8 regulator, if applicable, of the taxpayers included in the combined
9 return. In addition, total assets includes leased real property that is
10 not properly reflected on a balance sheet.

11 (II) Assets will only be included if the income or expenses of which
12 are properly reflected, or would have been properly reflected if not
13 fully depreciated or expensed, or depreciated or expensed to a nominal
14 amount, in the computation of the taxpayer's entire net income for the
15 taxable year. Assets will not include deferred tax assets and intangible
16 assets identified as "goodwill".

17 (III) Tangible real and personal property, such as buildings, land,
18 machinery, and equipment, shall be valued at cost. Leased real property
19 that is not properly reflected on a balance sheet will be valued at the
20 annual lease payment multiplied by eight. Intangible property, such as
21 loans and investments, shall be valued at book value exclusive of
22 reserves.

23 (IV) Average assets are computed using the assets measured on the
24 first day of the taxable year, and on the last day of each subsequent
25 quarter of the taxable year or month or day during the taxable year.

26 (iii) A qualifying loan is a loan that meets the conditions specified
27 in subclause (A) through subclause (E) of this clause.

28 (A) The loan is originated by the taxpayer lender or purchased by the
29 taxpayer immediately after its origination in connection with a commit-
30 ment to purchase made by the taxpayer prior to the loan's origination.

31 (B) Satisfies conditions of item (I) or (II) of this subclause.

32 (I) The loan is secured by a housing accommodation located within the
33 city, where there are rental units in such housing accommodation that
34 are qualifying units, which for purposes of this subclause, means units
35 subject to rent control, rent stabilization or to a regulatory agree-
36 ment, provided that, each such loan will be considered a qualifying loan
37 for purposes of this paragraph only in proportion to a percentage equal
38 to the number of qualifying units divided by the total number of all
39 residential and commercial units located on the site of the real prop-
40 erty securing the loan, as determined as of the date the loan is made.

41 (II) To the extent not included in item (I) of this subclause, loans
42 secured by residential real property located in a low-income community.
43 For purposes of this paragraph, low-income community areas are census
44 tracts within the city in which the poverty rate for such tract is at
45 least twenty percent and the median family income for such tract does
46 not exceed eighty percent of metropolitan area median family income.
47 This determination will be made by reference to the poverty and median
48 family income census data for application of section forty-five-D of the
49 internal revenue code.

50 (C) The loan is not treated as a qualifying loan in the computation of
51 a subtraction from entire net income pursuant to paragraph (q) of this
52 subdivision.

53 (D) If the taxpayer applies a subtraction pursuant to paragraph (r) of
54 this subdivision, the interest or net gains from the loan are not recog-
55 nized by a captive REIT as defined in section 11-601 of this chapter.

1 (E) A loan that meets the definition of a qualifying loan in a prior
2 taxable year, including years prior to the effective date of this para-
3 graph, remains a qualifying loan in taxable years during and after which
4 such loan is acquired by another corporation in the taxpayer's combined
5 reporting group under section 11-654.3 of this subchapter.

6 (iv) For purposes of this paragraph, the following terms shall mean:

7 (A) "Housing accommodations" shall mean a multiple dwelling that
8 contains at least five dwelling units together with the land on which
9 such structure is situated.

10 (B) "Regulatory agreement" shall mean a written agreement with or
11 approved by any local, municipal, state, federal or other government
12 agency that requires the provision of housing accommodations for fami-
13 lies and persons of low or moderate income, and binds the owner of such
14 real property and its successors and assigns. A regulatory agreement may
15 include such other terms and conditions as the locality, municipality,
16 state, or federal government shall determine.

17 (C) "Rent stabilization" shall mean, collectively, the rent stabiliza-
18 tion law of nineteen hundred sixty-nine, the rent stabilization code,
19 and the emergency tenant protection act of nineteen seventy-four,
20 together with any successor statutes or regulations addressing substan-
21 tially the same subject matter.

22 9. (a) The term "calendar year" means a period of twelve calendar
23 months, or any shorter period beginning on the date the taxpayer becomes
24 subject to the tax imposed by this subchapter, ending on the thirty-
25 first day of December, provided the taxpayer keeps its books on the
26 basis of such period or on the basis of any period ending on any day
27 other than the last day of a calendar month, or provided the taxpayer
28 does not keep books, and includes, in case the taxpayer changes the
29 period on the basis of which it keeps its books from a fiscal year to a
30 calendar year, the period from the close of its last old fiscal year up
31 to and including the following December thirty-first.

32 (b) The term "fiscal year" means a period of twelve calendar months,
33 or any shorter period beginning on the date the taxpayer becomes subject
34 to the tax imposed by this subchapter, ending on the last day of any
35 month other than December, provided the taxpayer keeps its books on the
36 basis of such period, and includes, in case the taxpayer changes the
37 period on the basis of which it keeps its books from a calendar year to
38 a fiscal year or from one fiscal year to another fiscal year, the period
39 from the close of its last old calendar or fiscal year up to the date
40 designated as the close of its new fiscal year.

41 10. The term "tangible personal property" means corporeal personal
42 property, such as machinery, tools, implements, goods, wares and
43 merchandise, and does not mean money, deposits in banks, shares of
44 stock, bonds, notes, credits or evidences of an interest property and
45 evidences of debt.

46 11. The term "internal revenue code" means, unless otherwise specif-
47 ically stated in this subchapter, the internal revenue code of 1986, as
48 amended.

49 12. The term "combinable captive insurance company" means an entity
50 that is treated as an association taxable as a corporation under the
51 internal revenue code:

52 (a) more than fifty percent of the voting stock of which is owned or
53 controlled, directly or indirectly, by a single entity that is treated
54 as an association taxable as a corporation under the internal revenue
55 code and not exempt from federal income tax;

1 (b) that is licensed as a captive insurance company under the laws of
2 this state or another jurisdiction;

3 (c) whose business includes providing, directly and indirectly, insur-
4 ance or reinsurance covering the risks of its parent and/or members of
5 its affiliated group; and

6 (d) fifty percent or less of whose gross receipts for the taxable year
7 consist of premiums from arrangements that constitute insurance for
8 federal income tax purposes.

9 For purposes of this subdivision, "affiliated group" has the same
10 meaning as that term is given in section fifteen hundred four of the
11 internal revenue code, except that the term "common parent corporation"
12 in that section is deemed to mean any person, as defined in section
13 seven thousand seven hundred one of the internal revenue code and refer-
14 ences to "at least eighty percent" in section fifteen hundred four of
15 the internal revenue code are to be read as "fifty percent or more;"
16 section fifteen hundred four of the internal revenue code is to be read
17 without regard to the exclusions provided for in subsection (b) of that
18 section; "premiums" has the same meaning as that term is given in para-
19 graph one of subdivision (c) of section fifteen hundred ten of the tax
20 law, except that it includes consideration for annuity contracts and
21 excludes any part of the consideration for insurance, reinsurance or
22 annuity contracts that do not provide bona fide insurance, reinsurance
23 or annuity benefits; and "gross receipts" includes the amounts included
24 in gross receipts for purposes of paragraph fifteen of subsection (c) of
25 section five hundred one of the internal revenue code, except that those
26 amounts also include all premiums as defined in this subdivision.

27 13. The term "partnership" includes a syndicate, group, pool, joint
28 venture, or other unincorporated organization, through or by means of
29 which any business, financial operation, or venture is carried on, and
30 which is not a corporation as defined in subdivision one of this
31 section, or a trust or estate that is separate from its owner under part
32 one of subchapter J of chapter one of subtitle A of the internal revenue
33 code; and the term "partner" includes a member in such syndicate, group,
34 pool, joint venture, or organization.

35 § 11-653 Imposition of tax; exemptions. 1. (a) For the privilege of
36 doing business, or of employing capital, or of owning or leasing proper-
37 ty in the city in a corporate or organized capacity, or of maintaining
38 an office in the city, or of deriving receipts from activity in the
39 city, for all or any part of each of its fiscal or calendar years, every
40 domestic or foreign corporation, except corporations specified in subdi-
41 vision four of this section, shall annually pay a tax, upon the basis of
42 its business income, or upon such other basis as may be applicable as
43 hereinafter provided, for such fiscal or calendar year or part thereof,
44 on a report which shall be filed, except as hereinafter provided, on or
45 before the fifteenth day of March next succeeding the close of each such
46 year, or, in the case of a taxpayer which reports on the basis of a
47 fiscal year, within two and one-half months after the close of such
48 fiscal year, and shall be paid as hereinafter provided.

49 (b) A corporation is deriving receipts from activity in the city if it
50 has receipts within the city of one million dollars or more in a taxable
51 year. For purposes of this section, the term "receipts" means the
52 receipts that are subject to the allocation rules set forth in section
53 11-654.2 of this subchapter, and the term "receipts within the city"
54 means the receipts included in the numerator of the receipts fraction
55 determined under section 11-654.2 of this subchapter. For purposes of

1 this paragraph, receipts from processing credit card transactions for
2 merchants include merchant discount fees received by the corporation.

3 (c) A corporation is doing business in the city if (1) it has issued
4 credit cards to one thousand or more customers who have a mailing
5 address within the city as of the last day of its taxable year, (2) it
6 has merchant customer contracts with merchants and the total number of
7 locations covered by those contracts equals one thousand or more
8 locations in the city to whom the corporation remitted payments for
9 credit card transactions during the taxable year, or (3) the sum of the
10 number of customers described in subparagraph one of this paragraph plus
11 the number of locations covered by its contracts described in subpara-
12 graph two of this paragraph equals one thousand or more. As used in this
13 subdivision, the term "credit card" includes bank, credit, travel and
14 entertainment cards.

15 (d)(1) A corporation with less than one million dollars but at least
16 ten thousand dollars of receipts within the city in a taxable year that
17 is part of a unitary group that meets the ownership test under section
18 11-654.3 of this subchapter is deriving receipts from activity in the
19 city if the receipts within the city of the members of the unitary group
20 that have at least ten thousand dollars of receipts within the city in
21 the aggregate meet the threshold set forth in paragraph (b) of this
22 subdivision.

23 (2) A corporation that does not meet any of the thresholds set forth
24 in paragraph (c) of this subdivision but has at least ten customers, or
25 locations, or customers and locations, as described in paragraph (c) of
26 this subdivision, and is part of a unitary group that meets the owner-
27 ship test under section 11-654.3 of this subchapter, is doing business
28 in the city if the number of customers, locations, or customers and
29 locations, within the city of the members of the unitary group that have
30 at least ten customers, locations, or customers and locations, within
31 the city in the aggregate meets any of the thresholds set forth in para-
32 graph (c) of this subdivision.

33 (3) For purposes of this paragraph, any corporation described in para-
34 graph (c) of subdivision two of section 11-654.3 of this subchapter
35 shall not be considered.

36 (e) At the end of each year, the commissioner shall review the cumula-
37 tive percentage change in the consumer price index. The commissioner
38 shall adjust the receipt thresholds set forth in this subdivision if the
39 consumer price index has changed by ten percent or more since January
40 first, two thousand twenty-two, or since the date that the thresholds
41 were last adjusted under this subdivision. The thresholds shall be
42 adjusted to reflect the cumulative percentage change in the consumer
43 price index. The adjusted thresholds shall be rounded to the nearest one
44 thousand dollars. As used in this paragraph, "consumer price index"
45 means the consumer price index for all urban consumers (CPI-U) available
46 from the bureau of labor statistics of the United States department of
47 labor. Any adjustment shall apply to tax periods that begin after the
48 adjustment is made.

49 (f) If a partnership is doing business, employing capital, owning or
50 leasing property in the city, or maintaining an office in the city, or
51 deriving receipts from activity in the city, any corporation that is a
52 partner in such partnership shall be subject to tax under this subchap-
53 ter as described in the regulations of the commissioner of finance.

54 2. A foreign corporation shall not be deemed to be doing business,
55 employing capital, owning or leasing property, or maintaining an office

1 in the city, or deriving receipts from activity in the city, for the
2 purposes of this subchapter, by reason of:

3 (a) the maintenance of cash balances with banks or trust companies in
4 the city, or

5 (b) the ownership of shares of stock or securities kept in the city,
6 if kept in a safe deposit box, safe, vault or other receptacle rented
7 for the purpose, or if pledged as collateral security, or if deposited
8 with one or more banks or trust companies, or brokers who are members of
9 a recognized security exchange, in safekeeping or custody accounts, or

10 (c) the taking of any action by any such bank or trust company or
11 broker, which is incidental to the rendering of safekeeping or custodian
12 service to such corporation, or

13 (d) the maintenance of an office in the city by one or more officers
14 or directors of the corporation who are not employees of the corporation
15 if the corporation otherwise is not doing business in the city, and does
16 not employ capital or own or lease property in the city, or

17 (e) the keeping of books or records of a corporation in the city if
18 such books or records are not kept by employees of such corporation and
19 such corporation does not otherwise do business, employ capital, own or
20 lease property or maintain an office in the city, or

21 (f) any combination of such activities.

22 2-a. An alien corporation shall not be deemed to be doing business,
23 employing capital, owning or leasing property, or maintaining an office
24 in the city, or deriving receipts from activity in the city, for the
25 purposes of this subchapter, if its activities in the city are limited
26 solely to:

27 (a) investing or trading in stocks and securities for its own account
28 within the meaning of clause (ii) of subparagraph (A) of paragraph (2)
29 of subsection (b) of section eight hundred sixty-four of the internal
30 revenue code, or:

31 (b) investing or trading in commodities for its own account within the
32 meaning of clause (ii) of subparagraph (B) of paragraph (2) of
33 subsection (b) of section eight hundred sixty-four of the internal
34 revenue code, or

35 (c) any combination of activities described in paragraphs (a) and (b)
36 of this subdivision.

37 An alien corporation that under any provision of the internal revenue
38 code is not treated as a "domestic corporation" as defined in section
39 seven thousand seven hundred one of such code and has no effectively
40 connected income for the taxable year pursuant to clause three of the
41 opening paragraph of subdivision eight of section 11-652 of this
42 subchapter shall not be subject to tax under this subchapter for that
43 taxable year. For purposes of this subchapter, an alien corporation is a
44 corporation organized under the laws of a country, or any political
45 subdivision thereof, other than the United States, or organized under
46 the laws of a possession, territory or commonwealth of the United
47 States.

48 3. Any receiver, referee, trustee, assignee or other fiduciary, or any
49 officer or agent appointed by any court, who conducts the business of
50 any corporation, shall be subject to the tax imposed by this subchapter
51 in the same manner and to the same extent as if the business were
52 conducted by the agents or officers of such corporation. A dissolved
53 corporation which continues to conduct business shall also be subject to
54 the tax imposed by this subchapter.

55 4. (a) Corporations subject to tax under chapter eleven of this title,
56 any trust company organized under a law of this state all of the stock

1 of which is owned by not less than twenty savings banks organized under
2 a law of this state, housing companies organized and operating pursuant
3 to the provisions of article two of the private housing finance law,
4 housing development fund companies organized pursuant to the provisions
5 of article eleven of the private housing finance law, corporations
6 described in section three of the tax law, a corporation principally
7 engaged in the operation of marine vessels whose activities in the city
8 are limited exclusively to the use of property in interstate or foreign
9 commerce, provided, however, such a corporation will not be subject to
10 tax under this subchapter solely because it maintains an office in the
11 city, or employs capital in the city, in connection with such use of
12 property, a corporation principally engaged in the conduct of a ferry
13 business and operating between any of the boroughs of the city under a
14 lease granted by the city and a corporation principally engaged in the
15 conduct of an aviation, steamboat, ferry or navigation business, or two
16 or more of such businesses, all of the capital stock of which is owned
17 by a municipal corporation of this state, shall not be subject to tax
18 under this subchapter; provided, however, that any corporation, other
19 than (1) a utility corporation subject to the supervision of the state
20 department of public service, and (2) for taxable years beginning on or
21 after August first, two thousand two, a utility as defined in subdivi-
22 sion six of section 11-1101 of this title, which is subject to tax under
23 chapter eleven of this title as a vendor of utility services, shall be
24 subject to tax under this subchapter, but in computing the tax imposed
25 by this section pursuant to the provisions of clause (i) of subparagraph
26 one of paragraph (e) of subdivision one of section 11-654 of this
27 subchapter, business income allocated to the city pursuant to paragraph
28 (a) of subdivision three of such section shall be reduced by the
29 percentage which such corporation's gross operating income subject to
30 tax under chapter eleven of this title is of its gross operating income.

31 (b) The term "gross operating income", when used in paragraph (a) of
32 this subdivision, means receipts received in or by reason of any trans-
33 action had and consummated in the city, including cash, credits and
34 property of any kind or nature, whether or not such transaction is made
35 for profit, without any deduction therefrom on account of the cost of
36 the property sold, the cost of materials used, labor or other services,
37 delivery costs or any other costs whatsoever, interest or discount paid
38 or any other expenses whatsoever.

39 (c) If it shall appear to the commissioner of finance that the appli-
40 cation of the provisions of paragraph (a) of this subdivision, does not
41 fairly and equitably reflect the portion of the taxpayer's business
42 income allocable to the city which is attributable to its city activ-
43 ities which are not taxable under chapter eleven of this title, the
44 commissioner of finance may prescribe other means or methods of deter-
45 mining such portion, including the use of the books and records of the
46 taxpayer, if the commissioner of finance finds that such means or meth-
47 ods used in keeping them fairly and equitably reflect such portion.

48 5. Intentionally omitted.

49 6. Intentionally omitted.

50 7. For any taxable year of a real estate investment trust, as defined
51 in section eight hundred fifty-six of the internal revenue code, in
52 which such trust is subject to federal income taxation under section
53 eight hundred fifty-seven of such code, such trust shall be subject to a
54 tax computed under either clause (i) of subparagraph one of paragraph
55 (e) of subdivision one of section 11-654 of this subchapter, or clause
56 (iv), whichever is greater. In the case of such a real estate investment

1 trust, including a captive REIT as defined in section 11-601 of this
2 chapter, the term "entire net income" means "real estate investment
3 trust taxable income" as defined in paragraph two of subdivision (b) of
4 section eight hundred fifty-seven, as modified by section eight hundred
5 fifty-eight, of the internal revenue code plus the amount taxable under
6 paragraph three of subdivision (b) of section eight hundred fifty-seven
7 of such code, subject to the modifications required by subdivision eight
8 of section 11-652 of this subchapter including the modifications
9 required by paragraphs (d) and (e) of subdivision three of section
10 11-654 of this subchapter.

11 8. For any taxable year of a regulated investment company, as defined
12 in section eight hundred fifty-one of the internal revenue code, in
13 which such company is subject to federal income taxation under section
14 eight hundred fifty-two of such code, such company shall be subject to a
15 tax computed under either clause one or four of subparagraph (a) of
16 paragraph E of subdivision one of section 11-654 of this subchapter,
17 whichever is greater. In the case of such a regulated investment compa-
18 ny, including a captive RIC as defined in section 11-601 of this chap-
19 ter, the term "entire net income" used in subdivision one of this
20 section means "investment company taxable income" as defined in para-
21 graph two of subdivision (b) of section eight hundred fifty-two, as
22 modified by section eight hundred fifty-five, of the internal revenue
23 code plus the amount taxable under paragraph three of subdivision (b) of
24 section eight hundred fifty-two of such code subject to the modifica-
25 tions required by subdivision eight of section 11-652 of this subchap-
26 ter, including the modification required by paragraphs (d) and (e) of
27 subdivision three of section 11-654 of this subchapter.

28 9. An organization described in paragraph two or twenty-five of
29 subsection (c) of section five hundred one of the internal revenue code
30 shall be exempt from all taxes imposed by this subchapter.

31 § 11-654 Computation of tax. 1. (a) Intentionally omitted.

32 (b) Intentionally omitted.

33 (c) Intentionally omitted.

34 (d) Intentionally omitted.

35 (e) The tax imposed by subdivision one of section 11-653 of this
36 subchapter shall be, in the case of each taxpayer:

37 (1) whichever of the following amounts is the greatest:

38 (i) an amount computed on its business income or the portion of such
39 business income allocated within the city as hereinafter provided,
40 subject to the application of paragraphs (j) and (k) of this subdivision
41 and any modification required by paragraphs (d) and (e) of subdivision
42 three of this section, at the rate of (1) nine per centum for financial
43 corporations, as defined in this clause, or (2) eight and eighty-five
44 one hundredths per centum for all other corporations. For purposes of
45 this clause, "financial corporation" means a corporation or, if the
46 corporation is included in a combined group, a combined group, that (A)
47 has total assets reflected on its balance sheet at the end of its taxa-
48 ble year in excess of one hundred billion dollars, computed under gener-
49 ally accepted accounting principles and (B)(I) allocates more than fifty
50 percent of the receipts included in the denominator of its receipts
51 fraction, determined under section 11-654.2 of this subchapter, pursuant
52 to subdivision five of section 11-654.2 of this subchapter for its taxa-
53 ble year, or (II) is itself or is included in a combined group in which
54 more than fifty percent of the total assets reflected on its balance
55 sheet at the end of its taxable year are held by one or more corpo-
56 rations that are classified as (a) registered under state law as a bank

1 holding company or registered under the Federal Bank Holding Company Act
 2 of 1956 (12 U.S.C. § 1841, et seq., as amended), or registered as a
 3 savings and loan holding company under the Federal National Housing Act
 4 (12 U.S.C. 1701, as amended), (b) a national bank organized and existing
 5 as a national bank association pursuant to the provisions of the
 6 National Bank Act, 12 U.S.C. 21 et. seq., (c) a savings association or
 7 federal savings bank as defined in the Federal Deposit Insurance Act, 12
 8 U.S.C. § 1813(b)(1), (d) a bank, savings association, or thrift institu-
 9 tion incorporated or organized under the laws of any state, (e) a corpo-
 10 ration organized under the provisions of 12 U.S.C. §§ 611 to 631, (f) an
 11 agency or branch or a foreign depository as defined in 12 U.S.C. § 3101,
 12 (g) a registered securities or commodities broker or dealer registered
 13 as such by the securities and exchange commission or the commodities
 14 futures trading commission, which shall include an OTC derivatives deal-
 15 er as defined under regulations of the securities and exchange commis-
 16 sion at title 17, part 240, section 3b-12 of the code of federal regu-
 17 lations (17 CFR 240.3b-12), or (h) any corporation whose voting stock is
 18 more than fifty percent owned, directly or indirectly, by any person or
 19 business entity described in subitems (a) through (g) of this item,
 20 other than an insurance company taxable under article thirty-three of
 21 the tax law; or

22 (ii) an amount computed by multiplying its total business capital, or
 23 the portion thereof allocated within the city, as hereinafter provided,

24 (A) except as provided in subclauses (B) and (C) of this clause, by
 25 fifteen one-hundredths per centum;

26 (B) in the case of a cooperative housing corporation as defined in the
 27 internal revenue code, by four one-hundredths per centum;

28 (C) in the case of the portion of total business capital directly
 29 attributable to a corporation that is or would be taxable under chapter
 30 eleven of this title, except for a vendor of utility services that is
 31 taxable under both chapter eleven of this title and this subchapter, or
 32 a corporation that would have been taxable as an insurance corporation
 33 under former part IV, title R, chapter forty-six of the administrative
 34 code of the city of New York as in effect on June thirtieth, nineteen
 35 hundred seventy-four, by seven and one-half one-hundredths per centum;
 36 and

37 (D) subtracting ten thousand dollars from the sum of the amount of tax
 38 computed pursuant to subclauses (A), (B) and (C) of this clause,
 39 provided that if such amount of tax is less than zero it shall be deemed
 40 to be zero; and

41 (E) provided that in no event shall the amount of tax computed pursu-
 42 ant to subclause (D) of this clause on the taxpayer's total business
 43 capital, or the portion thereof allocated within the city, exceed ten
 44 million dollars, or

45 (iii) Intentionally omitted.

46 (iv) If New York city receipts are:	Fixed dollar minimum
47	tax is:
48 Not more than \$100,000	\$25
49 More than \$100,000 but not over \$250,000	\$75
50 More than \$250,000 but not over \$500,000	\$175
51 More than \$500,000 but not over \$1,000,000	\$500
52 More than \$1,000,000 but not over \$5,000,000	\$1,500
53 More than \$5,000,000 but not over \$25,000,000	\$3,500
54 More than \$25,000,000 but not over \$50,000,000	\$5,000
55 More than \$50,000,000 but not over \$100,000,000	\$10,000

1	More than \$100,000,000 but not over \$250,000,000	\$20,000
2	More than \$250,000,000 but not over \$500,000,000	\$50,000
3	More than \$500,000,000 but not over \$1,000,000,000	\$100,000
4	Over \$1,000,000,000	\$200,000

5 For purposes of this clause, New York city receipts are the receipts
6 computed in accordance with section 11-654.2 of this subchapter for the
7 taxable year. If the taxable year is less than twelve months, the amount
8 prescribed by this clause shall be reduced by twenty-five percent if the
9 period for which the taxpayer is subject to tax is more than six months
10 but not more than nine months and by fifty percent if the period for
11 which the taxpayer is subject to tax is not more than six months. If the
12 taxable year is less than twelve months, the amount of New York city
13 receipts for purposes of this clause is determined by dividing the
14 amount of the receipts for the taxable year by the number of months in
15 the taxable year and multiplying the result by twelve.

16 (f) Intentionally omitted.

17 (g) Intentionally omitted.

18 (h) Intentionally omitted.

19 (i) Intentionally omitted.

20 (j) (1) If the amount of business income allocated within the city as
21 hereinafter provided is less than one million dollars, the amount
22 computed in clause (i) of subparagraph one of paragraph (e) of this
23 subdivision shall be at the rate of six and five-tenths per centum of
24 the amount of business income allocated within the city as hereinafter
25 provided, subject to any modification required by paragraphs (d) and (e)
26 of subdivision three of this section;

27 (2) Subject to subparagraph three of this paragraph, if the amount of
28 business income allocated within the city as hereinafter provided is one
29 million dollars or greater but less than one million five hundred thou-
30 sand dollars, the amount computed in clause (i) of subparagraph one of
31 paragraph (e) of this subdivision shall be at the rate of (i) six and
32 five-tenths per centum, plus (ii) two and thirty-five one-hundredths per
33 centum multiplied by a fraction the numerator of which is allocated
34 business income less one million dollars and the denominator of which is
35 five hundred thousand dollars, of the amount of business income allo-
36 cated within the city as hereinafter provided, subject to any modifica-
37 tion required by paragraphs (d) and (e) of subdivision three of this
38 section;

39 (3) Provided, however, notwithstanding anything to the contrary, if
40 the amount of business income before allocation is two million dollars
41 or greater but less than three million dollars, the rate of tax provided
42 for in this paragraph shall not be less than (i) six and five-tenths per
43 centum, plus (ii) two and thirty-five one-hundredths per centum multi-
44 plied by a fraction the numerator of which is business income before
45 allocation less two million dollars and the denominator of which is one
46 million dollars, and provided, however, notwithstanding anything to the
47 contrary, if the amount of business income before allocation is three
48 million dollars or greater, the rate of tax shall be eight and eighty-
49 five one-hundredths percentum or, in the case of a financial corpo-
50 ration, as defined in clause (i) of subparagraph one of paragraph (e) of
51 subdivision one of section 11-654, if the amount of business income
52 before allocation is three million dollars or greater the rate of tax
53 shall be nine per centum.

54 (k)(1) For qualified New York manufacturing corporations as defined in
55 subparagraph four of this paragraph, if the amount of business income

1 allocated within the city as hereinafter provided is less than ten
2 million dollars, the amount computed in clause (i) of subparagraph one
3 of paragraph (e) of this subdivision shall be at the rate of four and
4 four hundred twenty-five one thousandths per centum, of its business
5 income allocated within the city as hereinafter provided, subject to any
6 modification required by paragraphs (d) and (e) of subdivision three of
7 this section;

8 (2) Subject to subparagraph three of this paragraph for qualified New
9 York manufacturing corporations as defined in subparagraph four of this
10 paragraph, if the amount of business income allocated within the city as
11 hereinafter provided is ten million dollars or greater but less than
12 twenty million dollars, the amount computed in clause (i) of subpara-
13 graph one of paragraph (e) of this subdivision shall be at the rate of
14 (i) four and four hundred twenty-five one-thousandths per centum, plus
15 (ii) four and four hundred twenty-five one-thousandths per centum multi-
16 plied by a fraction the numerator of which is allocated business income
17 less ten million dollars and the denominator of which is ten million
18 dollars, of its business income or the portion of such business income
19 allocated within the city as hereinafter provided, subject to any
20 modification required by paragraphs (d) and (e) of subdivision three of
21 this section;

22 (3) Notwithstanding anything to the contrary, if the amount of busi-
23 ness income before allocation is twenty million dollars or greater but
24 less than forty million dollars, the rate of tax provided for in this
25 paragraph shall not be less than (i) four and four hundred twenty-five
26 one-thousandths per centum, plus (ii) four and four hundred twenty-five
27 one-thousandths per centum multiplied by a fraction the numerator of
28 which is business income before allocation less twenty million dollars
29 and the denominator of which is twenty million dollars, and provided,
30 however, notwithstanding anything to the contrary, if the amount of
31 business income before allocation is forty million dollars or greater,
32 the rate of tax shall be eight and eighty-five one-hundredths per
33 centum.

34 (4)(i) As used in this subparagraph, the term "manufacturing corpo-
35 ration" means a corporation principally engaged in the manufacturing and
36 sale thereof of tangible personal property; and the term "manufacturing"
37 includes the process, including the assembly process (A) of working raw
38 materials into wares suitable for use or (B) which gives new shapes, new
39 qualities or new combinations to matter which already has gone through
40 some artificial process, by the use of machinery, tools, appliances and
41 other similar equipment. Moreover, in the case of a combined report, a
42 combined group shall be considered a "manufacturing corporation" for
43 purposes of this subparagraph only if the combined group during the
44 taxable year is principally engaged in the activities set forth in this
45 paragraph, or any combination thereof. A taxpayer or, in the case of a
46 combined report, a combined group, shall be "principally engaged" in
47 activities described in this subparagraph if, during the taxable year,
48 more than fifty percent of the gross receipts of the taxpayer or
49 combined group, respectively, are derived from receipts from the sale of
50 goods produced by such activities. In computing a combined group's gross
51 receipts, intercorporate receipts shall be eliminated.

52 (ii) A "qualified New York manufacturing corporation" is a manufactur-
53 ing corporation that has property in the state that is described in
54 subparagraph five of this paragraph and either (A) the adjusted basis of
55 such property for New York state tax purposes at the close of the taxa-

1 ble year is at least one million dollars or (B) more than fifty percent
2 of its real and personal property is located in the state.

3 (5) For purposes of subclause (A) of clause (ii) of subparagraph four
4 of this paragraph, property includes tangible personal property and
5 other tangible property, including buildings and structural components
6 of buildings, which are: depreciable pursuant to section one hundred
7 sixty-seven of the internal revenue code, have a useful life of four
8 years or more, are acquired by purchase as defined in subsection (d) of
9 section one hundred seventy-nine of the internal revenue code, have a
10 situs in the state and are principally used by the taxpayer in the
11 production of goods by manufacturing. Property used in the production of
12 goods shall include machinery, equipment or other tangible property
13 which is principally used in the repair and service of other machinery,
14 equipment or other tangible property used principally in the production
15 of goods and shall include all facilities used in the production opera-
16 tion, including storage of material to be used in production and of the
17 products that are produced.

18 2. The amount of investment capital and business capital shall be
19 determined by taking the average value of the gross assets included
20 therein, less liabilities deductible therefrom pursuant to the
21 provisions of subdivisions four and six of section 11-652 of this
22 subchapter, and, if the period covered by the report is other than a
23 period of twelve calendar months, by multiplying such value by the
24 number of calendar months or major parts thereof included in such peri-
25 od, and dividing the product thus obtained by twelve. For purposes of
26 this subdivision, real property and marketable securities shall be
27 valued at fair market value and the value of personal property other
28 than marketable securities shall be the value thereof shown on the books
29 and records of the taxpayer in accordance with generally accepted
30 accounting principles.

31 3. The portion of the business income of a taxpayer to be allocated to
32 the city shall be determined as follows:

33 (a) multiply its business income by a business allocation percentage
34 to be determined by:

35 (1) ascertaining the percentage which the average value of the taxpay-
36 er's real and tangible personal property, whether owned or rented to it,
37 within the city during the period covered by its report bears to the
38 average value of all the taxpayer's real and tangible personal property,
39 whether owned or rented to it, wherever situated during such period. For
40 the purpose of this subparagraph, the term "value of the taxpayer's real
41 and tangible personal property" shall mean the adjusted bases of such
42 properties for federal income tax purposes, except that in the case of
43 rented property such value shall mean the product of (i) eight and (ii)
44 the gross rents payable for the rental of such property during the taxa-
45 ble year; provided, however, that the taxpayer may make a one-time,
46 revocable election, pursuant to regulations promulgated by the commis-
47 sioner of finance to use fair market value as the value of all of its
48 real and tangible personal property, provided that such election is made
49 on or before the due date for filing a report under section 11-655 of
50 this subchapter for the taxpayer's first taxable year commencing on or
51 after January first, two thousand fifteen and provided that such
52 election shall not apply to any taxable year with respect to which the
53 taxpayer is included on a combined report unless each of the taxpayers
54 included on such report has made such an election which remains in
55 effect for such year or to any taxpayer that was subject to tax under
56 subchapter two of this chapter and did not have an election in effect

1 under subparagraph one of paragraph (a) of subdivision three of section
2 11-604 of this chapter on December thirty-first, two thousand fourteen;
3 (2) ascertaining the percentage determined under section 11-654.2 of
4 this subchapter;
5 (3) ascertaining the percentage of the total wages, salaries and other
6 personal service compensation, similarly computed, during such period of
7 employees within the city, except general executive officers, to the
8 total wages, salaries and other personal service compensation, similarly
9 computed, during such period of all the taxpayer's employees within and
10 without the city, except general executive officers; and
11 (4) adding together the percentages so determined and dividing the
12 result by the number of percentages.
13 (5) Intentionally omitted.
14 (6) Intentionally omitted.
15 (7) Intentionally omitted.
16 (8) Intentionally omitted.
17 (9) Intentionally omitted.
18 (10) Notwithstanding subparagraphs one through four of this paragraph,
19 the business allocation percentage, to the extent that it is computed by
20 reference to the percentages determined under subparagraphs one, two and
21 three of this paragraph, shall be computed in the manner set forth in
22 this subparagraph.
23 (i) Intentionally omitted.
24 (ii) Intentionally omitted.
25 (iii) Intentionally omitted.
26 (iv) Intentionally omitted.
27 (v) Intentionally omitted.
28 (vi) Intentionally omitted.
29 (vii) For taxable years beginning in two thousand fifteen, the busi-
30 ness allocation percentage shall be determined by adding together the
31 following percentages:
32 (A) the product of ten percent and the percentage determined under
33 subparagraph one of this paragraph;
34 (B) the product of eighty percent and the percentage determined under
35 subparagraph two of this paragraph; and
36 (C) the product of ten percent and the percentage determined under
37 subparagraph three of this paragraph.
38 (viii) For taxable years beginning in two thousand sixteen, the busi-
39 ness allocation percentage shall be determined by adding together the
40 following percentages:
41 (A) the product of six and one-half percent and the percentage deter-
42 mined under subparagraph one of this paragraph;
43 (B) the product of eighty-seven percent and the percentage determined
44 under subparagraph two of this paragraph; and
45 (C) the product of six and one-half percent and the percentage deter-
46 mined under subparagraph three of this paragraph.
47 (ix) For taxable years beginning in two thousand seventeen, the busi-
48 ness allocation percentage shall be determined by adding together the
49 following percentages:
50 (A) the product of three and one-half percent and the percentage
51 determined under subparagraph one of this paragraph;
52 (B) the product of ninety-three percent and the percentage determined
53 under subparagraph two of this paragraph; and
54 (C) the product of three and one-half percent and the percentage
55 determined under subparagraph three of this paragraph.

1 (x) For taxable years beginning after two thousand seventeen, the
2 business allocation percentage shall be the percentage determined under
3 subparagraph two of this paragraph.

4 (xi) The commissioner of finance shall promulgate rules necessary to
5 implement the provisions of this subparagraph under such circumstances
6 where any of the percentages to be determined under subparagraph one,
7 two or three of this paragraph cannot be determined because the taxpayer
8 has no property, receipts or wages within or without the city.

9 (xii) Notwithstanding the provisions of clauses (viii), (ix), and (x)
10 of this subparagraph, for taxable years beginning on or after January
11 first, two thousand eighteen, a taxpayer that has fifty million dollars
12 or less of receipts allocated to the city as determined under section
13 11-654.2 of this subchapter, or, if the taxpayer is included in a
14 combined group, a combined group that has fifty million dollars or less
15 of receipts allocated to the city as determined under section 11-654.2
16 of this subchapter, may make a one-time election to determine its busi-
17 ness allocation percentage by adding together the following percentages:

18 (A) the product of three and one-half percent and the percentage
19 determined under subparagraph one of this paragraph;

20 (B) the product of ninety-three percent and the percentage determined
21 under subparagraph two of this paragraph; and

22 (C) the product of three and one-half percent and the percentage
23 determined under subparagraph three of this paragraph.

24 The election provided for in this clause must be made on an original
25 or amended report filed pursuant to section 11-655 of this subchapter
26 for the taxpayer's or, if the taxpayer is included in a combined group,
27 the combined group's, first taxable year commencing on or after January
28 first, two thousand eighteen and shall remain in effect until revoked by
29 the taxpayer, or if the taxpayer is included in a combined group, the
30 combined group. An election shall be revoked under this clause on an
31 original or amended report filed pursuant to section 11-655 of this
32 subchapter for the taxpayer's, or if the taxpayer is included in a
33 combined group, the combined group's, first taxable year with respect to
34 which such revocation is to be effective. If the taxpayer is a member of
35 a combined group, an election or revocation by the taxpayer under this
36 clause shall apply to all members of the combined group.

37 (11) A foreign air carrier described in the first sentence of subpara-
38 graph one of paragraph (c-1) of subdivision eight of section 11-652 of
39 this subchapter shall determine its business allocation percentage
40 pursuant to subparagraphs one through four of this paragraph, as modi-
41 fied by subparagraph ten of this paragraph, except that the numerators
42 and denominators involved in such computation shall exclude property to
43 the extent employed in generating income excluded from entire net income
44 for the taxable year pursuant to paragraph (c-1) of subdivision eight of
45 section 11-652 of this subchapter, exclude such receipts as are excluded
46 from entire net income for the taxable year pursuant to paragraph (c-1)
47 of subdivision eight of section 11-652 of this subchapter, and exclude
48 wages, salaries or other personal service compensation which are direct-
49 ly attributable to the generation of income excluded from entire net
50 income for the taxable year pursuant to paragraph (c-1) of subdivision
51 eight of section 11-652 of this subchapter.

52 (b) Intentionally omitted.

53 (c) Intentionally omitted.

54 (d) In any taxable year when property is sold or otherwise disposed
55 of, with respect to which a deduction has been allowed pursuant to
56 subparagraph one or two of paragraph (d) of subdivision three of section

1 11-604 of this chapter or subdivision (k) of section 11-641 of this
2 chapter in any period in which the taxpayer was subject to tax under
3 subchapter two of this chapter, the gain or loss thereon entering into
4 the computation of federal taxable income shall be disregarded in
5 computing entire net income, and there shall be added to or subtracted
6 from the portion of entire net income allocated within the city the gain
7 or loss upon such sale or other disposition. In computing such gain or
8 loss the basis of the property sold or disposed of shall be adjusted to
9 reflect the deduction allowed with respect to such property pursuant to
10 subparagraph one or two of paragraph (d) of subdivision three of section
11 11-604 of this chapter. Provided, however, that no loss shall be recog-
12 nized for the purposes of this subparagraph with respect to a sale or
13 other disposition of property to a person whose acquisition thereof is
14 not a purchase as defined in subsection (d) of section one hundred
15 seventy-nine of the internal revenue code.

16 (e) In any taxable year when property is sold or otherwise disposed
17 of, with respect to which a deduction has been allowed pursuant to
18 subparagraph one or two of paragraph (e) of subdivision three of section
19 11-604 of this chapter in any period the taxpayer was subject to tax
20 under subchapter two of this chapter, the gain or loss thereon entering
21 into the computation of federal taxable income shall be disregarded in
22 computing entire net income, and there shall be added to or subtracted
23 from the portion of entire net income allocated within the city the gain
24 or loss upon such sale or other disposition. In computing such gain or
25 loss the basis of the property sold or disposed of shall be adjusted to
26 reflect the deduction allowed with respect to such property pursuant to
27 subparagraph one or two of paragraph (e) of subdivision three of section
28 11-604 of this chapter. Provided, however, that no loss shall be recog-
29 nized for the purposes of this subparagraph with respect to a sale or
30 other disposition of property to a person whose acquisition thereof is
31 not a purchase as defined in subsection (d) of section one hundred
32 seventy-nine of the internal revenue code.

33 4. The portion of the business capital of a taxpayer to be allocated
34 within the city shall be determined by multiplying the amount thereof by
35 the business allocation percentage determined as hereinabove provided.

36 4-a. A corporation that is a partner in a partnership shall compute
37 tax under this subchapter using any method required or permitted in
38 regulations of the commissioner of finance.

39 5. Intentionally omitted.

40 6. Intentionally omitted.

41 7. Intentionally omitted.

42 8. Intentionally omitted.

43 9. If it shall appear to the commissioner of finance that any business
44 allocation percentage determined as hereinabove provided does not prop-
45 erly reflect the activity, business, income or capital of a taxpayer
46 within the city, the commissioner of finance shall be authorized in his
47 or her discretion to adjust it, or the taxpayer may request that the
48 commissioner of finance adjust it, by (a) excluding one or more of the
49 factors therein, (b) including one or more other factors, such as
50 expenses, purchases, contract values, minus subcontract values, (c)
51 excluding one or more assets in computing such allocation percentage,
52 provided the income therefrom, is also excluded in determining entire
53 net income, or (d) any other similar or different method calculated to
54 effect a fair and proper allocation of the income and capital reasonably
55 attributable to the city. The party seeking the adjustment shall bear
56 the burden of proof to demonstrate that the business allocation percent-

1 age determined pursuant to this section does not result in a proper
2 reflection of the taxpayer's income or capital within the city and that
3 the proposed adjustment is appropriate. The commissioner of finance from
4 time to time shall publish all rulings of general public interest with
5 respect to any application of the provisions of this subdivision.

6 10. Intentionally omitted.

7 11. Intentionally omitted.

8 12. Intentionally omitted.

9 13. (a) In addition to any other credit allowed by this section, a
10 taxpayer shall be allowed a credit against the tax imposed by this
11 subchapter to be credited or refunded without interest, in the manner
12 hereinafter provided in this section.

13 (1)(i) Where a taxpayer shall have relocated to the city from a
14 location outside the state, and by such relocation shall have created a
15 minimum of one hundred industrial or commercial employment opportu-
16 nities; and where such taxpayer shall have entered into a written lease
17 for the relocation premises, the terms of which lease provide for
18 increased additional payments to the landlord which are based solely and
19 directly upon any increase or addition in real estate taxes imposed on
20 the leased premises, the taxpayer upon approval and certification by the
21 industrial and commercial incentive board as hereinafter provided shall
22 be entitled to a credit against the tax imposed by this subchapter. The
23 amount of such credit shall be an amount equal to the annual increased
24 payments actually made by the taxpayer to the landlord which are solely
25 and directly attributable to an increase or addition to the real estate
26 tax imposed upon the leased premises. Such credit shall be allowed only
27 to the extent that the taxpayer has not otherwise claimed said amount as
28 a deduction against the tax imposed by this subchapter.

29 (ii) The industrial and commercial incentive board in approving and
30 certifying to the qualifications of the taxpayer to receive such tax
31 credit shall first determine that the applicant has met the requirements
32 of this section, and further, that the granting of the tax credit to the
33 applicant is in the "public interest". In determining that the granting
34 of the tax credit is in the public interest, the board shall make affir-
35 mative findings that: the granting of the tax credit to the applicant
36 will not effect an undue hardship on similar taxpayers already located
37 within the city; the existence of this tax incentive has been instru-
38 mental in bringing about the relocation of the applicant to the city;
39 and the granting of the tax credit will foster the economic recovery and
40 economic development of the city.

41 (iii) The tax credit, if approved and certified by the industrial and
42 commercial incentive board, must be utilized annually by the taxpayer
43 for the length of the term of the lease or for a period not to exceed
44 ten years from the date of relocation whichever period is shorter.

45 (2) When used in this subdivision:

46 (i) "Employment opportunity" means the creation of a full time posi-
47 tion of gainful employment for an industrial or commercial employee and
48 the actual hiring of such employee for the said position.

49 (ii) "Industrial employee" means one engaged in the manufacture or
50 assembling of tangible goods or the processing of raw materials.

51 (iii) "Commercial employee" means one engaged in the buying, selling
52 or otherwise providing of goods or services other than on a retail
53 basis.

54 (iv) "Retail" means the selling or otherwise disposing or furnishing
55 of tangible goods or services directly to the ultimate user or consumer.

1 (v) "Full time position" means the hiring of an industrial or commer-
2 cial employee in a position of gainful employment where the number of
3 hours worked by such employees is not less than thirty hours during any
4 given work week.

5 (vi) "Industrial and commercial incentive board" means the board
6 created pursuant to part three of subchapter two of chapter two of this
7 title.

8 (b) The credit allowed under this subdivision for any taxable year
9 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
10 ited or refunded, without interest, in accordance with the provisions of
11 section 11-677 of this chapter.

12 14. (a) In addition to any other credit allowed by this section, a
13 taxpayer shall be allowed a credit against the tax imposed by this
14 subchapter to be credited or refunded without interest, in the manner
15 hereinafter provided in this section. The amount of such credit shall
16 be:

17 (1) A maximum of three hundred dollars for each commercial employment
18 opportunity and a maximum of five hundred dollars for each industrial
19 employment opportunity relocated to the city from an area outside the
20 state. Such credit shall be allowed to a taxpayer who relocates a mini-
21 mum of ten employment opportunities. The credit shall be allowed against
22 employment opportunity relocation costs incurred by the taxpayer. Such
23 credit shall be allowed only to the extent that the taxpayer has not
24 claimed a deduction for allowable employment opportunity relocation
25 costs. The credit allowed hereunder may be taken by the taxpayer in
26 whole or in part in the year in which the employment opportunity is
27 relocated by such taxpayer or either of the two years succeeding such
28 event, provided, however, no credit shall be allowed under this subdivi-
29 sion to a taxpayer for industrial employment opportunities relocated to
30 premises (i) that are within an industrial business zone established
31 pursuant to section 22-626 of the code of the preceding municipality and
32 (ii) for which a binding contract to purchase or lease was first entered
33 into by the taxpayer on or after July first, two thousand five.

34 The commissioner of finance is empowered to promulgate rules and regu-
35 lations and to prescribe the form of application to be used by a taxpay-
36 er seeking the such credit.

37 (2) When used in this subdivision:

38 (i) "Employment opportunity" means the creation of a full time posi-
39 tion of gainful employment for an industrial or commercial employee and
40 the actual hiring of such employee for the said position.

41 (ii) "Industrial employee" means one engaged in the manufacture or
42 assembling of tangible goods or the processing of raw materials.

43 (iii) "Commercial employee" means one engaged in the buying, selling
44 or otherwise providing of goods or services other than on a retail
45 basis.

46 (iv) "Retail" means the selling or otherwise disposing of tangible
47 goods directly to the ultimate user or consumer.

48 (v) "Full time position" means the hiring of an industrial or commer-
49 cial employee in a position of gainful employment where the number of
50 hours worked by such employee is not less than thirty hours during any
51 given work week.

52 (vi) "Employment opportunity relocation costs" means the costs
53 incurred by the taxpayer in moving furniture, files, papers and office
54 equipment into the city from a location outside the state; the costs
55 incurred by the taxpayer in the moving and installation of machinery and
56 equipment into the city from a location outside the state; the costs of

1 installation of telephones and other communications equipment required
2 as a result of the relocation to the city from a location outside the
3 state; the cost incurred in the purchase of office furniture and
4 fixtures required as a result of the relocation to the city from a
5 location outside the state; and the cost of renovation of the premises
6 to be occupied as a result of the relocation; provided, however, that
7 such renovation costs shall be allowable only to the extent that they do
8 not exceed seventy-five cents per square foot of the total area utilized
9 by the taxpayer in the occupied premises.

10 (b) The credit allowed under this section for any taxable year shall
11 be deemed to be an overpayment of tax by the taxpayer to be credited or
12 refunded without interest in accordance with the provisions of section
13 11-677 of this chapter.

14 (c) Notwithstanding any other provision of this subdivision to the
15 contrary, in the case of a taxpayer that has received, in a taxable year
16 beginning before January first, two thousand fifteen, the credit set
17 forth in subdivision fourteen of section 11-604 of this chapter for an
18 eligible employment relocation, a credit shall be allowed to the taxpay-
19 er under this subdivision for any tax year beginning on or after January
20 first, two thousand fifteen, in the same amount and to the same extent
21 that a credit, or the unused portion thereof, would have been allowed
22 under subdivision fourteen of section 11-604 of this chapter, as in
23 effect on December thirty-first, two thousand fourteen, if such subdivi-
24 sion continued to apply to the taxpayer for such taxable year.

25 15. Intentionally omitted.

26 16. Intentionally omitted.

27 17. (a) In addition to any other credit allowed by this section, a
28 taxpayer that has obtained the certifications required by chapter six-B
29 of title twenty-two of the code of the preceding municipality shall be
30 allowed a credit against the tax imposed by this subchapter. The amount
31 of the credit shall be the amount determined by multiplying five hundred
32 dollars or, in the case of a taxpayer that has obtained pursuant to
33 chapter six-B of such title twenty-two a certification of eligibility
34 dated on or after July first, nineteen hundred ninety-five, one thousand
35 dollars or, in the case of an eligible business that has obtained pursu-
36 ant to chapter six-B of such title twenty-two a certification of eligi-
37 bility dated on or after July first, two thousand, for a relocation to
38 eligible premises located within a revitalization area defined in subdivi-
39 sion (n) of section 22-621 of the code of the preceding municipality,
40 three thousand dollars, by the number of eligible aggregate employment
41 shares maintained by the taxpayer during the taxable year with respect
42 to particular premises to which the taxpayer has relocated; provided,
43 however, with respect to a relocation for which no application for a
44 certificate of eligibility is submitted prior to July first, two thou-
45 sand three, to eligible premises that are not within a revitalization
46 area, if the date of such relocation as determined pursuant to subdivi-
47 sion (j) of section 22-621 of the code of the preceding municipality is
48 before July first, nineteen hundred ninety-five, the amount to be multi-
49 plied by the number of eligible aggregate employment shares shall be
50 five hundred dollars, and with respect to a relocation for which no
51 application for a certificate of eligibility is submitted prior to July
52 first, two thousand three, to eligible premises that are within a revi-
53 talization area, if the date of such relocation as determined pursuant
54 to subdivision (j) of such section is before July first, nineteen
55 hundred ninety-five, the amount to be multiplied by the number of eligi-
56 ble aggregate employment shares shall be five hundred dollars, and if

1 the date of such relocation as determined pursuant to subdivision (j) of
2 such section is on or after July first, nineteen hundred ninety-five,
3 and before July first, two thousand, one thousand dollars; provided,
4 however, that no credit shall be allowed for the relocation of any
5 retail activity or hotel services; provided, further, that no credit
6 shall be allowed under this subdivision to any taxpayer that has elected
7 pursuant to subdivision (d) of section 22-622 of the code of the preced-
8 ing municipality to take such credit against a gross receipts tax
9 imposed by chapter eleven of this title; and provided that in the case
10 of an eligible business that has obtained pursuant to chapter six-B of
11 such title twenty-two certifications of eligibility for more than one
12 relocation, the portion of the total amount of eligible aggregate
13 employment shares to be multiplied by the dollar amount specified in
14 this subdivision for each such certification of a relocation shall be
15 the number of total attributed eligible aggregate employment shares
16 determined with respect to such relocation pursuant to subdivision (o)
17 of section 22-621 of the code of the preceding municipality. For
18 purposes of this subdivision, the terms "eligible aggregate employment
19 shares," "relocate," "retail activity" and "hotel services" shall have
20 the meanings ascribed by section 22-621 of the code of the preceding
21 municipality.

22 (b) The credit allowed under this subdivision with respect to eligible
23 aggregate employment shares maintained with respect to particular prem-
24 ises to which the taxpayer has relocated shall be allowed for the first
25 taxable year during which such eligible aggregate employment shares are
26 maintained with respect to such premises and for any of the twelve
27 succeeding taxable years during which eligible aggregate employment
28 shares are maintained with respect to such premises; provided that the
29 credit allowed for the twelfth succeeding taxable year shall be calcu-
30 lated by multiplying the number of eligible aggregate employment shares
31 maintained with respect to such premises in the twelfth succeeding taxa-
32 ble year by the lesser of one and a fraction the numerator of which is
33 such number of days in the taxable year of relocation less the number of
34 days the eligible business maintained employment shares in the eligible
35 premises in the taxable year of relocation and the denominator of which
36 is the number of days in such twelfth succeeding taxable year during
37 which such eligible aggregate employment shares are maintained with
38 respect to such premises. Except as provided in paragraph (d) of this
39 subdivision, if the amount of the credit allowable under this subdivi-
40 sion for any taxable year exceeds the tax imposed for such year, the
41 excess may be carried over, in order, to the five immediately succeeding
42 taxable years and, to the extent not previously deductible, may be
43 deducted from the taxpayer's tax for such years.

44 (c) The credit allowable under this subdivision shall be deducted
45 after the credit allowed by subdivision eighteen of this section, but
46 prior to the deduction of any other credit allowed by this section.

47 (d) In the case of a taxpayer that has obtained a certification of
48 eligibility pursuant to chapter six-B of title twenty-two of the code of
49 the preceding municipality dated on or after July first, two thousand
50 for a relocation to eligible premises located within the revitalization
51 area defined in subdivision (n) of section 22-621 of the code of the
52 preceding municipality, the credits allowed under this subdivision, or
53 in the case of a taxpayer that has relocated more than once, the portion
54 of such credits attributed to such certification of eligibility pursuant
55 to paragraph (a) of this subdivision, against the tax imposed by this
56 chapter for the taxable year of such relocation and for the four taxable

1 years immediately succeeding the taxable year of such relocation, shall
2 be deemed to be overpayments of tax by the taxpayer to be credited or
3 refunded, without interest, in accordance with the provisions of section
4 11-677 of this chapter. For such taxable years, such credits or portions
5 thereof may not be carried over to any succeeding taxable year;
6 provided, however, that this paragraph shall not apply to any relocation
7 for which an application for a certification of eligibility was not
8 submitted prior to July first, two thousand three, unless the date of
9 such relocation is on or after July first, two thousand.

10 (e) Notwithstanding any other provision of this subdivision to the
11 contrary, in the case of a taxpayer that has obtained, pursuant to chap-
12 ter six-B of title twenty-two of the code of the preceding municipality,
13 a certification of eligibility and has received, in a taxable year
14 beginning before January first, two thousand fifteen, the credit set
15 forth in subdivision seventeen of section 11-604 of this chapter or
16 section 11-643.7 of this chapter for the relocation of an eligible busi-
17 ness, a credit shall be allowed under this subdivision to the taxpayer
18 for any taxable year beginning on or after January first, two thousand
19 fifteen in the same amount and to the same extent that a credit would
20 have been allowed under subdivision seventeen of section 11-604 of this
21 chapter or section 11-643.7 of this chapter, as in effect on December
22 thirty-first, two thousand fourteen, if such subdivision continued to
23 apply to the taxpayer for such taxable year.

24 17-a. Intentionally omitted.

25 17-b. (a) In addition to any other credit allowed by this section, an
26 eligible business that first enters into a binding contract on or after
27 July first, two thousand five to purchase or lease eligible premises to
28 which it relocates shall be allowed a one-time credit against the tax
29 imposed by this subchapter to be credited or refunded in the manner
30 hereinafter provided in this subdivision. The amount of such credit
31 shall be one thousand dollars per full-time employee; provided, however,
32 that the amount of such credit shall not exceed the lesser of actual
33 relocation costs or one hundred thousand dollars.

34 (b) When used in this subdivision, the following terms shall have the
35 following meanings:

36 (1) "Eligible business" means any business subject to tax under this
37 subchapter that (i) has been conducting substantial business operations
38 and engaging primarily in industrial and manufacturing activities at one
39 or more locations within the city of New York or outside the state of
40 New York continuously during the twenty-four consecutive full months
41 immediately preceding relocation, (ii) has leased the premises from
42 which it relocates continuously during the twenty-four consecutive full
43 months immediately preceding relocation, (iii) first enters into a bind-
44 ing contract on or after July first, two thousand five to purchase or
45 lease eligible premises to which such business will relocate, and (iv)
46 will be engaged primarily in industrial and manufacturing activities at
47 such eligible premises.

48 (2) "Eligible premises" means premises located entirely within an
49 industrial business zone. For any eligible business, an industrial busi-
50 ness zone tax credit shall not be granted with respect to more than one
51 eligible premises.

52 (3) "Full-time employee" means (i) one person gainfully employed in an
53 eligible premises by an eligible business where the number of hours
54 required to be worked by such person is not less than thirty-five hours
55 per week; or (ii) two persons gainfully employed in an eligible premises
56 by an eligible business where the number of hours required to be worked

1 by each such person is more than fifteen hours per week but less than
2 thirty-five hours per week.

3 (4) "Industrial business zone" means an area within the city of New
4 York established pursuant to section 22-626 of the code of the preceding
5 municipality.

6 (5) "Industrial business zone tax credit" means a credit, as provided
7 for in this subdivision, against a tax imposed under this subchapter.

8 (6) "Industrial and manufacturing activities" means activities involv-
9 ing the assembly of goods to create a different article, or the process-
10 ing, fabrication, or packaging of goods. Industrial and manufacturing
11 activities shall not include waste management or utility services.

12 (7) "Relocation" means the physical relocation of furniture, fixtures,
13 equipment, machinery and supplies directly to an eligible premises, from
14 one or more locations of an eligible business, including at least one
15 location at which such business conducts substantial business operations
16 and engages primarily in industrial and manufacturing activities. For
17 purposes of this subdivision, the date of relocation shall be (i) the
18 date of the completion of the relocation to the eligible premises or
19 (ii) ninety days from the commencement of the relocation to the eligible
20 premises, whichever is earlier.

21 (8) "Relocation costs" means costs incurred in the relocation of such
22 furniture, fixtures, equipment, machinery and supplies, including, but
23 not limited to, the cost of dismantling and reassembling equipment and
24 the cost of floor preparation necessary for the reassembly of the equip-
25 ment. Relocation costs shall include only such costs that are incurred
26 during the ninety-day period immediately following the commencement of
27 the relocation to an eligible premises. Relocation costs shall not
28 include costs for structural or capital improvements or items purchased
29 in connection with the relocation.

30 (c) The credit allowed under this subdivision for any taxable year
31 shall be deemed to be an overpayment of tax by the taxpayer to be cred-
32 ited or refunded without interest, in accordance with the provisions of
33 section 11-677 of this chapter.

34 (d) The number of full-time employees for the purposes of calculating
35 an industrial business tax credit shall be the average number of full-
36 time employees, calculated on a weekly basis, employed in the eligible
37 premises by the eligible business in the fifty-two week period imme-
38 diately following the earlier of (1) the date of the completion of the
39 relocation to eligible premises or (2) ninety days from the commencement
40 of the relocation to the eligible premises.

41 (e) The credit allowed under this subdivision must be taken by the
42 taxpayer in the taxable year in which such twelve month period selected
43 by the taxpayer ends.

44 (f) For the purposes of calculating entire net income in the taxable
45 year that an industrial business tax credit is allowed, a taxpayer must
46 add back the amount of the credit allowed under this subdivision, to the
47 extent of any relocation costs deducted in the current taxable year or a
48 prior taxable year in calculating federal taxable income.

49 (g) The credit allowed under this subdivision shall not be granted for
50 an eligible business for more than one relocation, provided, however, an
51 industrial business tax credit shall not be granted if the eligible
52 business receives benefits pursuant to chapter six-B or six-C of title
53 twenty-two of the code of the preceding municipality, through a grant
54 program administered by the business relocation assistance corporation,
55 or through the New York city printers relocation fund grant.

1 (h) The commissioner of finance is authorized to promulgate rules and
2 regulations and to prescribe forms necessary to effectuate the purposes
3 of this subdivision.

4 18. (a) If a corporation is a partner in an unincorporated business
5 taxable under chapter five of this title, and is required to include in
6 entire net income its distributive share of income, gain, loss and
7 deductions of, or guaranteed payments from, such unincorporated busi-
8 ness, such corporation shall be allowed a credit against the tax imposed
9 by this subchapter equal to the lesser of the amounts determined in
10 subparagraphs one and two of this paragraph:

11 (1) The amount determined in this subparagraph is the product of (i)
12 the sum of (A) the tax imposed by chapter five of this title on the
13 unincorporated business for its taxable year ending within or with the
14 taxable year of the corporation and paid by the unincorporated business
15 and (B) the amount of any credit or credits taken by the unincorporated
16 business under section 11-503 of this title, except the credit allowed
17 by subdivision (b) of section 11-503 of this title, for its taxable year
18 ending within or with the taxable year of the corporation, to the extent
19 that such credits do not reduce such unincorporated business's tax below
20 zero, and (ii) a fraction, the numerator of which is the net total of
21 the corporation's distributive share of income, gain, loss and
22 deductions of, and guaranteed payments from, the unincorporated business
23 for such taxable year, and the denominator of which is the sum, for such
24 taxable year, of the net total distributive shares of income, gain, loss
25 and deductions of, and guaranteed payments to, all partners in the unin-
26 corporated business for whom or which such net total, as separately
27 determined for each partner, is greater than zero.

28 (2) The amount determined in this subparagraph is the product of (i)
29 the excess of (A) the tax computed under clause (i) of subparagraph one
30 of paragraph (e) of subdivision one of this section, without allowance
31 of any credits allowed by this section, over (B) the tax so computed,
32 determined as if the corporation had no such distributive share or guar-
33 anteed payments with respect to the unincorporated business, and (ii) a
34 fraction, the numerator of which is four and the denominator of which is
35 eight and eighty-five one-hundredths, except that in the case of a
36 financial corporation as defined in clause (i) of subparagraph one of
37 paragraph (e) of subdivision one of this section, such denominator is
38 nine, and in the case of a taxpayer that is subject to paragraph (j) or
39 (k) of subdivision one of this section, such denominator shall be the
40 rate of tax as determined by such paragraph (j) or (k) for the taxable
41 year; provided that the amounts computed in subclauses (A) and (B) of
42 clause (i) of this subparagraph shall be computed with the following
43 modifications:

44 (A) such amounts shall be computed without taking into account any
45 carryforward or carryback by the partner of a net operating loss or a
46 prior net operation loss conversion subtraction;

47 (B) if, prior to taking into account any distributive share or guaran-
48 teed payments from any unincorporated business or any net operating loss
49 carryforward or carryback, the entire net income of the partner is less
50 than zero, such entire net income shall be treated as zero; and

51 (C) if such partner's net total distributive share of income, gain,
52 loss and deductions of, and guaranteed payments from, any unincorporated
53 business is less than zero, such net total shall be treated as zero. The
54 amount determined in this subparagraph shall not be less than zero.

55 (b) (1) Notwithstanding anything to the contrary in paragraph (a) of
56 this subdivision, in the case of a corporation that, before the applica-

tion of this subdivision or any other credit allowed by this section, is liable for the tax on business income under clause (i) of subparagraph one of paragraph (e) of subdivision one of this section, the credit or the sum of the credits that may be taken by such corporation for a taxable year under this subdivision with respect to an unincorporated business or unincorporated businesses in which it is a partner shall not exceed the tax so computed, without allowance of any credits allowed by this section, multiplied by a fraction the numerator of which is four and the denominator of which is eight and eighty-five one-hundredths, except that in the case of a financial corporation as defined in clause (i) of subparagraph one of paragraph (e) of subdivision one of this section, such denominator is nine, and in the case of a taxpayer that is subject to paragraph (j) or (k) of subdivision one of this section, such denominator shall be the rate of tax as determined by such paragraph (j) or (k) for the taxable year. If the credit allowed under this subdivision or the sum of such credits exceeds the product of such tax and such fraction, the amount of the excess may be carried forward, in order, to each of the seven immediately succeeding taxable years and, to the extent not previously taken, shall be allowed as a credit in each of such years. In applying such provisions, the credit determined for the taxable year under paragraph (a) of this subdivision shall be taken before taking any credit carryforward pursuant to this paragraph and the credit carryforward attributable to the earliest taxable year shall be taken before taking a credit carryforward attributable to a subsequent taxable year.

(2) Intentionally omitted.

(2-a) Notwithstanding any other provision of this subdivision to the contrary, in the case of a taxpayer that has received, in a taxable year beginning before January first, two thousand fifteen, the credit set forth in subdivision eighteen of section 11-604 of this chapter or in section 11-643.8 of this chapter for a tax paid under chapter five of this title in a taxable year beginning before January first, two thousand fifteen, the taxpayer may carry forward the unused portion of such credit under this subdivision to any taxable year beginning on or after January first, two thousand fifteen in the same amount and to the same extent, including the same limitations, that the credit, or the unused portion thereof, would have been allowed to be carried forward under subparagraph one of paragraph (b) of subdivision eighteen of section 11-604 of this chapter or paragraph one of subdivision (b) of section 11-643.8 of this chapter, as in effect on December thirty-first, two thousand fourteen, if such subdivision continued to apply to the taxpayer for such taxable year.

(3) No credit allowed under this subdivision may be taken in a taxable year by a taxpayer that, in the absence of such credit, would be liable for the tax computed on the basis of business capital under clause (ii) of subparagraph one of paragraph (e) of subdivision one of this section or the fixed-dollar minimum tax under clause (iv) of subparagraph one of paragraph (e) of subdivision one of this section.

(c) For corporations that file a report on a combined basis pursuant to section 11-654.3 of this subchapter, the credit allowed by this subdivision shall be computed as if the combined group were the partner in each unincorporated business from which any of the members of such group had a distributive share or guaranteed payments, provided, however, if more than one member of the combined group is a partner in the same unincorporated business, for purposes of the calculation required in subparagraph one of paragraph (a) of this subdivision, the numerator

1 of the fraction described in clause (ii) of such subparagraph one shall
2 be the sum of the net total distributive shares of income, gain, loss
3 and deductions of, and guaranteed payments from, the unincorporated
4 business of all of the partners of the unincorporated business within
5 the combined group for which such net total, as separately determined
6 for each partner, is greater than zero, and the denominator of such
7 fraction shall be the sum of the net total distributive shares of
8 income, gain, loss and deductions of, and guaranteed payments from, the
9 unincorporated business of all partners in the unincorporated business
10 for whom or which such net total, as separately determined for each
11 partner, is greater than zero.

12 (d) Notwithstanding any other provision of this subchapter, the credit
13 allowable under this subdivision shall be taken prior to the taking of
14 any other credit allowed by this section. Notwithstanding any other
15 provision of this subchapter, the application of this subdivision shall
16 not change the basis on which the taxpayer's tax is computed under para-
17 graph (e) of subdivision one of this section.

18 19. Lower Manhattan relocation and employment assistance credit. (a)
19 In addition to any other credit allowed by this section, a taxpayer that
20 has obtained the certifications required by chapter six-C of title twen-
21 ty-two of the code of the preceding municipality shall be allowed a
22 credit against the tax imposed by this subchapter. The amount of the
23 credit shall be the amount determined by multiplying three thousand
24 dollars by the number of eligible aggregate employment shares maintained
25 by the taxpayer during the taxable year with respect to eligible prem-
26 ises to which the taxpayer has relocated; provided, however, that no
27 credit shall be allowed for the relocation of any retail activity or
28 hotel services; provided, further, that no credit shall be allowed under
29 this subdivision to any taxpayer that has elected pursuant to subdivi-
30 sion (d) of section 22-624 of the code of the preceding municipality to
31 take such credit against a gross receipts tax imposed under chapter
32 eleven of this title. For purposes of this subdivision, the terms
33 "eligible aggregate employment shares," "eligible premises," "relocate,"
34 "retail activity" and "hotel services" shall have the meanings ascribed
35 by section 22-623 of the code of the preceding municipality.

36 (b) The credit allowed under this subdivision with respect to eligible
37 aggregate employment shares maintained with respect to eligible premises
38 to which the taxpayer has relocated shall be allowed for the taxable
39 year of the relocation and for any of the twelve succeeding taxable
40 years during which eligible aggregate employment shares are maintained
41 with respect to eligible premises; provided that the credit allowed for
42 the twelfth succeeding taxable year shall be calculated by multiplying
43 the number of eligible aggregate employment shares maintained with
44 respect to eligible premises in the twelfth succeeding taxable year by
45 the lesser of one and a fraction the numerator of which is such number
46 of days in the taxable year of relocation less the number of days the
47 taxpayer maintained employment shares in eligible premises in the tax-
48 able year of relocation and the denominator of which is the number of
49 days in such twelfth taxable year during which such eligible aggregate
50 employment shares are maintained with respect to such premises.

51 (c) Except as provided in paragraph (d) of this subdivision, if the
52 amount of the credit allowable under this subdivision for any taxable
53 year exceeds the tax imposed for such year, the excess may be carried
54 over, in order, to the five immediately succeeding taxable years and, to
55 the extent not previously deductible, may be deducted from the taxpay-
56 er's tax for such years.

1 (d) The credits allowed under this subdivision, against the tax
2 imposed by this chapter for the taxable year of the relocation and for
3 the four taxable years immediately succeeding the taxable year of such
4 relocation, shall be deemed to be overpayments of tax by the taxpayer to
5 be credited or refunded, without interest, in accordance with the
6 provisions of section 11-677 of this chapter. For such taxable years,
7 such credits or portions thereof may not be carried over to any succeed-
8 ing taxable year.

9 (e) The credit allowable under this subdivision shall be deducted
10 after the credits allowed by subdivisions seventeen and eighteen of this
11 section, but prior to the deduction of any other credit allowed by this
12 section.

13 (f) Notwithstanding any other provision of this subdivision to the
14 contrary, in the case of a taxpayer that has obtained, pursuant to chap-
15 ter six-C of title twenty-two of the code of the preceding municipality,
16 a certification of eligibility and has received, in a taxable year
17 beginning before January first, two thousand fifteen, the credit set
18 forth in subdivision nineteen of section 11-604 of this chapter or
19 section 11-643.9 of this chapter for the relocation of an eligible busi-
20 ness, a credit shall be allowed under this subdivision to the taxpayer
21 for any taxable year beginning on or after January first, two thousand
22 fifteen in the same amount and to the same extent that a credit would
23 have been allowed under subdivision nineteen of section 11-604 of this
24 chapter or section 11-643.9 of this chapter, as in effect on December
25 thirty-first, two thousand fourteen, if such subdivision continued to
26 apply to the taxpayer for such taxable year.

27 20. Intentionally omitted.

28 21. Biotechnology credit. (a) (1) A taxpayer that is a qualified
29 emerging technology company, engages in biotechnologies, and meets the
30 eligibility requirements of this subdivision, shall be allowed a credit
31 against the tax imposed by this subchapter. The amount of credit shall
32 be equal to the sum of the amounts specified in subparagraphs three,
33 four and five of this paragraph, subject to the limitations in subpara-
34 graphs six and seven of this paragraph, paragraph (b) of this subdivi-
35 sion, and paragraph three of subdivision (d) of section twelve hundred
36 one-a of the tax law. For the purposes of this subdivision, "qualified
37 emerging technology company" shall mean a company located in the city:
38 (i) whose primary products or services are classified as emerging tech-
39 nologies and whose total annual product sales are ten million dollars or
40 less; or

41 (ii) a company that has research and development activities in the
42 city and whose ratio of research and development funds to net sales
43 equals or exceeds the average ratio for all surveyed companies classi-
44 fied as determined by the National Science Foundation in the most recent
45 published results from its Survey of Industry Research and Development,
46 or any comparable successor survey as determined by the department of
47 finance, and whose total annual product sales are ten million dollars or
48 less. For the purposes of this subdivision, the definition of research
49 and development funds shall be the same as that used by the National
50 Science Foundation in the aforementioned survey. For the purposes of
51 this subdivision, "biotechnologies" shall mean the technologies involv-
52 ing the scientific manipulation of living organisms, especially at the
53 molecular and/or the sub-molecular genetic level, to produce products
54 conducive to improving the lives and health of plants, animals, and
55 humans; and the associated scientific research, pharmacological, mechan-
56 ical, and computational applications and services connected with these

1 improvements. Activities included with such applications and services
2 shall include, but not be limited to, alternative mRNA splicing, DNA
3 sequence amplification, antigenetic switching bioaugmentation, bioen-
4 richment, bioremediation, chromosome walking, cytogenetic engineering,
5 DNA diagnosis, fingerprinting, and sequencing, electroporation, gene
6 translocation, genetic mapping, site-directed mutagenesis, bio-transduc-
7 tion, bio-mechanical and bio-electrical engineering, and bio-informat-
8 ics.

9 (2) An eligible taxpayer shall (i) have no more than one hundred full-
10 time employees, of which at least seventy-five percent are employed in
11 the city, (ii) have a ratio of research and development funds to net
12 sales, as referred to in section thirty-one hundred two-e of the public
13 authorities law, which equals or exceeds six percent during the calendar
14 year ending with or within the taxable year for which the credit is
15 claimed, and (iii) have gross revenues, along with the gross revenues of
16 its "affiliates" and "related members" not exceeding twenty million
17 dollars for the calendar year immediately preceding the calendar year
18 ending with or within the taxable year for which the credit is claimed.
19 For the purposes of this subdivision, "affiliates" shall mean those
20 corporations that are members of the same affiliated group, as defined
21 in section fifteen hundred four of the internal revenue code, as the
22 taxpayer. For the purposes of this subdivision, the term "related
23 members" shall mean a person, corporation, or other entity, including an
24 entity that is treated as a partnership or other pass-through vehicle
25 for purposes of federal taxation, whether such person, corporation or
26 entity is a taxpayer or not, where one such person, corporation or enti-
27 ty, or set of related persons, corporations or entities, directly or
28 indirectly owns or controls a controlling interest in another entity.
29 Such entity or entities may include all taxpayers under chapters five,
30 eleven and seventeen of this title, and this subchapter and subchapters
31 two and three of this chapter. A controlling interest shall mean, in the
32 case of a corporation, either thirty percent or more of the total
33 combined voting power of all classes of stock of such corporation, or
34 thirty percent or more of the capital, profits or beneficial interest in
35 such voting stock of such corporation; and in the case of a partnership,
36 association, trust or other entity, thirty percent or more of the capi-
37 tal, profits or beneficial interest in such partnership, association,
38 trust or other entity.

39 (3) An eligible taxpayer shall be allowed a credit for eighteen per
40 centum of the cost or other basis for federal income tax purposes of
41 research and development property that is acquired by the taxpayer by
42 purchase as defined in subsection (d) of section one hundred seventy-
43 nine of the internal revenue code and placed in service during the
44 calendar year that ends with or within the taxable year for which the
45 credit is claimed. Provided, however, for the purposes of this paragraph
46 only, an eligible taxpayer shall be allowed a credit for such percentage
47 of the (i) cost or other basis for federal income tax purposes for prop-
48 erty used in the testing or inspection of materials and products, (ii)
49 the costs or expenses associated with quality control of the research
50 and development, (iii) fees for use of sophisticated technology facili-
51 ties and processes, and (iv) fees for the production or eventual commer-
52 cial distribution of materials and products resulting from the activ-
53 ities of an eligible taxpayer as long as such activities fall under
54 activities relating to biotechnologies. The costs, expenses and other
55 amounts for which a credit is allowed and claimed under this paragraph
56 shall not be used in the calculation of any other credit allowed under

1 this subchapter. For the purposes of this subdivision, "research and
2 development property" shall mean property that is used for purposes of
3 research and development in the experimental or laboratory sense. Such
4 purposes shall not be deemed to include the ordinary testing or
5 inspection of materials or products for quality control, efficiency
6 surveys, management studies, consumer surveys, advertising, promotions,
7 or research in connection with literary, historical or similar projects.

8 (4) An eligible taxpayer shall be allowed a credit for nine per centum
9 of qualified research expenses paid or incurred by the taxpayer in the
10 calendar year that ends with or within the taxable year for which the
11 credit is claimed. For the purposes of this subdivision, "qualified
12 research expenses" shall mean expenses associated with in-house research
13 and processes, and costs associated with the dissemination of the
14 results of the products that directly result from such research and
15 development activities; provided, however, that such costs shall not
16 include advertising or promotion through media. In addition, costs asso-
17 ciated with the preparation of patent applications, patent application
18 filing fees, patent research fees, patent examinations fees, patent post
19 allowance fees, patent maintenance fees, and grant application expenses
20 and fees shall qualify as qualified research expenses. In no case shall
21 the credit allowed under this subparagraph apply to expenses for liti-
22 gation or the challenge of another entity's intellectual property
23 rights, or for contract expenses involving outside paid consultants.

24 (5) An eligible taxpayer shall be allowed a credit for qualified high-
25 technology training expenditures as described in this subparagraph paid
26 or incurred by the taxpayer during the calendar year that ends with or
27 within the taxable year for which the credit is claimed.

28 (i) The amount of credit shall be one hundred percent of the training
29 expenses described in clause (iii) of this subparagraph, subject to a
30 limitation of no more than four thousand dollars per employee per calen-
31 dar year for such training expenses.

32 (ii) Qualified high-technology training shall include a course or
33 courses taken and satisfactorily completed by an employee of the taxpay-
34 er at an accredited, degree granting post-secondary college or universi-
35 ty in the city that (A) directly relates to biotechnology activities,
36 and (B) is intended to upgrade, retrain or improve the productivity or
37 theoretical awareness of the employee. Such course or courses may
38 include, but are not limited to, instruction or research relating to
39 techniques, meta, macro, or micro-theoretical or practical knowledge
40 bases or frontiers, or ethical concerns related to such activities. Such
41 course or courses shall not include classes in the disciplines of
42 management, accounting or the law or any class designed to fulfill the
43 discipline specific requirements of a degree program at the associate,
44 baccalaureate, graduate or professional level of these disciplines.
45 Satisfactory completion of a course or courses shall mean the earning
46 and granting of credit or equivalent unit, with the attainment of a
47 grade of "B" or higher in a graduate level course or courses, a grade of
48 "C" or higher in an undergraduate level course or courses, or a similar
49 measure of competency for a course that is not measured according to a
50 standard grade formula.

51 (iii) Qualified high-technology training expenditures shall include
52 expenses for tuition and mandatory fees, software required by the insti-
53 tution, fees for textbooks or other literature required by the institu-
54 tion offering the course or courses, minus applicable scholarships and
55 tuition or fee waivers not granted by the taxpayer or any affiliates of
56 the taxpayer, that are paid or reimbursed by the taxpayer. Qualified

1 high-technology expenditures do not include room and board, computer
2 hardware or software not specifically assigned for such course or cours-
3 es, late-charges, fines or membership dues and similar expenses. Such
4 qualified expenditures shall not be eligible for the credit provided by
5 this section unless the employee for whom the expenditures are disbursed
6 is continuously employed by the taxpayer in a full-time, full-year posi-
7 tion primarily located at a qualified site during the period of such
8 coursework and lasting through at least one hundred eighty days after
9 the satisfactory completion of the qualifying course-work. Qualified
10 high-technology training expenditures shall not include expenses for
11 in-house or shared training outside of a city higher education institu-
12 tion or the use of consultants outside of credit granting courses,
13 whether such consultants function inside of such higher education insti-
14 tution or not.

15 (iv) If a taxpayer relocates from an academic business incubator
16 facility partnered with an accredited post-secondary education institu-
17 tion located within the city, which provides space and business support
18 services to taxpayers, to another site, the credit provided in this
19 subdivision shall be allowed for all expenditures referenced in clause
20 (iii) of this subparagraph paid or incurred in the two preceding calen-
21 dar years that the taxpayer was located in such an incubator facility
22 for employees of the taxpayer who also relocate from said incubator
23 facility to such city site and are employed and primarily located by the
24 taxpayer in the city. Such expenditures in the two preceding years shall
25 be added to the amounts otherwise qualifying for the credit provided by
26 this subdivision that were paid or incurred in the calendar year that
27 the taxpayer relocates from such a facility. Such expenditures shall
28 include expenses paid for an eligible employee who is a full-time, full-
29 year employee of said taxpayer during the calendar year that the taxpay-
30 er relocated from an incubator facility notwithstanding (A) that such
31 employee was employed full or part-time as an officer, staff-person or
32 paid intern of the taxpayer when such taxpayer was located at such incu-
33 bator facility or (B) that such employee was not continuously employed
34 when such taxpayer was located at the incubator facility during the one
35 hundred eighty day period referred to in clause (iii) of this subpara-
36 graph, provided such employee received wages or equivalent income for at
37 least seven hundred fifty hours during any twenty-four month period when
38 the taxpayer was located at the incubator facility. Such expenditures
39 shall include payments made to such employee after the taxpayer has
40 relocated from the incubator facility for qualified expenditures if such
41 payments are made to reimburse an employee for expenditures paid by the
42 employee during such two preceding years. The credit provided under
43 this paragraph shall be allowed in any taxable year that the taxpayer
44 qualifies as an eligible taxpayer.

45 (v) For purposes of this subdivision the term "academic year" shall
46 mean the annual period of sessions of a post-secondary college or
47 university.

48 (vi) For the purposes of this subdivision the term "academic incubator
49 facility" shall mean a facility providing low-cost space, technical
50 assistance, support services and educational opportunities, including
51 but not limited to central services provided by the manager of the
52 facility to the tenants of the facility, to an entity located in the
53 city. Such entity's primary activity must be in biotechnologies, and
54 such entity must be in the formative stage of development. The academic
55 incubator facility and the entity must act in partnership with an
56 accredited post-secondary college or university located in the city. An

1 academic incubator facility's mission shall be to promote job creation,
2 entrepreneurship, technology transfer, and provide support services to
3 incubator tenants, including, but not limited to, business planning,
4 management assistance, financial-packaging, linkages to financing
5 services, and coordinating with other sources of assistance.

6 (6) An eligible taxpayer may claim credits under this subdivision for
7 three consecutive years. In no case shall the credit allowed by this
8 subdivision to a taxpayer exceed two hundred fifty thousand dollars per
9 calendar year for eligible expenditures made during such calendar year.

10 (7) The credit allowed under this subdivision for any taxable year
11 shall not reduce the tax due for such year to less than the amount
12 prescribed in clause (iv) of subparagraph one of paragraph (e) of subdi-
13 vision one of this section. Provided, however, if the amount of credit
14 allowed under this subdivision for any taxable year reduces the tax to
15 such amount, any amount of credit not deductible in such taxable year
16 shall be treated as an overpayment of tax to be credited or refunded in
17 accordance with the provisions of section 11-677 of this chapter;
18 provided, however, that notwithstanding the provisions of section 11-679
19 of this chapter, no interest shall be paid thereon.

20 (8) The credit allowed under this subdivision shall only be allowed
21 for taxable years beginning before January first, two thousand nineteen.

22 (b) (1) The percentage of the credit allowed to a taxpayer under this
23 subdivision in any calendar year shall be:

24 (i) If the average number of individuals employed full time by a
25 taxpayer in the city during the calendar year that ends with or within
26 the taxable year for which the credit is claimed is at least one hundred
27 five percent of the taxpayer's base year employment, one hundred
28 percent, except that in no case shall the credit allowed under this
29 clause exceed two hundred fifty thousand dollars per calendar year.
30 Provided, however, the increase in base year employment shall not apply
31 to a taxpayer allowed a credit under this subdivision that was, (A)
32 located outside of the city, (B) not doing business, or (C) did not have
33 any employees, in the year preceding the first year that the credit is
34 claimed. Any such taxpayer shall be eligible for one hundred percent of
35 the credit for the first calendar year that ends with or within the
36 taxable year for which the credit is claimed, provided that such taxpay-
37 er locates in the city, begins doing business in the city or hires
38 employees in the city during such calendar year and is otherwise eligi-
39 ble for the credit pursuant to the provisions of this subdivision.

40 (ii) If the average number of individuals employed full time by a
41 taxpayer in the city during the calendar year that ends with or within
42 the taxable year for which the credit is claimed is less than one
43 hundred five percent of the taxpayer's base year employment, fifty
44 percent, except that in no case shall the credit allowed under this
45 clause exceed one hundred twenty-five thousand dollars per calendar
46 year. In the case of an entity located in the city receiving space and
47 business support services by an academic incubator facility, if the
48 average number of individuals employed full time by such entity in the
49 city during the calendar year in which the credit allowed under this
50 subdivision is claimed is less than one hundred five percent of the
51 taxpayer's base year employment, the credit shall be zero.

52 (2) For the purposes of this subdivision, "base year employment" means
53 the average number of individuals employed full-time by the taxpayer in
54 the city in the year preceding the first calendar year that ends with or
55 within the taxable year for which the credit is claimed.

1 (3) For the purposes of this subdivision, average number of individ-
2 uals employed full-time shall be computed by adding the number of such
3 individuals employed by the taxpayer at the end of each quarter during
4 each calendar year or other applicable period and dividing the sum so
5 obtained by the number of such quarters occurring within such calendar
6 year or other applicable period.

7 (4) Notwithstanding anything contained in this section to the contra-
8 ry, the credit provided by this subdivision shall be allowed against the
9 taxes authorized by this chapter for the taxable year after reduction by
10 all other credits permitted by this chapter.

11 (c) Notwithstanding any other provision of this subdivision to the
12 contrary, in the case of a taxpayer that has received, in a taxable year
13 beginning before January first, two thousand fifteen, the credit set
14 forth in subdivision twenty-one of section 11-604 of this chapter for an
15 eligible acquisition of property and/or expense paid or incurred, a
16 credit shall be allowed to the taxpayer under this subdivision for any
17 tax year beginning on or after January first, two thousand fifteen in
18 the same amount and to the same extent that a credit would have been
19 allowed under subdivision twenty-one of section 11-604 of this chapter,
20 as in effect on December thirty-first, two thousand fourteen, if such
21 subdivision continued to apply to the taxpayer for such taxable year.

22 22. Beer production credit. (a) A taxpayer subject to tax under this
23 subchapter, that is registered as a distributor under article eighteen
24 of the tax law, and that produces sixty million or fewer gallons of beer
25 in this state in the taxable year, shall be allowed a credit against the
26 tax imposed by this subchapter in the amount specified in paragraph (b)
27 of this subdivision. Provided, however, that no credit shall be allowed
28 for any beer produced in excess of fifteen million five hundred thousand
29 gallons in the taxable year. Notwithstanding anything in this title to
30 the contrary, if a partnership is allowed a credit under subdivision (p)
31 of section 11-503 of this title, a taxpayer that is a partner in such
32 partnership shall not be allowed a credit under this subdivision for any
33 taxable year that includes the last day of the taxable year for which
34 the partnership is allowed such credit.

35 (b) The amount of the credit per taxpayer per taxable year for each
36 gallon of beer produced in the city of New York on or after January
37 first, two thousand seventeen shall be determined as follows:

38 (1) for the first five hundred thousand gallons of beer produced in
39 the city of New York in the taxable year, the credit shall equal twelve
40 cents per gallon; and

41 (2) for each gallon of beer produced in the city of New York in the
42 taxable year in excess of five hundred thousand gallons, the credit
43 shall equal three and eighty-six one-hundredths cents per gallon. In no
44 event shall the credit allowed under this subdivision for any taxable
45 year reduce the tax due for such year to less than the amount prescribed
46 in subparagraph one of paragraph (e) of subdivision one of this section.
47 However, if the amount of credit allowed under this subdivision for any
48 taxable year reduces the tax to such amount, any amount of credit thus
49 not deductible in such taxable year shall be treated as an overpayment
50 of tax to be credited or refunded in accordance with the provisions of
51 section 11-677 of this chapter; provided, however, that notwithstanding
52 the provisions of section 11-679 of this chapter, no interest shall be
53 paid thereon.

54 23. Credit for the provision of child care. In addition to any other
55 credit allowed under this section, a taxpayer whose application for a
56 credit authorized by section 11-144 of this title has been approved by

1 the department of finance shall be allowed a credit against the tax
2 imposed by this chapter. The amount of the credit shall be determined as
3 provided in such section. To the extent the amount of the credit allowed
4 by this subdivision exceeds the amount of tax due pursuant to this
5 subchapter, as calculated without such credit, such excess amount shall
6 be treated as an overpayment of tax to be credited or refunded in
7 accordance with the provisions of section 11-677 of this chapter,
8 provided, however, that notwithstanding the requirements of section
9 11-679 of this chapter to the contrary, no interest shall be paid there-
10 on.

11 § 11-654.1 Net operating loss. 1. In computing the business income
12 subject to tax, taxpayers shall be allowed both a prior net operating
13 loss conversion subtraction under subdivision two of this section and a
14 net operating loss deduction under subdivision three of this section.
15 The prior net operating loss conversion subtraction computed under
16 subdivision two of this section shall be applied against business income
17 before the net operating loss deduction computed under subdivision three
18 of this section.

19 2. Prior net operating loss conversion subtraction. (a) Definitions.

20 (1) "Base year" means the last taxable year beginning on or after Janu-
21 ary first, two thousand fourteen and before January first, two thousand
22 fifteen.

23 (2) "Unabsorbed net operating loss" means the unabsorbed portion of
24 net operating loss as calculated under paragraph (f) of subdivision
25 eight of section 11-602 of this chapter or subdivision (k-1) of section
26 11-641 of this chapter, as such sections were in effect on December
27 thirty-first, two thousand fourteen, that was not deductible in previous
28 taxable years and was eligible for carryover on the last day of the base
29 year subject to the limitations for deduction under such sections,
30 including any net operating loss sustained by the taxpayer during the
31 base year.

32 (3) "Base year BAP" means the taxpayer's business allocation percent-
33 age as calculated under paragraph (a) of subdivision three of section
34 11-604 of this chapter for the base year, or the taxpayer's allocation
35 percentage as calculated under section 11-642 of this chapter for
36 purposes of calculating entire net income for the base year, as such
37 sections were in effect on December thirty-first, two thousand fourteen.

38 (4) "Base year tax rate" means the taxpayer's tax rate for the base
39 year as applied to entire net income and calculated under subdivision
40 one of section 11-604 of this chapter or subdivision (a) of section
41 11-643.5 of this chapter, as such provisions were in effect on December
42 thirty-first, two thousand fourteen.

43 (b) The prior net operating loss conversion subtraction shall be
44 calculated as follows:

45 (1) The taxpayer shall first calculate the tax value of its unabsorbed
46 net operating loss for the base year. The value is equal to the product
47 of (i) the amount of the taxpayer's unabsorbed net operating loss, (ii)
48 the taxpayer's base year BAP, and (iii) the taxpayer's base year tax
49 rate.

50 (2) The product determined under subparagraph one of this paragraph
51 shall then be divided by eight and eighty-five one-hundredths per centum
52 or, in the case of a financial corporation, as defined in clause (i) of
53 subparagraph one of paragraph (e) of subdivision one of section 11-654
54 of this subchapter, the product determined under subparagraph one of
55 this paragraph shall then be divided by nine per centum. This result

1 shall equal the taxpayer's prior net operating loss conversion
2 subtraction pool.

3 (3) The taxpayer's prior net operating loss conversion subtraction for
4 the taxable year shall equal one-tenth of its prior net operating loss
5 conversion subtraction pool, plus any amount of unused prior net operat-
6 ing loss conversion subtraction from preceding taxable years.

7 (4) In lieu of the prior net operating loss conversion subtraction
8 described in subparagraph three of this paragraph, if the taxpayer so
9 elects, the taxpayer's prior net operating loss conversion subtraction
10 for its taxable years beginning on or after January first, two thousand
11 fifteen and before January first, two thousand seventeen shall equal, in
12 each year, not more than one-half of its prior net operating loss
13 conversion subtraction pool until the pool is exhausted. If the pool is
14 not exhausted at the end of such time period, the remainder of the pool
15 shall be forfeited. The taxpayer shall make such election, which shall
16 be revocable, on its first return for the tax year beginning on or after
17 January first, two thousand fifteen and before January first, two thou-
18 sand sixteen by the due date for such return, determined with regard to
19 extensions.

20 (c) (1) Where a taxpayer was properly included or required to be
21 included in a combined report for the base year pursuant to section
22 11-605 of this chapter or a combined return for the base year pursuant
23 to section 11-646 of this chapter, as such sections were in effect on
24 December thirty-first, two thousand fourteen, and the members of the
25 combined group for the base year are the same as the members of the
26 combined group for the taxable year immediately succeeding the base
27 year, the combined group shall calculate its prior net operating loss
28 conversion subtraction pool using the combined group's total unabsorbed
29 net operating loss, base year BAP, and base year tax rate.

30 (2) If a combined group includes additional members in the taxable
31 year immediately succeeding the base year that were not included in the
32 combined group during the base year, each base year combined group and
33 each taxpayer that filed separately for the base year but is included in
34 the combined group in the taxable year succeeding the base year shall
35 calculate its prior net operating loss conversion subtraction pool, and
36 the sum of the pools shall be the combined prior net operating loss
37 conversion subtraction pool of the combined group.

38 (3) If a taxpayer was properly included in a combined report for the
39 base year and files a separate report for a subsequent taxable year,
40 then the amount of remaining prior net operating loss conversion
41 subtraction allowed to the taxpayer filing such separate report shall be
42 proportionate to the amount that such taxpayer contributed to the prior
43 net operating loss conversion subtraction pool on a combined basis, and
44 the remaining prior net operating loss conversion subtraction allowed to
45 the remaining members of the combined group shall be reduced accord-
46 ingly.

47 (4) If a taxpayer filed a separate report for the base year and is
48 properly included in a combined report for a subsequent taxable year,
49 then the prior net operating loss conversion subtraction pool of the
50 combined group shall be increased by the amount of the remaining prior
51 net operating loss conversion subtraction allowed to the taxpayer at the
52 time the taxpayer is properly included in the combined group.

53 (d) The prior net operating loss conversion subtraction may be used to
54 reduce the taxpayer's tax on allocated business income to the higher of
55 the tax on business capital under clause (ii) of subparagraph one of
56 paragraph (e) of subdivision one of section 11-654 of this subchapter or

1 the fixed dollar minimum under clause (iv) of subparagraph one of para-
2 graph (e) of subdivision one of section 11-654 of this subchapter.
3 Unless the taxpayer has made the election provided for in subparagraph
4 four of paragraph (b) of this subdivision, any amount of unused prior
5 net operating loss conversion subtraction shall be carried forward to a
6 subsequent tax year or subsequent tax years until the prior net operat-
7 ing loss conversion subtraction pool is exhausted, but for no longer
8 than twenty taxable years or the taxable year beginning on or after
9 January first, two thousand thirty-five but before January first, two
10 thousand thirty-six, whichever comes first. Such amount carried forward
11 shall not be subject to the one-tenth limitation for the subsequent tax
12 year or years under subparagraph three of paragraph (b) of this subdivi-
13 sion. However, if the taxpayer elects to compute its prior net operat-
14 ing loss conversion subtraction pursuant to subparagraph four of para-
15 graph (b) of this subdivision, the taxpayer shall not carry forward any
16 unused amount of such prior net operating loss conversion subtraction to
17 any tax year beginning on or after January first, two thousand seven-
18 teen.

19 3. In computing business income, a net operating loss deduction shall
20 be allowed. A net operating loss deduction shall be the amount of net
21 operating loss or losses from one or more taxable years that are carried
22 forward or carried back to a particular taxable year. A net operating
23 loss shall be the amount of a business loss incurred in a particular tax
24 year multiplied by the business allocation percentage for that year as
25 determined under subdivision three of section 11-654 of this subchapter.
26 The maximum net operating loss deduction that is allowed in a taxable
27 year shall be the amount that reduces the taxpayer's tax on allocated
28 business income to the higher of the tax on business capital under
29 clause (ii) of subparagraph one of paragraph (e) of subdivision one of
30 section 11-654 of this subchapter or the fixed dollar minimum amount
31 under clause (iv) of subparagraph one of paragraph (e) of subdivision
32 one of section 11-654 of this subchapter. Such net operating loss
33 deduction and net operating loss shall be determined in accordance with
34 the following:

35 (a) Such net operating loss deduction shall not be limited to the
36 amount allowed under section one hundred seventy-two of the internal
37 revenue code or the amount that would have been allowed if the taxpayer
38 did not have an election under subchapter S of chapter one of the inter-
39 nal revenue code in effect for the applicable tax year.

40 (b) Such net operating loss deduction shall not include any net oper-
41 ating loss incurred during any taxable year beginning prior to January
42 first, two thousand fifteen, or during any taxable year in which the
43 taxpayer was not subject to the tax imposed by this subchapter.

44 (c) A taxpayer that files as part of a federal consolidated return but
45 on a separate basis for purposes of this subchapter shall compute its
46 deduction and loss as if it were filing on a separate basis for federal
47 income tax purposes.

48 (d) A net operating loss may be carried back three taxable years
49 preceding the taxable year of the loss except that no loss may be
50 carried back to a taxable year beginning before January first, two thou-
51 sand fifteen. The loss first shall be carried to the earliest of the
52 three taxable years preceding the taxable year of the loss. If it is not
53 entirely used in that year, it shall be carried to the second taxable
54 year preceding the taxable year of the loss, and any remaining amount
55 shall be carried to the taxable year immediately preceding the taxable
56 year of the loss. Any unused amount of loss then remaining may be

1 carried forward for as many as twenty taxable years following the tax-
2 ble year of the loss. Losses carried forward are carried forward first
3 to the taxable year immediately following the taxable year of the loss,
4 then to the second taxable year following the taxable year of the loss,
5 and then to the next immediately subsequent taxable year or years until
6 the loss is used up or the twentieth taxable year following the taxable
7 year of the loss, whichever comes first.

8 (e) Such net operating loss deduction shall not include any net oper-
9 ating loss incurred during any taxable year commencing after January
10 first, two thousand fifteen if the taxpayer was subject to tax under
11 subchapter two or three of this chapter in that year; provided, however,
12 any year commencing after January first, two thousand fifteen that the
13 taxpayer was subject to tax under subchapter two or three of this chap-
14 ter in that year must be treated as a taxable year for purposes of
15 determining the number of taxable years to which a net operating loss
16 may be carried forward.

17 (f) Where there are two or more allocated net operating losses, or
18 portions thereof, carried back or carried forward to be deducted in one
19 particular tax year from allocated business income, the earliest allo-
20 cated loss incurred must be applied first.

21 (g) A taxpayer may elect to waive the entire carryback period with
22 respect to a net operating loss. Such election must be made on the
23 taxpayer's original timely filed return, determined with regard to
24 extensions, for the taxable year of the net operating loss for which the
25 election is to be in effect. Once an election is made for a taxable
26 year, it shall be irrevocable for that taxable year. A separate election
27 must be made for each taxable year of the loss. This election applies to
28 all members of a combined group.

29 § 11-654.2 Receipts allocation. 1. The percentage of receipts of the
30 taxpayer to be allocated to the city for purposes of subparagraph two of
31 paragraph (a) of subdivision three of section 11-654 of this subchapter
32 shall be equal to the receipts fraction determined pursuant to this
33 section. The receipts fraction is a fraction, determined by including
34 only those receipts, net income, net gains, and other items described in
35 this section that are included in the computation of the taxpayer's
36 business income, determined without regard to the modification provided
37 in subparagraph fourteen of paragraph (a) of subdivision eight of
38 section 11-652 of this subchapter, for the taxable year. The numerator
39 of the receipts fraction shall be equal to the sum of all the amounts
40 required to be included in the numerator pursuant to the provisions of
41 this section and the denominator of the receipts fraction shall be equal
42 to the sum of all the amounts required to be included in the denominator
43 pursuant to the provisions of this section.

44 2. (a) Receipts from sales of tangible personal property where ship-
45 ments are made to points within the city or the destination of the prop-
46 erty is a point within the city shall be included in the numerator of
47 the receipts fraction. Receipts from sales of tangible personal property
48 where shipments are made to points within and without the city or the
49 destination is within and without the city shall be included in the
50 denominator of the receipts fraction.

51 (b) Receipts from sales of electricity delivered to points within the
52 city shall be included in the numerator of the receipts fraction.
53 Receipts from sales of electricity delivered to points within and with-
54 out the city shall be included in the denominator of the receipts frac-
55 tion.

1 (c) Receipts from sales of tangible personal property and electricity
2 that are traded as commodities as the term "commodity" is defined in
3 section four hundred seventy-five of the internal revenue code, shall be
4 included in the receipts fraction in accordance with clause (ix) of
5 subparagraph two of paragraph (a) of subdivision five of this section.

6 (d) Net gains, not less than zero, from the sales of real property
7 located within the city shall be included in the numerator of the
8 receipts fraction. Net gains, not less than zero, from the sales of real
9 property located within and without the city shall be included in the
10 denominator of the receipts fraction.

11 3. (a) Receipts from rentals of real and tangible personal property
12 located within the city shall be included in the numerator of the
13 receipts fraction. Receipts from rentals of real and tangible personal
14 property located within and without the city shall be included in the
15 denominator of the receipts fraction.

16 (b) Receipts of royalties from the use of patents, copyrights, trade-
17 marks, and similar intangible personal property within the city shall be
18 included in the numerator of the receipts fraction. Receipts of royal-
19 ties from the use of patents, copyrights, trademarks, and similar intan-
20 gible personal property within and without the city shall be included in
21 the denominator of the receipts fraction. A patent, copyright, trade-
22 mark, or similar intangible personal property is used within the city to
23 the extent that the activities thereunder are carried on within the
24 city.

25 (c) Receipts from the sales of rights for closed-circuit and cable
26 television transmissions of an event, other than events occurring on a
27 regularly scheduled basis, taking place within the city as a result of
28 the rendition of services by employees of the corporation, as athletes,
29 entertainers or performing artists, shall be included in the numerator
30 of the receipts fraction to the extent that such receipts are attribut-
31 able to such transmissions received or exhibited within the city.
32 Receipts from all sales of rights for closed-circuit and cable tele-
33 vision transmissions of an event, other than events occurring on a regu-
34 larly scheduled basis, shall be included in the denominator of the
35 receipts fraction.

36 4. (a) For purposes of determining the receipts fraction under this
37 section, the term "digital product" means any property or service, or
38 combination thereof, of whatever nature delivered to the purchaser
39 through the use of wire, cable, fiber-optic, laser, microwave, radio
40 wave, satellite or similar successor media, or any combination thereof.
41 Digital product includes, but is not limited to, an audio work, audi-
42 ovisual work, visual work, book or literary work, graphic work, game,
43 information or entertainment service, storage of digital products and
44 computer software by whatever means delivered. The term "delivered to"
45 includes furnished or provided to or accessed by. A digital product
46 shall not include legal, medical, accounting, architectural, research,
47 analytical, engineering or consulting services provided by the taxpayer.

48 (b) Receipts from the sale of, license to use, or granting of remote
49 access to digital products within the city, determined according to the
50 hierarchy of methods set forth in subparagraphs one through four of
51 paragraph (c) of this subdivision, shall be included in the numerator of
52 the receipts fraction. Receipts from the sale of, license to use, or
53 granting of remote access to digital products within and without the
54 city shall be included in the denominator of the receipts fraction. The
55 taxpayer must exercise due diligence under each method described in
56 paragraph (c) of this subdivision before rejecting it and proceeding to

1 the next method in the hierarchy, and must base its determination on
2 information known to the taxpayer or information that would be known to
3 the taxpayer upon reasonable inquiry. If the receipt for a digital prod-
4 uct is comprised of a combination of property and services, it cannot be
5 divided into separate components and shall be considered to be one
6 receipt regardless of whether it is separately stated for billing
7 purposes. The entire receipt must be allocated by this hierarchy.

8 (c) The hierarchy of sourcing methods is as follows: (1) the custom-
9 er's primary use location of the digital product; (2) the location where
10 the digital product is received by the customer, or is received by a
11 person designated for receipt by the customer; (3) the receipts fraction
12 determined pursuant to this subdivision for the preceding taxable year
13 for such digital product; or (4) the receipts fraction in the current
14 taxable year for those digital products that can be sourced using the
15 hierarchy of sourcing methods in subparagraphs one and two of this para-
16 graph.

17 5. (a) A financial instrument is a "nonqualified financial instrument"
18 if it is not a qualified financial instrument. A qualified financial
19 instrument means a financial instrument that is of a type described in
20 any of clauses (i), (ii), (iii), (iv), (vii), (viii) or (ix) of subpara-
21 graph two of this paragraph and that has been marked to market in the
22 taxable year by the taxpayer under section four hundred seventy-five or
23 section one thousand two hundred fifty-six of the internal revenue code.
24 Further, if the taxpayer has in the taxable year marked to market a
25 financial instrument of the type described in any of clauses (i), (ii),
26 (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this para-
27 graph, then any financial instrument within that type described in the
28 above specified clause or clauses that has not been marked to market by
29 the taxpayer under section four hundred seventy-five or section one
30 thousand two hundred fifty-six of the internal revenue code is a quali-
31 fied financial instrument in the taxable year, provided, however, (i) a
32 loan secured by real property shall not be a qualified financial instru-
33 ment, (ii) if the only loans that are marked to market by the taxpayer
34 under section four hundred seventy-five or section one thousand two
35 hundred fifty-six of the internal revenue code are loans secured by real
36 property, then no loans shall be qualified financial instruments, (iii)
37 stock that is investment capital as defined in paragraph (a) of subdivi-
38 sion four of section 11-652 of this subchapter shall not be a qualified
39 financial instrument, and (iv) stock that generates other exempt income
40 as defined in subdivision five-a of section 11-652 of this subchapter
41 and that is not marked to market under section four hundred seventy-five
42 or section one thousand two hundred fifty-six of the internal revenue
43 code shall not constitute a qualified financial instrument with respect
44 to the income from that stock that is described in such subdivision
45 five-a. If a corporation is included in a combined report, the defi-
46 nition of qualified financial instrument shall be determined on a
47 combined basis. In the case of RIC or a REIT that is not a captive RIC
48 or a captive REIT, a qualified financial instrument means a financial
49 instrument that is of a type described in any of clauses (i), (ii),
50 (iii), (iv), (vii), (viii) or (ix) of subparagraph two of this para-
51 graph, other than (i) a loan secured by real property, (ii) stock that
52 is investment capital as defined in paragraph (a) of subdivision four of
53 section 11-652 of this subchapter, and (iii) stock that generates other
54 exempt income as defined in subdivision five-a of section 11-652 of this
55 subchapter with respect to the income from that stock that is described
56 in such subdivision five-a.

1 (1) In determining the inclusion of receipts and net gains from quali-
2 fied financial instruments in the receipts fraction, taxpayers may elect
3 to use the fixed percentage method described in this subparagraph for
4 qualified financial instruments. The election is irrevocable, applies to
5 all qualified financial instruments, and must be made on an annual basis
6 on the taxpayer's original, timely filed return, determined with regard
7 to extensions. If the taxpayer elects the fixed percentage method, then
8 all income, gain or loss, including marked to market net gains as
9 defined in clause (x) of subparagraph two of this paragraph, from quali-
10 fied financial instruments constitute business income, gain or loss. If
11 the taxpayer does not elect to use the fixed percentage method, then
12 receipts and net gains are included in the receipts fraction in accord-
13 ance with the customer sourcing method described in subparagraph two of
14 this paragraph. Under the fixed percentage method, eight percent of all
15 net income, not less than zero, from qualified financial instruments
16 shall be included in the numerator of the receipts fraction. All net
17 income, not less than zero, from qualified financial instruments shall
18 be included in the denominator of the receipts fraction.

19 (2) Receipts and net gains from qualified financial instruments, in
20 cases where the taxpayer did not elect to use the fixed percentage meth-
21 od described in subparagraph one of this paragraph, and from nonquali-
22 fied financial instruments shall be included in the receipts fraction in
23 accordance with this subparagraph. For purposes of this paragraph, an
24 individual is deemed to be located within the city if his or her billing
25 address is within the city. A business entity is deemed to be located
26 within the city if its commercial domicile is located within the city.

27 (i)(A) Receipts constituting interest from loans secured by real prop-
28 erty located within the city shall be included in the numerator of the
29 receipts fraction. Receipts constituting interest from loans secured by
30 real property located within and without the city shall be included in
31 the denominator of the receipts fraction.

32 (B) Receipts constituting interest from loans not secured by real
33 property shall be included in the numerator of the receipts fraction if
34 the borrower is located within the city. Receipts constituting interest
35 from loans not secured by real property, whether the borrower is located
36 within or without the city, shall be included in the denominator of the
37 receipts fraction.

38 (C) Net gains, not less than zero, from sales of loans secured by real
39 property shall be included in the numerator of the receipts fraction as
40 provided in this subclause. The amount of net gains from the sales of
41 loans secured by real property included in the numerator of the receipts
42 fraction shall be determined by multiplying the net gains by a fraction,
43 the numerator of which shall be the amount of gross proceeds from sales
44 of loans secured by real property located within the city and the denom-
45 inator of which shall be the gross proceeds from sales of loans secured
46 by real property located within and without the city. Gross proceeds
47 shall be determined after the deduction of any cost incurred to acquire
48 the loans but shall not be less than zero. Net gains, not less than
49 zero, from sales of loans secured by real property located within and
50 without the city shall be included in the denominator of the receipts
51 fraction.

52 (D) Net gains, not less than zero, from sales of loans not secured by
53 real property shall be included in the numerator of the receipts frac-
54 tion as provided in this subclause. The amount of net gains from the
55 sales of loans not secured by real property included in the numerator of
56 the receipts fraction shall be determined by multiplying the net gains

1 by a fraction, the numerator of which shall be the amount of gross
2 proceeds from sales of loans not secured by real property to purchasers
3 located within the city and the denominator of which shall be the amount
4 of gross proceeds from sales of loans not secured by real property to
5 purchasers located within and without the city. Gross proceeds shall be
6 determined after the deduction of any cost incurred to acquire the loans
7 but shall not be less than zero. Net gains, not less than zero, from
8 sales of loans not secured by real property shall be included in the
9 denominator of the receipts fraction.

10 (E) For purposes of this subdivision, a loan is secured by real prop-
11 erty if fifty percent or more of the value of the collateral used to
12 secure the loan, when valued at fair market value as of the time the
13 loan was entered into, consists of real property.

14 (ii) Federal, state, and municipal debt. Receipts constituting inter-
15 est and net gains from sales of debt instruments issued by the United
16 States, any state, or political subdivision of a state shall not be
17 included in the numerator of the receipts fraction. Receipts constitut-
18 ing interest and net gains, not less than zero, from sales of debt
19 instruments issued by the United States and the state of New York or its
20 political subdivisions, including the city, shall be included in the
21 denominator of the receipts fraction. Fifty percent of the receipts
22 constituting interest and net gains, not less than zero, from sales of
23 debt instruments issued by other states or their political subdivisions
24 shall be included in the denominator of the receipts fraction.

25 (iii) Asset backed securities and other government agency debt. Eight
26 percent of the interest income from asset backed securities or other
27 securities issued by government agencies, including but not limited to
28 securities issued by the government national mortgage association
29 (GNMA), the federal national mortgage association (FNMA), the federal
30 home loan mortgage corporation (FHLMC), or the small business adminis-
31 tration, or eight percent of the interest income from asset backed secu-
32 rities issued by other entities shall be included in the numerator of
33 the receipts fraction. Eight percent of the net gains, not less than
34 zero, from (A) sales of asset backed securities or other securities
35 issued by government agencies, including but not limited to securities
36 issued by GNMA, FNMA, FHLMC, or the small business administration, or
37 (B) sales of other asset backed securities that are sold through a
38 registered securities broker or dealer or through a licensed exchange,
39 shall be included in the numerator of the receipts fraction. The amount
40 of net gains, not less than zero, from sales of other asset backed secu-
41 rities not referenced in subclause (A) or (B) of this clause included in
42 the numerator of the receipts fraction shall be determined by multiply-
43 ing such net gains by a fraction, the numerator of which shall be the
44 amount of gross proceeds from such sales to purchasers located in the
45 city and the denominator of which shall be the amount of gross proceeds
46 from such sales to purchasers located within and without the city.
47 Receipts constituting interest income from asset backed securities and
48 other securities referenced in this clause and net gains, not less than
49 zero, from sales of asset backed securities and other securities refer-
50 enced in this clause shall be included in the denominator of the
51 receipts fraction. Gross proceeds shall be determined after the
52 deduction of any cost to acquire the securities but shall not be less
53 than zero.

54 (iv) Receipts constituting interest from corporate bonds shall be
55 included in the numerator of the receipts fraction if the commercial
56 domicile of the issuing corporation is within the city. Eight percent of

1 the net gains, not less than zero, from sales of corporate bonds sold
2 through a registered securities broker or dealer or through a licensed
3 exchange shall be included in the numerator of the receipts fraction.
4 The amount of net gains, not less than zero, from other sales of corpo-
5 rate bonds included in the numerator of the receipts fraction shall be
6 determined by multiplying such net gains by a fraction, the numerator of
7 which is the amount of gross proceeds from such sales to purchasers
8 located within the city and the denominator of which is the amount of
9 gross proceeds from sales to purchasers located within and without the
10 city. Receipts constituting interest from corporate bonds, whether the
11 issuing corporation's commercial domicile is within or without the city,
12 and net gains, not less than zero, from sales of corporate bonds to
13 purchasers within and without the city shall be included in the denomi-
14 nator of the receipts fraction. Gross proceeds shall be determined after
15 the deduction of any cost to acquire the bonds but shall not be less
16 than zero.

17 (v) Eight percent of net interest income, not less than zero, from
18 reverse repurchase agreements and securities borrowing agreements shall
19 be included in the numerator of the receipts fraction. Net interest
20 income, not less than zero, from reverse repurchase agreements and secu-
21 rities borrowing agreements shall be included in the denominator of the
22 receipts fraction. Net interest income from reverse repurchase agree-
23 ments and securities borrowing agreements shall be determined for
24 purposes of this subdivision after the deduction of the interest expense
25 from the taxpayer's repurchase agreements and securities lending agree-
26 ments but shall not be less than zero. For this calculation, the amount
27 of such interest expense shall be the interest expense associated with
28 the sum of the value of the taxpayer's repurchase agreements where it is
29 the seller/borrower plus the value of the taxpayer's securities lending
30 agreements where it is the securities lender, provided such sum is
31 limited to the sum of the value of the taxpayer's reverse repurchase
32 agreements where it is the purchaser/lender plus the value of the
33 taxpayer's securities lending agreements where it is the securities
34 borrower.

35 (vi) Eight percent of the net interest, not less than zero, from
36 federal funds shall be included in the numerator of the receipts frac-
37 tion. The net interest, not less than zero, from federal funds shall be
38 included in the denominator of the receipts fraction. Net interest from
39 federal funds shall be determined after deduction of interest expense
40 from federal funds.

41 (vii) Dividends from stock, net gains, not less than zero, from sales
42 of stock and net gains, not less than zero, from sales of partnership
43 interests shall not be included in either the numerator or denominator
44 of the receipts fraction unless the commissioner of finance determines
45 pursuant to subdivision eleven of this section that inclusion of such
46 dividends and net gains, not less than zero, is necessary to properly
47 reflect the business income or capital of the taxpayer.

48 (viii)(A) Receipts constituting interest from other financial instru-
49 ments shall be included in the numerator of the receipts fraction if the
50 payor is located within the city. Receipts constituting interest from
51 other financial instruments, whether the payor is within or without the
52 city, shall be included in the denominator of the receipts fraction.

53 (B) Net gains, not less than zero, from sales of other financial
54 instruments and other income, not less than zero, from other financial
55 instruments where the purchaser or payor is located within the city
56 shall be included in the numerator of the receipts fraction, provided

1 that, if the purchaser or payor is a registered securities broker or
2 dealer or the transaction is made through a licensed exchange, then
3 eight percent of the net gains, not less than zero, or other income, not
4 less than zero, shall be included in the numerator of the receipts frac-
5 tion. Net gains, not less than zero, from sales of other financial
6 instruments and other income, not less than zero, from other financial
7 instruments shall be included in the denominator of the receipts frac-
8 tion.

9 (ix) Net income, not less than zero, from sales of physical commod-
10 ities shall be included in the numerator of the receipts fraction as
11 provided in this clause. The amount of net income from sales of physical
12 commodities included in the numerator of the receipts fraction shall be
13 determined by multiplying the net income from sales of physical commod-
14 ities by a fraction, the numerator of which shall be the amount of
15 receipts from sales of physical commodities actually delivered to points
16 within the city or, if there is no actual delivery of the physical
17 commodity, sold to purchasers located within the city, and the denomina-
18 tor of which shall be the amount of receipts from sales of physical
19 commodities actually delivered to points within and without the city or,
20 if there is no actual delivery of the physical commodity, sold to
21 purchasers located within and without the city. Net income, not less
22 than zero, from sales of physical commodities shall be included in the
23 denominator of the receipts fraction. Net income, not less than zero,
24 from sales of physical commodities shall be determined after the
25 deduction of the cost to acquire or produce the physical commodities.

26 (x)(A) For purposes of this subdivision, "marked to market" means that
27 a financial instrument is, under section four hundred seventy-five or
28 section twelve hundred fifty-six of the internal revenue code, treated
29 by the taxpayer as sold for its fair market value on the last business
30 day of the taxpayer's taxable year. "Marked to market gain or loss"
31 means the gain or loss recognized by the taxpayer under section four
32 hundred seventy-five or section twelve hundred fifty-six of the internal
33 revenue code because the financial instrument is treated as sold for its
34 fair market value on the last business day of the taxpayer's taxable
35 year.

36 (B) The amount of marked to market net gains, not less than zero, from
37 each type of financial instrument that is marked to market included in
38 the numerator of the receipts fraction shall be determined by multiply-
39 ing the marked to market net gains, not less than zero, from such type
40 of financial instrument by a fraction, the numerator of which shall be
41 the numerator of the receipts fraction for net gains from that type of
42 financial instrument determined under the applicable clause of this
43 subparagraph and the denominator of which shall be the denominator of
44 the receipts fraction for net gains from that type of financial instru-
45 ment determined under the applicable clause of this subparagraph. Marked
46 to market net gains, not less than zero, from financial instruments for
47 which the numerator of the receipts fraction for net gains is determined
48 under this subparagraph shall be included in the denominator of the
49 receipts fraction.

50 (C) If the type of financial instrument that is marked to market is
51 not otherwise sourced by the taxpayer under this subparagraph, or if the
52 taxpayer has a net loss from the sales of that type of financial instru-
53 ment under the applicable clause of this subparagraph, the amount of
54 marked to market net gains, not less than zero, from that type of finan-
55 cial instrument included in the numerator of the receipts fraction shall
56 be determined by multiplying the marked to market net gains, but not

1 less than zero, from that type of financial instrument by a fraction,
2 the numerator of which shall be the sum of the amount of receipts
3 included in the numerator of the receipts fraction under clauses (i)
4 through (ix) of this subparagraph and subclause (B) of this clause, and
5 the denominator of which shall be the sum of the amount of receipts
6 included in the denominator of the receipts fraction under clauses (i)
7 through (ix) of this subparagraph and subclause (B) of this clause.
8 Marked to market net gains, not less than zero, for which the amount to
9 be included in the numerator of the receipts fraction is determined
10 under this subparagraph shall be included in the denominator of the
11 receipts fraction.

12 (b) Receipts of a registered securities broker or dealer from securi-
13 ties or commodities broker or dealer activities described in this para-
14 graph shall be deemed to be generated within the city as described in
15 subparagraphs one through eight of this paragraph. Receipts from such
16 activities generated within the city shall be included in the numerator
17 of the receipts fraction. Receipts from such activities generated within
18 and without the city shall be included in the denominator of the
19 receipts fraction. For the purposes of this paragraph, the term "securi-
20 ties" shall have the same meaning as in paragraph two of subsection (c)
21 of section four hundred seventy-five of the internal revenue code and
22 the term "commodities" shall have the same meaning as in paragraph two
23 of subsection (e) of section four hundred seventy-five of the internal
24 revenue code.

25 (1) Receipts constituting brokerage commissions derived from the
26 execution of securities or commodities purchase or sales orders for the
27 accounts of customers shall be deemed to be generated within the city if
28 the mailing address in the records of the taxpayer of the customer who
29 is responsible for paying such commissions is within the city.

30 (2) Receipts constituting margin interest earned on behalf of broker-
31 age accounts shall be deemed to be generated within the city if the
32 mailing address in the records of the taxpayer of the customer who is
33 responsible for paying such margin interest is within the city.

34 (3) (i) Receipts constituting fees earned by the taxpayer for advisory
35 services to a customer in connection with the underwriting of securities
36 for such customer, such customer being the entity that is contemplating
37 issuing or is issuing securities, or fees earned by the taxpayer for
38 managing an underwriting shall be deemed to be generated within the city
39 if the mailing address in the records of the taxpayer of such customer
40 who is responsible for paying such fees is within the city.

41 (ii) Receipts constituting the primary spread of selling concession
42 from underwritten securities shall be deemed to be generated within the
43 city if the customer is located within the city.

44 (iii) The term "primary spread" means the difference between the price
45 paid by the taxpayer to the issuer of the securities being marketed and
46 the price received from the subsequent sale of the underwritten securi-
47 ties at the initial public offering price, less any selling concession
48 and any fees paid to the taxpayer for advisory services or any manager's
49 fees, if such fees are not paid by the customer to the taxpayer sepa-
50 rately. The term "public offering price" means the price agreed upon by
51 the taxpayer and the issuer at which the securities are to be offered to
52 the public. The term "selling concession" means the amount paid to the
53 taxpayer for participating in the underwriting of a security where the
54 taxpayer is not the lead underwriter.

55 (4) Receipts constituting account maintenance fees shall be deemed to
56 be generated within the city if the mailing address in the records of

1 the taxpayer of the customer who is responsible for paying such account
2 maintenance fees is within the city.

3 (5) Receipts constituting fees for management or advisory services,
4 including fees for advisory services in relation to merger or acquisi-
5 tion activities, but excluding fees paid for services described in para-
6 graph (d) of this subdivision, shall be deemed to be generated within
7 the city if the mailing address in the records of the taxpayer of the
8 customer who is responsible for paying such fees is within the city.

9 (6) Receipts constituting interest earned by the taxpayer on loans and
10 advances made by the taxpayer to a corporation affiliated with the
11 taxpayer but with which the taxpayer is not permitted or required to
12 file a combined report pursuant to section 11-654.3 of this subchapter
13 shall be deemed to arise from services performed at the principal place
14 of business of such affiliated corporation.

15 (7) If the taxpayer receives any of the receipts enumerated in subpar-
16 agraphs one through four of this paragraph as a result of a securities
17 correspondent relationship such taxpayer has with another broker or
18 dealer with the taxpayer acting in this relationship as the clearing
19 firm, such receipts shall be deemed to be generated within the city to
20 the extent set forth in each of such subparagraphs. The amount of such
21 receipts shall exclude the amount the taxpayer is required to pay to the
22 correspondent firm for such correspondent relationship. If the taxpayer
23 receives any of the receipts enumerated in subparagraphs one through
24 four of this paragraph as a result of a securities correspondent
25 relationship such taxpayer has with another broker or dealer with the
26 taxpayer acting in this relationship as the introducing firm, such
27 receipts shall be deemed to be generated within the city to the extent
28 set forth in each of such subparagraphs.

29 (8) If, for the purposes of subparagraph one, subparagraph two, clause
30 (i) of subparagraph three, subparagraph four, or subparagraph five of
31 this paragraph, the taxpayer is unable from its records to determine the
32 mailing address of the customer, eight percent of the receipts shall be
33 included in the numerator of the receipts fraction.

34 (c) Receipts relating to the bank, credit, travel, and entertainment
35 card activities described in this paragraph shall be deemed to be gener-
36 ated within the city as described in subparagraphs one through four of
37 this paragraph. Receipts from such activities generated within the city
38 shall be included in the numerator of the receipts fraction. Receipts
39 from such activities generated within and without the city shall be
40 included in the denominator of the receipts fraction.

41 (1) Receipts constituting interest, and fees and penalties in the
42 nature of interest, from bank, credit, travel and entertainment card
43 receivables shall be deemed to be generated within the city if the mail-
44 ing address of the card holder in the records of the taxpayer is within
45 the city;

46 (2) Receipts from service charges and fees from such cards shall be
47 deemed to be generated within the city if the mailing address of the
48 card holder in the records of the taxpayer is within the city;

49 (3) Receipts from merchant discounts shall be deemed to be generated
50 within the city if the merchant is located within the city. In the case
51 of a merchant with locations both within and without the city, only
52 receipts from merchant discounts attributable to sales made from
53 locations within the city are allocated to the city. It shall be
54 presumed that the location of the merchant is the address of the
55 merchant shown on the invoice submitted by the merchant to the taxpayer;
56 and

1 (4) Receipts from credit card authorization processing, and clearing
2 and settlement processing received by a credit card processor shall be
3 deemed to be generated within the city if the location where the credit
4 card processor's customer accesses the credit card processor's network
5 is located within the city. The amount of all other receipts received by
6 a credit card processor not specifically addressed in subdivisions one
7 through nine or subdivision twelve of this section deemed to be gener-
8 ated within the city shall be determined by multiplying the total amount
9 of such other receipts by the average of (i) eight percent and (ii) the
10 percent of Staten Island access points. The percent of Staten Island
11 access points shall be the number of locations in Staten Island from
12 which the credit card processor's customers access the credit card
13 processor's network divided by the total number of locations in the
14 United States where the credit card processor's customers access the
15 credit card processor's network.

16 (d) Receipts received from an investment company arising from the sale
17 of management, administration or distribution services to such invest-
18 ment company shall be included in the denominator of the receipts frac-
19 tion. The portion of such receipts included in the numerator of the
20 receipts fraction, such portion referred to herein as the Staten Island
21 portion, shall be determined as provided in this paragraph.

22 (1) The Staten Island portion shall be the product of the total of
23 such receipts from the sale of such services and a fraction. The numera-
24 tor of that fraction shall be the sum of the monthly percentages, as
25 defined hereinafter, determined for each month of the investment compa-
26 ny's taxable year for federal income tax purposes which taxable year
27 ends within the taxable year of the taxpayer, but excluding any month
28 during which the investment company had no outstanding shares. The
29 monthly percentage for each such month shall be determined by dividing
30 the number of shares in the investment company that are owned on the
31 last day of the month by shareholders that are located in the city by
32 the total number of shares in the investment company outstanding on that
33 date. The denominator of the fraction shall be the number of such month-
34 ly percentages.

35 (2)(i) For purposes of this paragraph, an individual, estate or trust
36 shall be deemed to be located within the city if his, her or its mailing
37 address in the records of the investment company is located within the
38 city. A business entity is deemed to be located within the city if its
39 commercial domicile is located within the city.

40 (ii) For purposes of this paragraph, the term "investment company"
41 means a regulated investment company, as defined in section eight
42 hundred fifty-one of the internal revenue code, and a partnership to
43 which subsection (a) of section seven thousand seven hundred four of the
44 internal revenue code applies, by virtue of paragraph three of
45 subsection (c) of section seven thousand seven hundred four of such
46 code, and that meets the requirements of subsection (b) of section eight
47 hundred fifty-one of such code. The provisions of this subparagraph
48 shall be applied to the taxable year for federal income tax purposes of
49 the business entity that is asserted to constitute an investment company
50 that ends within the taxable year of the taxpayer.

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

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

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

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

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

26 (e) For purposes of this subdivision, a taxpayer shall use the follow-
27 ing hierarchy to determine the commercial domicile of a business entity,
28 based on the information known to the taxpayer or information that would
29 be known upon reasonable inquiry: (1) the seat of management and control
30 of the business entity; and (2) the billing address of the business
31 entity in the taxpayer's records. The taxpayer must exercise due dili-
32 gence before rejecting the first method in this hierarchy and proceeding
33 to the next method.

34 (f) For purposes of this subdivision, the term "registered securities
35 broker or dealer" means a broker or dealer registered as such by the
36 securities and exchange commission or a broker or dealer registered as
37 such by the commodities futures trading commission, and shall include an
38 OTC derivatives dealer as defined under regulations of the securities
39 and exchange commission at title 17, part 240, section 3b-12 of the code
40 of federal regulations (17 CFR 240.3b-12).

41 5-a. Notwithstanding any other provision of this section, net global
42 intangible low-taxed income shall be included in the receipts fraction
43 as provided in this subdivision. Receipts constituting net global intan-
44 gible low-taxed income shall not be included in the numerator of the
45 receipts fraction. Receipts constituting net global intangible low-taxed
46 income shall be included in the denominator of the receipts fraction.
47 For purposes of this subdivision, the term "net global intangible low-
48 taxed income" means the amount required to be included in the taxpayer's
49 federal gross income pursuant to subsection (a) of section nine hundred
50 fifty-one-D of the internal revenue code less the amount of the
51 deduction allowed under clause (i) of subparagraph (B) of paragraph one
52 of subdivision (a) of section two hundred fifty of such code.

53 6. Receipts from the conduct of a railroad business, including surface
54 railroad, whether or not operated by steam, subway railroad, elevated
55 railroad, palace car or sleeping car business, or a trucking business
56 shall be included in the numerator of the receipts fraction as follows.

1 The amount of receipts from the conduct of a railroad business or a
2 trucking business included in the numerator of the receipts fraction
3 shall be determined by multiplying the amount of receipts from such
4 business by a fraction, the numerator of which shall be the miles in
5 such business within the city during the period covered by the taxpay-
6 er's report and the denominator of which shall be the miles in such
7 business within and without the city during such period. Receipts from
8 the conduct of the railroad business or a trucking business shall be
9 included in the denominator of the receipts fraction.

10 7. (a) Receipts of a taxpayer acting as principal from the activity of
11 air freight forwarding and like indirect air carrier receipts arising
12 from such activity shall be included in the numerator of the receipts
13 fraction as follows: one hundred percent of such receipts if both the
14 pickup and delivery associated with such receipts are made within the
15 city and fifty percent of such receipts if either the pickup or delivery
16 associated with such receipts is made within this city. Such receipts,
17 whether the pickup or delivery associated with the receipts is within or
18 without the city, shall be included in the denominator of the receipts
19 fraction.

20 (b)(1)(i) The portion of receipts of a taxpayer from aviation
21 services, other than services described in paragraph (a) of this subdivi-
22 sion, but including the receipts of a qualified air freight forwarder,
23 to be included in the numerator of the receipts fraction shall be deter-
24 mined by multiplying its receipts from such aviation services by a
25 percentage which is equal to the arithmetic average of the following
26 three percentages:

27 (A) the percentage determined by dividing the aircraft arrivals and
28 departures within the city by the taxpayer during the period covered by
29 its report by the total aircraft arrivals and departures within and
30 without the city during such period; provided, however, arrivals and
31 departures solely for maintenance or repair, refueling, where no debar-
32 kation or embarkation of traffic occurs, arrivals and departures of
33 ferry and personnel training flights or arrivals and departures in the
34 event of emergency situations shall not be included in computing such
35 arrival and departure percentage; provided, further, the commissioner of
36 finance may also exempt from such percentage aircraft arrivals and
37 departures of all non-revenue flights including flights involving the
38 transportation of officers or employees receiving air transportation to
39 perform maintenance or repair services or where such officers or employ-
40 ees are transported in conjunction with an emergency situation or the
41 investigation of an air disaster, other than on a scheduled flight;
42 provided, however, that arrivals and departures of flights transporting
43 officers and employees receiving air transportation for purposes other
44 than specified above, without regard to remuneration, shall be included
45 in computing such arrival and departure percentage;

46 (B) the percentage determined by dividing the revenue tons handled by
47 the taxpayer at airports within the city during such period by the total
48 revenue tons handled by it at airports within and without the city
49 during such period; and

50 (C) the percentage determined by dividing the taxpayer's originating
51 revenue within the city for such period by its total originating revenue
52 within and without the city for such period.

53 (ii) As used herein the term "aircraft arrivals and departures" means
54 the number of landings and takeoffs of the aircraft of the taxpayer and
55 the number of air pickups and deliveries by the aircraft of such taxpay-
56 er; the term "originating revenue" means revenue to the taxpayer from

1 the transportation of revenue passengers and revenue property first
2 received by the taxpayer either as originating or connecting traffic at
3 airports; and the term "revenue tons handled by the taxpayer at
4 airports" means the weight in tons of revenue passengers, at two hundred
5 pounds per passenger, and revenue cargo first received either as origi-
6 nating or connecting traffic or finally discharged by the taxpayer at
7 airports.

8 (2) All such receipts of a taxpayer from aviation services described
9 in this paragraph shall be included in the denominator of the receipts
10 fraction.

11 (3) A corporation is a qualified air freight forwarder with respect to
12 another corporation:

13 (i) if it owns or controls either directly or indirectly all of the
14 capital stock of such other corporation, or if all of its capital stock
15 is owned or controlled either directly or indirectly by such other
16 corporation, or if all of the capital stock of both corporations is
17 owned or controlled either directly or indirectly by the same interests;

18 (ii) if it is principally engaged in the business of air freight
19 forwarding; and

20 (iii) if its air freight forwarding business is carried on principally
21 with the airline or airlines operated by such other corporation.

22 8. (a) The amount of receipts from sales of advertising in newspapers
23 or periodicals included in the numerator of the receipts fraction shall
24 be determined by multiplying the total of such receipts by a fraction,
25 the numerator of which shall be the number of newspapers and periodicals
26 delivered to points within the city and the denominator of which shall
27 be the number of newspapers and periodicals delivered to points within
28 and without the city. The total of such receipts from sales of advertis-
29 ing in newspapers or periodicals shall be included in the denominator of
30 the receipts fraction.

31 (b) The amount of receipts from sales of advertising on television or
32 radio included in the numerator of the receipts fraction shall be deter-
33 mined by multiplying the total of such receipts by a fraction, the
34 numerator of which shall be the number of viewers or listeners within
35 the city and the denominator of which shall be the number of viewers or
36 listeners within and without the city. The total of such receipts from
37 sales of advertising on television or radio shall be included in the
38 denominator of the receipts fraction.

39 (c) The amount of receipts from sales of advertising not described in
40 paragraph (a) or (b) of this subdivision that is furnished, provided or
41 delivered to, or accessed by the viewer or listener through the use of
42 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or
43 similar successor media or any combination thereof, included in the
44 numerator of the receipts fraction shall be determined by multiplying
45 the total of such receipts by a fraction, the numerator of which shall
46 be the number of viewers or listeners within the city and the denomina-
47 tor of which shall be the number of viewers or listeners within and
48 without the city. The total of such receipts from sales of advertising
49 described in this paragraph shall be included in the denominator of the
50 receipts fraction.

51 9. Receipts from the transportation or transmission of gas through
52 pipes shall be included in the numerator of the receipts fraction as
53 follows. The amount of receipts from the transportation or transmission
54 of gas through pipes included in the numerator of the receipts fraction
55 shall be determined by multiplying the total amount of such receipts by
56 a fraction, the numerator of which shall be the taxpayer's transporta-

1 tion units within the city and the denominator of which shall be the
2 taxpayer's transportation units within and without the city. A transpor-
3 tation unit is the transportation of one cubic foot of gas over a
4 distance of one mile. The total amount of receipts from the transporta-
5 tion or transmission of gas through pipes shall be included in the
6 denominator of the receipts fraction.

7 10. (a) Receipts from services not addressed in subdivisions one
8 through nine or subdivision twelve of this section and other business
9 receipts not addressed in such subdivisions shall be included in the
10 numerator of the receipts fraction if the location of the customer is
11 within the city. Such receipts from customers within and without the
12 city shall be included in the denominator of the receipts fraction.
13 Whether the receipts are included in the numerator of the receipts frac-
14 tion shall be determined according to the hierarchy of methods set forth
15 in paragraph (b) of this subdivision. The taxpayer must exercise due
16 diligence under each method described in such paragraph before rejecting
17 it and proceeding to the next method in the hierarchy, and must base its
18 determination on information known to the taxpayer or information that
19 would be known to the taxpayer upon reasonable inquiry.

20 (b) The hierarchy of methods is as follows: (1) the benefit is
21 received in the city; (2) delivery destination; (3) the receipts frac-
22 tion for such receipts within the city determined pursuant to this
23 subdivision for the preceding taxable year; or (4) the receipts fraction
24 in the current taxable year determined pursuant to this subdivision for
25 those receipts that can be sourced using the hierarchy of sourcing meth-
26 ods in subparagraphs one and two of this paragraph.

27 11. If it shall appear that the receipts fraction determined pursuant
28 to this section does not result in a proper reflection of the taxpayer's
29 business income or capital within the city, the commissioner of finance
30 is authorized in his or her discretion to adjust it, or the taxpayer may
31 request that the commissioner of finance adjust it, by (a) excluding one
32 or more items in such determination, (b) including one or more other
33 items in such determination, or (c) any other similar or different meth-
34 od calculated to effect a fair and proper allocation of the business
35 income and capital reasonably attributed to the city. The party seeking
36 the adjustment shall bear the burden of proof to demonstrate that the
37 receipts fraction determined pursuant to this section does not result in
38 a proper reflection of the taxpayer's business income or capital within
39 the city and that the proposed adjustment is appropriate.

40 12. Receipts from the operation of vessels shall be included in the
41 numerator of the receipts fraction as follows. The amount of receipts
42 from the operation of vessels included in the numerator of the receipts
43 fraction shall be determined by multiplying the amount of such receipts
44 by a fraction, the numerator of which shall be the aggregate number of
45 working days of the vessels owned or leased by the taxpayer in territo-
46 rial waters of the city during the period covered by the taxpayer's
47 report and the denominator of which shall be the aggregate number of
48 working days of all vessels owned or leased by the taxpayer during such
49 period. Receipts from the operation of vessels shall be included in the
50 denominator of the receipts fraction.

51 § 11-654.3 Combined reports. 1. (a) The tax on a combined report shall
52 be the highest of (1) the combined business income multiplied by the tax
53 rate specified in clause (i) of subparagraph one of paragraph (e) of
54 subdivision one of section 11-654 of this subchapter; (2) the combined
55 capital multiplied by the tax rate specified in clause (ii) of subpara-
56 graph one of paragraph (e) of subdivision one of section 11-654 of this

1 subchapter, but not exceeding the limitation provided for in such clause
2 (ii); or (3) the fixed dollar minimum that is attributable to the desig-
3 nated agent of the combined group. In addition, the tax on a combined
4 report shall include the fixed dollar minimum tax specified in clause
5 (iv) of subparagraph one of paragraph (e) of subdivision one of section
6 11-654 of this subchapter for each member of the combined group, other
7 than the designated agent, that is a taxpayer.

8 (b) The combined business income base is the amount of the combined
9 business income of the combined group that is allocated to the city,
10 reduced by any prior net operating loss conversion subtraction and any
11 net operating loss deduction for the combined group. The combined capi-
12 tal base is the amount of the combined capital of the combined group
13 that is allocated to the city.

14 2. (a) Except as provided in paragraph (c) of this subdivision, any
15 taxpayer (1) which owns or controls either directly or indirectly more
16 than fifty percent of the voting power of the capital stock of one or
17 more other corporations, or (2) more than fifty percent of the voting
18 power of the capital stock of which is owned or controlled either
19 directly or indirectly by one or more other corporations, or (3) more
20 than fifty percent of the voting power of the capital stock of which and
21 the capital stock of one or more other corporations, is owned or
22 controlled, directly or indirectly, by the same interests, and (4) that
23 is engaged in a unitary business with those corporations, hereinafter
24 referred to as "related corporations", shall make a combined report with
25 those other corporations.

26 (b) A corporation required to make a combined report within the mean-
27 ing of this section shall also include (1) a captive REIT and a captive
28 RIC; (2) a combinable captive insurance company; and (3) an alien corpo-
29 ration that satisfies the conditions in paragraph (a) of this subdivi-
30 sion if (i) under any provision of the internal revenue code, that
31 corporation is treated as a "domestic corporation" as defined in section
32 seven thousand seven hundred one of the internal revenue code, or (ii)
33 it has effectively connected income for the taxable year pursuant to
34 clause (iii) of the opening paragraph of subdivision eight of section
35 11-652 of this subchapter.

36 (c) A corporation required or permitted to make a combined report
37 under this section does not include (1) a corporation that is taxable
38 under a tax imposed by subchapter two or three of this chapter or chap-
39 ter eleven of this title, except for a vendor of utility services that
40 is taxable under both chapter eleven of this title and this subchapter,
41 or would be taxable under a tax imposed by subchapter two or three of
42 this chapter or chapter eleven of this title, except for a vendor of
43 utility services that is taxable under both chapter eleven of this title
44 and this subchapter, or would have been taxable as an insurance corpo-
45 ration under the former part IV, title R, chapter forty-six of the
46 administrative code as in effect on June thirtieth, nineteen hundred
47 seventy-four; (2) a REIT that is not a captive REIT, and a RIC that is
48 not a captive RIC; or (3) an alien corporation that under any provision
49 of the internal revenue code is not treated as a "domestic corporation"
50 as defined in section seven thousand seven hundred one of such code and
51 has no effectively connected income for the taxable year pursuant to
52 clause (iii) of the opening paragraph of subdivision eight of section
53 11-652 of this subchapter. If a corporation is subject to tax under this
54 subchapter solely as a result of its ownership of a limited partner
55 interest in a limited partnership that is doing business, employing
56 capital, owning or leasing property, or maintaining an office in this

1 city, and none of the corporation's related corporations are subject to
2 tax under this subchapter, such corporation shall not be required or
3 permitted to file a combined report under this section with such related
4 corporations.

5 (d) A combined report shall be filed by the designated agent of the
6 combined group as determined under subdivision seven of this section.

7 3. (a) Subject to the provisions of paragraph (c) of subdivision two
8 of this section, a taxpayer may elect to treat as its combined group all
9 corporations that meet the ownership requirements described in paragraph
10 (a) of subdivision two of this section, such corporations collectively
11 referred to in this subdivision as the "commonly owned group". If that
12 election is made, the commonly owned group shall calculate the combined
13 business income, combined business capital, and fixed dollar minimum
14 amount of all members of the group in accordance with paragraph four of
15 this subdivision, whether or not that business income or business capi-
16 tal is from a single unitary business.

17 (b) The election under this subdivision shall be made on an original,
18 timely filed return, determined with regard to extensions, of the
19 combined group. Any corporation entering a commonly owned group subse-
20 quent to the year of election shall be included in the combined group
21 and is considered to have waived any objection to its inclusion in the
22 combined group.

23 (c) The election shall be irrevocable, and binding for and applicable
24 to the taxable year for which it is made and for the next six taxable
25 years. The election will automatically be renewed for another seven
26 taxable years after it has been in effect for seven taxable years unless
27 it is affirmatively revoked. The revocation shall be made on an
28 original, timely filed return, determined with regard to extensions, for
29 the first taxable year after the completion of a seven year period for
30 which an election under this subdivision was in place. In the case of a
31 revocation, a new election under this subdivision shall not be permitted
32 in any of the immediately following three taxable years. In determining
33 the seven and three year periods described in this paragraph, short
34 taxable years shall not be considered or counted.

35 4. (a) In computing the tax bases for a combined report, the combined
36 group shall generally be treated as a single corporation, except as
37 otherwise provided, and subject to any regulations or guidance issued by
38 the commissioner of finance or the department of finance.

39 (b)(1) In computing combined business income, all intercorporate divi-
40 dends shall be eliminated, and all other intercorporate transactions
41 shall be deferred in a manner similar to the United States treasury
42 department regulations relating to intercompany transactions under
43 section fifteen hundred two of the internal revenue code.

44 (2) In computing combined capital, all intercorporate stockholdings,
45 intercorporate bills, intercorporate notes receivable and payable,
46 intercorporate accounts receivable and payable, and other intercorporate
47 indebtedness, shall be eliminated.

48 (c) Qualification for credits, including any limitations thereon,
49 shall be determined separately for each of the members of the combined
50 group, and shall not be determined on a combined group basis, except as
51 otherwise provided. However, the credits shall be applied against the
52 combined tax of the group. To the extent that a provision of section
53 11-654 of this subchapter, or any other applicable section of this
54 subchapter, limits a credit to the fixed dollar minimum amount
55 prescribed in clause (iv) of subparagraph one of paragraph (e) of subdi-
56 vision one of section 11-654 of this subchapter, such fixed dollar mini-

1 mum amount shall be the fixed dollar minimum amount that is attributable
2 to the designated agent of the combined group.

3 (d)(1) A net operating loss deduction is allowed in computing the
4 combined business income base. Such deduction may reduce the tax on the
5 combined business income base to the higher of the tax on the combined
6 capital or the fixed dollar minimum amount that is attributable to the
7 designated agent of the combined group. A combined net operating loss
8 deduction is equal to the amount of combined net operating loss or loss-
9 es from one or more taxable years that are carried forward or carried
10 back to a particular taxable year. A combined net operating loss is the
11 combined business loss incurred in a particular taxable year multiplied
12 by the combined business allocation percentage for that year determined
13 as provided in subdivision five of this section.

14 (2) The combined net operating loss deduction and combined net operat-
15 ing loss are also subject to the provisions contained in paragraphs (a)
16 through (g) of subdivision three of section 11-654.1 of this subchapter.

17 (3) In the case of a corporation that files a combined report, either
18 in the year the net operating loss is incurred or in the year in which a
19 deduction is claimed on account of the loss, the combined net operating
20 loss deduction is determined as if the combined group is a single corpo-
21 ration and, to the extent possible and not otherwise inconsistent with
22 this subdivision, is subject to the same limitations that would apply
23 for federal income tax purposes under the internal revenue code and the
24 code of federal regulations as if such corporation had filed for such
25 taxable year a consolidated federal income tax return with the same
26 corporations included in the combined report. If a corporation files a
27 combined report, regardless of whether it filed a separate return or
28 consolidated return for federal income tax purposes, the net operating
29 loss and net operating loss deduction for the combined group must be
30 computed as if the corporation had filed a consolidated return for the
31 same corporations for federal income tax purposes.

32 (4) In general, any net operating loss carryover from a year in which
33 a combined report was filed shall be based on the combined net operating
34 loss of the group of corporations filing such report. The portion of the
35 combined loss attributable to any member of the group that files a sepa-
36 rate report for a succeeding taxable year will be an amount bearing the
37 same relation to the combined loss as the net operating loss of such
38 corporation bears to the total net operating loss of all members of the
39 group having such losses to the extent that they are taken into account
40 in computing the combined net operating loss.

41 (d-1) A prior net operating loss conversion subtraction is allowed in
42 computing the combined business income base, as provided in subdivisions
43 one and two of section 11-654.1 of this subchapter. Such subtraction may
44 reduce the tax on combined business income to the higher of the tax on
45 combined capital or the fixed dollar minimum amount that is attributable
46 to the designated agent of the combined group.

47 (e)(i) Any election made pursuant to paragraph (b) of subdivision
48 five, paragraphs (b) and (c) of subdivision five-a of section 11-652 of
49 this subchapter, and paragraph (g) of subdivision three of section
50 11-654.1 of this subchapter shall apply to all members of the combined
51 group.

52 (ii) The determination of whether or not the limitation on investment
53 income provided in subparagraph (iii) of paragraph (a) of subdivision
54 five of section 11-652 of this subchapter to the combined group shall be
55 based on the investment income of the combined group, determined without

1 regard to interest expenses attributable to investment capital or
2 investment income, and the entire net income of the combined group.

3 (f)(1) In the case of a captive REIT or captive RIC required under
4 this section to be included in a combined report, entire net income
5 shall be computed as required under subdivision seven, in the case of a
6 captive REIT, or subdivision eight, in the case of a captive RIC, of
7 section 11-653 of this subchapter. However, the deduction under the
8 internal revenue code for dividends paid by the captive REIT or captive
9 RIC to any member of the affiliated group that includes the corporation
10 that directly or indirectly owns over fifty percent of the voting stock
11 of the captive REIT or captive RIC shall not be allowed. For purposes of
12 this subparagraph, the term "affiliated group" means "affiliated group"
13 as defined in section fifteen hundred four of the internal revenue code,
14 but without regard to the exceptions provided for in subsection (b) of
15 that section.

16 (2) In the case of a combinable captive insurance company required
17 under this section to be included in a combined report, entire net
18 income shall be computed as required by subdivision eight of section
19 11-652 of this subchapter.

20 (g) If more than one member of a combined group is eligible for any of
21 the modifications described in paragraphs (q), (r) or (s) of subdivision
22 eight of section 11-652 of this subchapter, all such members must
23 utilize the same modification.

24 5. (a) In determining the business allocation percentage for a
25 combined report, the receipts, net income, net gains and other items of
26 each member of the combined group, whether or not they are a taxpayer,
27 are included and intercorporate receipts, income and gains are elimi-
28 nated. Receipts, net income, net gains and other items are sourced, and
29 the amounts allowed in the receipts fraction are determined, as provided
30 in section 11-654.2 of this subchapter.

31 (b) An election made to allocate income and gains from qualifying
32 financial instruments pursuant to subparagraph one of paragraph (a) of
33 subdivision five of section 11-654.2 of this subchapter shall apply to
34 all members of the combined group.

35 6. Every member of the combined group that is subject to tax under
36 this article shall be jointly and severally liable for the tax due
37 pursuant to a combined report.

38 7. Each combined group shall appoint a designated agent for the
39 combined group, which shall be a taxpayer. Only the designated agent may
40 act on behalf of the members of the combined group for matters relating
41 to the combined report.

42 § 11-655 Reports. 1. Every corporation having an officer, agent or
43 representative within the city, shall annually on or before March
44 fifteenth for taxable years beginning before January first, two thousand
45 sixteen, and annually on or before April fifteenth for taxable years
46 beginning on or after January first, two thousand sixteen, transmit to
47 the commissioner of finance a report in a form prescribed by the commis-
48 sioner of finance, setting forth such information as the commissioner of
49 finance may prescribe, except that a corporation that reports on the
50 basis of a fiscal year shall transmit such report, for taxable years
51 beginning before January first, two thousand sixteen, within two and
52 one-half months after the close of its fiscal year, and, for taxable
53 years beginning after January first, two thousand sixteen, within three
54 and one-half months after the close of its fiscal year. Every taxpayer
55 that ceases to do business in the city or to be subject to the tax
56 imposed by this subchapter shall transmit to the commissioner of finance

1 a report on the date of such cessation or at such other time as the
2 commissioner of finance may require covering each year or period for
3 which no report was theretofore filed. Every taxpayer shall also trans-
4 mit such other reports and such facts and information as the commis-
5 sioner of finance may require in the administration of this subchapter. The
6 commissioner of finance may grant a reasonable extension of time for
7 filing reports whenever good cause exists.

8 An automatic extension of six months for the filing of its annual
9 report shall be allowed any taxpayer if, within the time prescribed by
10 the opening paragraph of this subdivision, whichever is applicable, such
11 taxpayer files with the commissioner of finance an application for
12 extension in such form as the commissioner of finance may prescribe by
13 regulation and pays on or before the date of such filing the amount
14 properly estimated as its tax.

15 2. Every report shall have annexed thereto a certification by the
16 president, vice-president, treasurer, assistant treasurer, chief
17 accounting officer or another officer of the taxpayer duly authorized so
18 to act to the effect that the statements contained therein are true. In
19 the case of an association, within the meaning of paragraph three of
20 section (a) of section seventy-seven hundred one of the internal revenue
21 code, a publicly-traded partnership treated as a corporation for
22 purposes of the internal revenue code pursuant to section seventy-seven
23 hundred four thereof and any business conducted by a trustee or trustees
24 wherein interest or ownership is evidenced by certificates or other
25 written instruments, such certification shall be made by any person duly
26 authorized so to act on behalf of such association, publicly-traded
27 partnership or business. The fact that an individual's name is signed on
28 a certification of the report shall be prima facie evidence that such
29 individual is authorized to sign and certify the report on behalf of the
30 corporation. Blank forms of reports shall be furnished by the commis-
31 sioner of finance, on application, but failure to secure such a blank
32 shall not release any corporation from the obligation of making any
33 report required by this subchapter.

34 2-a. The commissioner of finance may prescribe regulations and
35 instructions requiring returns of information to be made and filed in
36 conjunction with the reports required to be filed pursuant to this
37 section, relating to payments made to shareholders owning, directly or
38 indirectly, individually or in the aggregate, more than fifty percent of
39 the issued capital stock of the taxpayer, where such payments are treat-
40 ed as payments of interest in the computation of entire net income
41 reported on such reports.

42 3. If the amount of taxable income or other basis of tax for any year
43 of any taxpayer as returned to the United States treasury department or
44 the New York state commissioner of taxation and finance is changed or
45 corrected by the commissioner of internal revenue or other officer of
46 the United States or the New York state commissioner of taxation and
47 finance or other competent authority, or where a renegotiation of a
48 contract or subcontract with the United States or the state of New York
49 results in a change in taxable income or other basis of tax, or where a
50 recovery of a war loss results in a computation or recomputation of any
51 tax imposed by the United States or the state of New York, or if a
52 taxpayer, pursuant to subsection (d) of section sixty-two hundred thir-
53 teen of the internal revenue code, executes a notice of waiver of the
54 restrictions provided in subsection (a) of said section, or if a taxpay-
55 er, pursuant to subsection (f) of section one thousand eighty-one of the
56 tax law, executes a notice of waiver of the restrictions provided in

1 subsection (c) of said section, such taxpayer shall report such changed
2 or corrected taxable income or other basis of tax, or the results of
3 such renegotiation, or such computation, or recomputation, or such
4 execution of such notice of waiver and the changes or corrections of the
5 taxpayer's federal or New York state taxable income or other basis of
6 tax on which it is based, within ninety days, or one hundred twenty
7 days, in the case of a taxpayer making a combined report under this
8 subchapter for such year, after such execution or the final determi-
9 nation of such change or correction or renegotiation, or such computa-
10 tion, or recomputation, or as required by the commissioner of finance,
11 and shall concede the accuracy of such determination or state wherein it
12 is erroneous. The allowance of a tentative carryback adjustment based
13 upon a net operating loss carryback or net capital loss carryback pursu-
14 ant to section sixty-four hundred eleven of the internal revenue code
15 shall be treated as a final determination for purposes of this subdivi-
16 sion. Any taxpayer filing an amended return with such department shall
17 also file within ninety days, or one hundred twenty days, in the case of
18 a taxpayer making a combined report under this subchapter for such year,
19 thereafter an amended report with the commissioner of finance.

20 4. The provisions of section 11-654.3 of this subchapter shall apply
21 to combined reports.

22 5. In case it shall appear to the commissioner of finance that any
23 agreement, understanding or arrangement exists between the taxpayer and
24 any other corporation or any person or firm, whereby the activity, busi-
25 ness, income or capital of the taxpayer within the city is improperly or
26 inaccurately reflected, the commissioner of finance is authorized and
27 empowered, in its discretion and in such manner as it may determine, to
28 adjust items of income, deductions and capital, and to eliminate assets
29 in computing any allocation percentage provided only that any income
30 directly traceable thereto be also excluded from entire net income, so
31 as equitably to determine the tax. Where (a) any taxpayer conducts its
32 activity or business under any agreement, arrangement or understanding
33 in such manner as either directly or indirectly to benefit its members
34 or stockholders, or any of them, or any person or persons directly or
35 indirectly interested in such activity or business, by entering into any
36 transaction at more or less than a fair price which, but for such agree-
37 ment, arrangement or understanding, might have been paid or received
38 therefor, or (b) any taxpayer, a substantial portion of whose capital
39 stock is owned either directly or indirectly by another corporation,
40 enters into any transaction with such other corporation on such terms as
41 to create an improper loss or net income, the commissioner of finance
42 may include in the entire net income of the taxpayer the fair profits,
43 which, but for such agreement, arrangement or understanding, the taxpay-
44 er might have derived from such transaction. Where any taxpayer owns,
45 directly or indirectly, more than fifty percent of the capital stock of
46 another corporation subject to tax under section fifteen hundred two-a
47 of the tax law and fifty percent or less of whose gross receipts for the
48 taxable year consist of premiums, the commissioner of finance may
49 include in the entire net income of the taxpayer, as a deemed distrib-
50 ution, the amount of the net income of the other corporation that is in
51 excess of its net premium income.

52 6. An action may be brought at any time by the corporation counsel at
53 the instance of the commissioner of finance to compel the filing of
54 reports due under this subchapter.

55 7. Reports shall be preserved for five years, and thereafter until the
56 commissioner of finance orders them to be destroyed.

1 8. Where the New York state commissioner of taxation and finance
2 changes or corrects a taxpayer's sales and compensating use tax liabil-
3 ity with respect to the purchase or use of items for which a sales or
4 compensating use tax credit against the tax imposed by this subchapter
5 was claimed, the taxpayer shall report such change or correction to the
6 commissioner of finance within ninety days of the final determination of
7 such change or correction, or as required by the commissioner of
8 finance, and shall concede the accuracy of such determination or state
9 wherein it is erroneous. Any taxpayer filing an amended return or report
10 relating to the purchase or use of such items shall also file within
11 ninety days thereafter a copy of such amended return or report with the
12 commissioner of finance.

13 § 11-656 Payment and lien of tax. 1. To the extent the tax imposed by
14 section 11-653 of this subchapter shall not have been previously paid
15 pursuant to section 11-658 of this subchapter:

16 (a) such tax, or the balance thereof, shall be payable to the commis-
17 sioner of finance in full at the time the report is required to be
18 filed; and

19 (b) such tax, or the balance thereof, imposed on any taxpayer which
20 ceases to do business in the city or to be subject to the tax imposed by
21 this subchapter shall be payable to the commissioner of finance at the
22 time the report is required to be filed; all other taxes of any such
23 taxpayer, which pursuant to the this subdivision would otherwise be
24 payable subsequent to the time such report is required to be filed,
25 shall nevertheless be payable at such time. If the taxpayer, within the
26 time prescribed by section 11-655 of this subchapter, shall have applied
27 for an automatic extension of time to file its annual report and shall
28 have paid to the commissioner of finance on or before the date such
29 application is filed an amount properly estimated as provided by said
30 section, the only amount payable in addition to the tax shall be inter-
31 est at the underpayment rate set by the commissioner of finance pursuant
32 to section 11-687 of this chapter, or, if no rate is set, at the rate of
33 seven and one-half percent per annum upon the amount by which the tax,
34 or the portion thereof payable on or before the date the report was
35 required to be filed, exceeds the amount so paid, provided that:

36 (1) an amount so paid shall be deemed properly estimated if it is
37 either: (i) not less than ninety percent of the tax as finally deter-
38 mined, or (ii) not less than the tax shown on the taxpayer's report for
39 the preceding taxable year, if such preceding year was a taxable year of
40 twelve months; and

41 (2) the time when a report is required to be filed shall be determined
42 without regard to any extension of time for filing such report.

43 2. The commissioner of finance may grant a reasonable extension of
44 time for payment of any tax imposed by this subchapter under such condi-
45 tions as the commissioner of finance deems just and proper.

46 3. Intentionally omitted.

47 § 11-657 Declaration of estimated tax. 1. Every taxpayer subject to
48 the tax imposed by section 11-653 of this subchapter shall make a decla-
49 ration of its estimated tax for the current privilege period, containing
50 such information as the commissioner of finance may prescribe by regu-
51 lations or instructions, if such estimated tax can reasonably be
52 expected to exceed one thousand dollars.

53 2. The term "estimated tax" means the amount which a taxpayer esti-
54 mates to be the tax imposed by section 11-653 of this subchapter for the
55 current privilege period, less the amount which it estimates to be the
56 sum of any credits allowable against the tax.

1 3. In the case of a taxpayer which reports on the basis of a calendar
2 year, a declaration of estimated tax shall be filed on or before June
3 fifteenth of the current privilege period, except that if the require-
4 ments of subdivision one of this section are first met:

5 (a) after May thirty-first and before September first of such current
6 privilege period, the declaration shall be filed on or before September
7 fifteenth; or

8 (b) after August thirty-first and before December first of such
9 current privilege period, the declaration shall be filed on or before
10 December fifteenth.

11 4. A taxpayer may amend a declaration under regulations of the commis-
12 sioner of finance.

13 5. If, on or before February fifteenth of the succeeding year in the
14 case of a taxpayer which reports on the basis of a calendar year, a
15 taxpayer files its report for the year for which the declaration is
16 required, and pays therewith the balance, if any, of the full amount of
17 the tax shown to be due on the report:

18 (a) such report shall be considered as its declaration if no declara-
19 tion is required to be filed during the calendar or fiscal year for
20 which the tax was imposed, but is otherwise required to be filed on or
21 before December fifteenth pursuant to subdivision three of this section;
22 and

23 (b) such report shall be considered as the amendment permitted by
24 subdivision four of this section to be filed on or before December
25 fifteenth if the tax shown on the report is greater than the estimated
26 tax shown on a declaration previously made.

27 6. This section shall apply to privilege periods of twelve months
28 other than a calendar year by the substitution of the months of such
29 fiscal year for the corresponding months specified in this section.

30 7. If the privilege period for which a tax is imposed by section
31 11-653 of this subchapter is less than twelve months, every taxpayer
32 required to make a declaration of estimated tax for such privilege peri-
33 od shall make such a declaration in accordance with regulations of the
34 commissioner of finance.

35 8. The commissioner of finance may grant a reasonable extension of
36 time, not to exceed three months, for the filing of any declaration
37 required pursuant to this section, on such terms and conditions as it
38 may require.

39 § 11-658 Payments on account of estimated tax. 1. For taxable years
40 beginning before January first, two thousand sixteen, every taxpayer
41 subject to the tax imposed by section 11-653 of this subchapter shall
42 pay with the report required to be filed for the preceding privilege
43 period, if any, or with an application for extension of the time and
44 filing such report, an amount equal to twenty-five per centum of the
45 preceding year's tax if such preceding year's tax exceeded one thousand
46 dollars. For taxable years beginning on or after January first, two
47 thousand sixteen, every taxpayer subject to the tax imposed by section
48 11-653 of this subchapter shall pay on or before the fifteenth day of
49 March next succeeding the close of each such calendar year, or, in the
50 case of a taxpayer that reports on the basis of a fiscal year, within
51 two and one-half months after the close of each such fiscal year an
52 amount equal to twenty-five per centum of the second preceding year's
53 tax if the second preceding year's tax exceeded one thousand dollars.

54 2. The estimated tax with respect to which a declaration for such
55 privilege period is required shall be paid, in the case of a taxpayer
56 which reports on the basis of a calendar year, as follows:

1 (a) If the declaration is filed on or before June fifteenth, the esti-
2 mated tax shown thereon, after applying thereto the amount, if any, paid
3 during the same privilege period pursuant to subdivision one of this
4 section, shall be paid in three equal installments. One of such install-
5 ments shall be paid at the time of the filing of the declaration, one
6 shall be paid on the following September fifteenth, and one on the
7 following December fifteenth.

8 (b) If the declaration is filed after June fifteenth and not after
9 September fifteenth of such privilege period, and is not required to be
10 filed on or before June fifteenth of such period, the estimated tax
11 shown on such declaration, after applying thereto the amount, if any,
12 paid during the same privilege period pursuant to subdivision one of
13 this section, shall be paid in two equal installments. One of such
14 installments shall be paid at the time of the filing of the declaration
15 and one shall be paid on the following December fifteenth.

16 (c) If the declaration is filed after September fifteenth of such
17 privilege period, and is not required to be filed on or before September
18 fifteenth of such privilege period, the estimated tax shown on such
19 declaration, after applying thereto the amount, if any, paid in respect
20 to such privilege period pursuant to subdivision one of this section,
21 shall be paid in full at the time of the filing of the declaration.

22 (d) If the declaration is filed after the time prescribed therefor, or
23 after the expiration of any extension of time therefor, paragraphs (b)
24 and (c) of this subdivision shall not apply, and there shall be paid at
25 the time of such filing all installments of estimated tax payable at or
26 before such time, and the remaining installments shall be paid at the
27 times at which, and in the amounts in which, they would have been paya-
28 ble if the declaration had been filed when due.

29 3. If any amendment of a declaration is filed, the remaining install-
30 ments, if any, shall be ratably increased or decreased, as the case may
31 be, to reflect any increase or decrease in the estimated tax by reason
32 of such amendment, and if any amendment is made after September
33 fifteenth of the privilege period, any increase in the estimated tax by
34 reason thereof shall be paid at the time of making such amendment.

35 4. Any amount paid shall be applied after payment as a first install-
36 ment against the estimated tax of the taxpayer for the current privilege
37 period shown on the declaration required to be filed pursuant to section
38 11-657 of this subchapter or, if no declaration of estimated tax is
39 required to be filed by the taxpayer pursuant to such section, any such
40 amount shall be considered a payment on account of the tax shown on the
41 report required to be filed by the taxpayer for such privilege period.

42 5. Notwithstanding the provisions of section 11-679 of this chapter or
43 of section three-a of the general municipal law, if an amount paid
44 pursuant to subdivision one of this section exceeds the tax shown on the
45 report required to be filed by the taxpayer for the privilege period
46 during which the amount was paid, interest shall be allowed and paid on
47 the amount by which the amount so paid pursuant to such subdivision
48 exceeds such tax, at the overpayment rate set by the commissioner of
49 finance pursuant to section 11-687 of this chapter, or, if no rate is
50 set, at the rate of four percent per annum from the date of payment of
51 the amount so paid pursuant to such subdivision to the fifteenth day of
52 the third month following the close of the privilege period, provided,
53 however, that no interest shall be allowed or paid under this subdivi-
54 sion if the amount thereof is less than one dollar or if such interest
55 becomes payable solely because of a carryback of a net operating loss in
56 a subsequent privilege period.

1 6. As used in this section, "the preceding year's tax" means the tax
2 imposed upon the taxpayer by section 11-653 of this subchapter for the
3 preceding calendar or fiscal year, or, for purposes of computing the
4 first installment of estimated tax when either the mandatory first
5 installment is paid pursuant to subdivision one of this section or an
6 application has been filed for extension of the time for filing the
7 report required to be filed for such preceding calendar or fiscal year,
8 the amount properly estimated pursuant to section 11-657 of this
9 subchapter as the tax imposed upon the taxpayer for such calendar or
10 fiscal year. As used in this section, "the second preceding year's tax"
11 means the tax imposed upon the taxpayer by section 11-653 of this
12 subchapter for the second preceding calendar or fiscal year.

13 7. This section shall apply to a privilege period of less than twelve
14 months in accordance with regulations of the commissioner of finance.

15 8. The provisions of this section shall apply to privilege periods of
16 twelve months other than a calendar year by the substitution of the
17 months of such fiscal year for the corresponding months specified in
18 such provisions.

19 9. The commissioner of finance may grant a reasonable extension of
20 time, not to exceed six months, for payment of any installment of esti-
21 mated tax required pursuant to this section, on such terms and condi-
22 tions as the commissioner of finance may require including the furnish-
23 ing of a bond or other security by the taxpayer in an amount not
24 exceeding twice the amount for which any extension of time for payment
25 is granted, provided, however, that interest at the underpayment rate
26 set by the commissioner of finance pursuant to section 11-687 of this
27 subchapter, or, if no rate is set, at the rate of seven and one-half
28 percent per annum for the period of the extension shall be charged and
29 collected on the amount for which any extension of time for payment is
30 granted under this subdivision.

31 10. A taxpayer may elect to pay any installment of estimated tax prior
32 to the date prescribed in this section for payment thereof.

33 11. Intentionally omitted.

34 § 11-659 Collection of taxes. Every foreign corporation, other than a
35 moneyed corporation, subject to the provisions of this subchapter,
36 except a corporation having authority to do business by virtue of
37 section thirteen hundred five of the business corporation law, shall
38 file in the department of state a certificate of designation in its
39 corporate name, signed and acknowledged by its president or a vice-pre-
40 sident or its secretary or treasurer, under its corporate seal, desig-
41 nating the secretary of state as its agent upon whom process in any
42 action provided for by this subchapter may be served within this state,
43 and setting forth an address to which the secretary of state shall mail
44 a copy of any such process against the corporation which may be served
45 upon the secretary of state. In case any such corporation shall have
46 failed to file such certificate of designation, it shall be deemed to
47 have designated the secretary of state as its agent upon whom such proc-
48 ess against it may be served; and until a certificate of designation
49 shall have been filed the corporation shall be deemed to have directed
50 the secretary of state to mail copies of process served upon him or her
51 to the corporation at its last known office address within or without
52 the state. When a certificate of designation has been filed by such
53 corporation the secretary of state shall mail copies of process there-
54 after served upon the secretary of state to the address set forth in
55 such certificate. Any such corporation, from time to time, may change
56 the address to which the secretary of state is directed to mail copies

1 of process, by filing a certificate to that effect executed, signed and
2 acknowledged in like manner as a certificate of designation as herein
3 provided. Service of process upon any such corporation or upon any
4 corporation having a certificate of authority under section eight
5 hundred five of the limited liability company law or having authority to
6 do business by virtue of section thirteen hundred five of the business
7 corporation law, in any action commenced at any time pursuant to the
8 provisions of this subchapter, may be made by either: (a) personally
9 delivering to and leaving with the secretary of state, a deputy secre-
10 tary of state or with any person authorized by the secretary of state to
11 receive such service duplicate copies thereof at the office of the
12 department of state in the city of Albany, in which event the secretary
13 of state shall forthwith send by registered mail, return receipt
14 requested, one of such copies to the corporation at the address desig-
15 nated by it or at its last known office address within or without the
16 state, or (b) personally delivering to and leaving with the secretary of
17 state, a deputy secretary of state or with any person authorized by the
18 secretary of state to receive such service, a copy thereof at the office
19 of the department of state in the city of Albany and by delivering a
20 copy thereof to, and leaving such copy with, the president, vice-presi-
21 dent, secretary, assistant secretary, treasurer, assistant treasurer, or
22 cashier of such corporation, or the officer performing corresponding
23 functions under another name, or a director or managing agent of such
24 corporation, personally without the state. Proof of such personal
25 service without the state shall be filed with the clerk of the court in
26 which the action is pending within thirty days after such service, and
27 such service shall be complete ten days after proof thereof is filed.

28 § 11-660 Limitations of time. The provisions of the civil practice law
29 and rules relative to the limitation of time enforcing a civil remedy
30 shall not apply to any proceeding or action taken to levy, appraise,
31 assess, determine or enforce the collection of any tax or penalty
32 prescribed by this subchapter, provided, however, that as to real estate
33 in the hands of persons who are owners thereof who would be purchasers
34 in good faith but for such tax or penalty and as to the lien on real
35 estate of mortgages held by persons who would be holders thereof in good
36 faith but for such tax or penalty, all such taxes and penalties shall
37 cease to be a lien on such real estate as against such purchasers or
38 holders after the expiration of ten years from the date such taxes
39 became due and payable. The limitations herein provided for shall not
40 apply to any transfer from a corporation to a person or corporation with
41 intent to avoid payment of any taxes, or where with like intent the
42 transfer is made to a grantee corporation, or any subsequent grantee
43 corporation, controlled by such grantor or which has any community of
44 interest with it, either through stock ownership or otherwise.

45
46

SUBCHAPTER 4
TRANSPORTATION CORPORATION TAX

47 § 11-662 Tax on transportation corporations and associations. 1.
48 The term "corporation" as used in this subchapter shall include any
49 business conducted by a trustee or trustees wherein interest or owner-
50 ship is evidenced by certificates or other written instruments.
51 2. For the privilege of doing business or holding property in the
52 city every corporation, joint-stock company or association formed for or
53 principally engaged in the conduct of aviation, steamboat, ferry, except
54 a ferry company operating between the city of Staten Island and any of

1 the boroughs of the city of New York under a lease granted by the city
2 of New York, or navigation business, or formed for or principally
3 engaged in the conduct of two or more of such businesses, except a
4 corporation, joint-stock company or association subject to taxation
5 under chapter eleven of this title, shall pay, in advance, an annual tax
6 to be computed upon the basis of the amount of its capital stock within
7 the city during the preceding year, and upon each dollar of such amount.

8 3. The measure of the amount of capital stock in the city, except as
9 hereinafter provided, shall be such a portion of the issued capital
10 stock as the gross assets, exclusive of obligations issued by the United
11 States and cash on hand and on deposit, employed in any business within
12 the city, bear to the gross assets, exclusive of obligations issued by
13 the United States and cash on hand and on deposit, wherever employed in
14 business. Provided, however, that in the case of a corporation taxable
15 hereunder only for the privilege of holding property, the measure shall
16 be such a portion of the issued capital stock as the gross assets,
17 exclusive of obligations issued by the United States and cash on hand
18 and on deposit, located within the city, bear to the gross assets,
19 exclusive of obligations issued by the United States and cash on hand
20 and on deposit, wherever located. The capital of a corporation invested
21 in the stock of another corporation shall be deemed to be assets located
22 where the assets of the issuing corporation, other than patents, copy-
23 rights, trademarks, contracts and good will, are located.

24 4. Every corporation, joint-stock company or association subject to
25 taxation under this section shall, in any event, pay annually, for taxa-
26 ble years ending on or before December thirty-first, nineteen hundred
27 seventy-four, a minimum tax of not less than ten dollars nor less than
28 one mill, and for taxable years beginning on or after January first,
29 nineteen hundred seventy-five, a minimum tax of not less than fifteen
30 dollars nor less than one and one-half mills, on each dollar of such a
31 portion of the net value of its issued capital stock, which net value
32 for the purposes of this section shall be deemed to be not less than
33 five dollars per share, as may be determined upon such of the bases
34 herein provided for the measurement thereof as is applicable. The term
35 "net value" as used in this section shall be construed to mean not less
36 than the difference between a corporation's assets and liabilities, and
37 not less than the average price at which such stock sold during the year
38 covered by the report which forms the basis for the tax. But if the
39 dividends paid on the par value of any kind of capital stock during any
40 year ending with the thirty-first day of December amounts to six or more
41 than six per centum, the tax upon such kind of capital stock shall be at
42 the rate of one-quarter of a mill for taxable years ending on or before
43 December thirty-first, nineteen hundred seventy-four, and at the rate of
44 four-tenths of a mill for taxable years beginning on or after January
45 first, nineteen hundred seventy-five for each one per centum of divi-
46 dends paid and shall be computed upon the par value of such capital
47 stock, unless such a tax be less than the minimum tax hereinbefore
48 provided in this section and the commissioner of finance shall, for such
49 purpose, make a fair and equitable apportionment of the assets of the
50 corporation, joint-stock company or association, between or among the
51 different kinds of stock.

52 5. If such corporation, joint-stock company or association shall have
53 more than one kind of capital stock, and upon one of such kinds of stock
54 a dividend or dividends amounting to six or more than six per centum
55 upon the par value thereof, has been paid, and upon the other no divi-
56 dend has been paid, or the dividend or dividends paid thereon amount to

1 less than six per centum upon the par value thereof, then the tax shall
2 be fixed upon each kind as hereinbefore provided.

3 6. The dividend rate for a corporation having stock without nominal or
4 par value shall be determined by dividing the amount paid as a dividend
5 or dividends during the year by the amount paid in on such stock and, if
6 the rate is six per centum or more, then for taxable years ending on or
7 before December thirty-first, nineteen hundred seventy-four, the rate of
8 one-quarter of a mill for each one per centum of dividends shall be
9 applied to the amount paid in on such stock, and for taxable years
10 beginning on or after January first, nineteen hundred seventy-five, the
11 rate of four-tenths of a mill for each one per centum of dividends shall
12 be applied to the amount paid in on such stock, unless such tax be less
13 than the minimum tax hereinbefore in this section provided for. Any
14 consideration given by a corporation for the purchase of its own stock
15 in excess of the consideration received by it for the issuance of such
16 stock shall for the purposes of this section, be considered as a divi-
17 dend.

18 7. The owning or holding in the city by any corporation of property,
19 other than property exclusively in interstate or foreign commerce, shall
20 constitute carrying on business within the city within the intent of
21 this section, except that a corporation having no property in the city
22 other than a bank balance or stocks or bonds, or one or more of such
23 kinds of property, either held for safe keeping or pledged as collateral
24 security shall not be taxable under this section, and further provided
25 that any corporation having only office furniture or fixtures, a bank
26 balance, and stocks or bonds pledged as collateral security or merely
27 deposited for safe keeping, shall not be taxable under this section.

28 8. The measure of the amount of capital stock in the city of an
29 aviation corporation shall be a portion of the issued capital stock
30 determined by applying thereto the arithmetical average of the following
31 three ratios: (a) the ratio which the aircraft arrivals and departures
32 within the city scheduled by any such corporation during the preceding
33 calendar year bear to the total aircraft arrivals and departures within
34 and without the city scheduled by it during the same period, provided
35 that in the case of non-scheduled operations all arrivals and departures
36 shall be substituted for scheduled arrivals and departures; (b) the
37 ratio which the revenue tons handled by such corporation at airports
38 within the city during the preceding calendar year bear to the total
39 revenue tons handled by it at airports within and without the city
40 during the same period; and (c) the ratio which such corporation's orig-
41 inating revenue within the city for the preceding calendar years bears
42 to its total originating revenue within and without the city for the
43 same period. As used in this section, the term "aircraft arrivals and
44 departures" means the number of scheduled landings and takeoffs of the
45 aircraft of an aviation corporation, and the number of scheduled air
46 pickups and deliveries by the aircraft of such corporation, and in the
47 case of non-scheduled operations shall include all landings and
48 takeoffs, pickups and deliveries; the term "originating revenue" means
49 revenue to any such corporation from the transportation of revenue
50 passengers and revenue property first received by such corporation
51 either as originating or connecting traffic at airports; and the term
52 "revenue tons handled" by any such corporation at an airport means the
53 weight in tons of revenue passengers, at two hundred pounds per passen-
54 ger, and revenue cargo first received either as originating or connect-
55 ing traffic or finally discharged by such corporation at such airport.

1 9. The measure of the capital stock in the city of a corporation
2 engaged in the operation of vessels in foreign commerce shall be such
3 portion of the issued capital stock as the aggregate number of working
4 days in territorial waters of the city of all such vessels bears to the
5 aggregate number of working days of all such vessels. The dividend rate
6 for such a corporation shall be determined by dividing the amount paid
7 as a dividend or dividends on all classes of stock during the year by
8 the amount of paid-in capital and, if the rate is six per centum or
9 more, then for taxable years ending on or before December thirty-first,
10 nineteen hundred seventy-four, the rate of one-quarter of a mill for
11 each one per centum of dividends shall be applied to the amount of such
12 paid-in capital, and for taxable years beginning on or after January
13 first, nineteen hundred seventy-five, the rate of four-tenths of a mill
14 for each one per centum of dividends shall be applied to the amount of
15 such paid-in capital.

16 § 11-663 Additional tax on transportation corporations and associ-
17 ations. Every corporation, joint-stock company or association formed
18 for or principally engaged in the conduct of aviation, steamboat, ferry,
19 except a ferry company operating between the city of Staten Island and
20 any of the boroughs of the city of New York under a lease granted by the
21 city of New York, or navigation business or formed for or principally
22 engaged in the conduct of two or more of such businesses, except a
23 corporation, joint-stock company or association subject to taxation
24 under chapter eleven of this title, shall pay for the privilege of
25 carrying on its business in the city, a tax which shall be equal to
26 five-tenths of one per centum for taxable years ending on or before
27 December thirty-first, nineteen hundred seventy-four, and seventy-five
28 hundredths of one per centum for taxable years beginning on or after
29 January first, nineteen hundred seventy-five upon its gross earnings
30 from all sources within the city, excluding earnings derived from busi-
31 ness of a character other than wholly intra-city. Provided, however,
32 gross earnings from transportation business both originating and termi-
33 nating within the city and traversing both the city and any other city,
34 any state or states or any country shall be subject to the tax imposed
35 by this section and such earnings shall be allocated to the city in the
36 same ratio that the mileage within the city bears to the total mileage
37 of such business.

38 § 11-664 Receivers, etc., conducting corporate business. Any receiv-
39 er, liquidator, referee, trustee, assignee, or other fiduciary or offi-
40 cer or agent appointed by any court, who conducts the business of any
41 corporation, joint-stock company or association shall be subject to the
42 tax or taxes imposed by this subchapter in the same manner and to the
43 same extent as if the business were conducted by the agents or officers
44 of such corporation, joint-stock company or association. A dissolved
45 corporation, joint-stock company or association which continues to
46 conduct business shall also be subjected to the tax imposed by this
47 subchapter.

48 § 11-665 Service of process; limitation of time. 1. Every foreign
49 corporation, other than a moneyed corporation, subject to the provisions
50 of this subchapter, except a corporation having authority to do business
51 by virtue of section thirteen hundred five of the business corporation
52 law, shall file in the department of state a certificate of designation
53 in its corporate name, signed and acknowledged by its president or vice-
54 president or its secretary or treasurer, under its corporate seal,
55 designating the secretary of state as its agent upon whom process in any
56 action provided for by this subchapter or subchapter five of this chap-

1 ter may be served within this state, and setting forth an address to
2 which the secretary of state shall mail a copy of any such process
3 against the corporation which may be served upon the secretary of state.
4 In case any such corporation shall have failed to file such certificate
5 of designation, it shall be deemed to have designated the secretary of
6 state as its agent upon whom such process against it may be served; and
7 until a certificate of designation shall have been filed the corporation
8 shall be deemed to have directed the secretary of state to mail copies
9 of process served upon the secretary of state to the corporation at its
10 last known office address within or without the state. When a certif-
11 icate of designation has been filed by such corporation the secretary of
12 state shall mail copies of process thereafter served upon the secretary
13 of state to the address set forth in such certificate. Any such corpo-
14 ration, from time to time, may change the address to which the secretary
15 of state is directed to mail copies of process, by filing a certificate
16 to that effect executed, signed and acknowledged in like manner as a
17 certificate of designation as herein provided. Service of process upon
18 any such corporation or upon any corporation having authority to do
19 business by virtue of section thirteen hundred five of the business
20 corporation law, in any action commenced at any time pursuant to the
21 provisions of this subchapter or subchapter five of this chapter may be
22 made by either: (1) personally delivering to and leaving with the secre-
23 tary of state, a deputy secretary of state or with any person authorized
24 by the secretary of state to receive such service duplicate copies ther-
25 eof at the office of the department of state in the city of Albany, in
26 which event the secretary of state shall forthwith send by registered
27 mail, return receipt requested, one of such copies to the corporation at
28 the address designated by it or at its last known office address within
29 or without the state, or (2) personally delivering to and leaving with
30 the secretary of state, a deputy secretary of state or with any person
31 authorized by the secretary of state to receive such service, a copy
32 thereof at the office of the department of state in the city of Albany
33 and by delivering a copy hereof to, and leaving such copy with, the
34 president, vice-president, secretary, assistant secretary, treasurer,
35 assistant treasurer, or cashier of such corporation, or the officer
36 performing corresponding functions under another name, or a director or
37 managing agent of such corporation, personally without the state. Proof
38 of such personal service without the state shall be filed with the clerk
39 of the court in which the action is pending within thirty days after
40 such service, and such service shall be complete ten days after proof
41 thereof is filed.

42 2. The provisions of the civil practice law and rules relative to the
43 limitation of time of enforcing a civil remedy shall not apply to any
44 proceeding or action taken to levy, appraise, assess, determine or
45 enforce the collection of any tax or penalty prescribed by this subchap-
46 ter or subchapter five of this chapter, provided, however, that as to
47 real estate in the hands of persons who are owners thereof who would be
48 purchasers in good faith but for such tax or penalty and as to the lien
49 on real estate of mortgages held by persons who would be holders thereof
50 in good faith but for such tax or penalty, all such taxes and penalties
51 shall cease to be a lien on such real estate as against such purchasers
52 or holders after the expiration of ten years from the date such taxes
53 become due and payable. The limitations provided for in this subdivi-
54 sion shall not apply to any transfer from a corporation to a person or
55 corporation with intent to avoid payment of any taxes, or where with
56 like intent the transfer is made to a grantee corporation, or any subse-

1 quent grantee corporation controlled by such grantor or which has any
2 community of interest with it, either through stock ownership or other-
3 wise.

4 § 11-666 Exemption of corporations owned by a municipality. The
5 provisions of this subchapter shall not apply to any corporation all of
6 the capital stock of which is owned by a municipal corporation of this
7 state.

8 § 11-667 Reports of corporations. Corporations liable to pay a tax
9 under this subchapter shall report as follows:

10 1. Every corporation, association or joint-stock company liable to pay
11 a tax under section 11-662 of this subchapter shall, on or before March
12 first in each year, make a written report to the commissioner of finance
13 of its condition at the close of its business on the preceding December
14 thirty-first, stating the amount of its authorized capital stock, the
15 amount of stock paid-in, the date and rate per centum of each dividend
16 paid by it during the year ending with such day, the entire amount of
17 the capital of such corporation, and the capital employed by it in the
18 city during such year.

19 2. Every corporation, joint-stock company or association liable to pay
20 an additional tax under section 11-663 of this subchapter shall also, on
21 or before February fifteenth, May fifteenth, August fifteenth and Novem-
22 ber fifteenth in each year, make a written report to the commissioner of
23 finance of the amount of its gross earnings subject to the tax imposed
24 by said section for the quarter year ended on the last day of the second
25 month preceding that in which the report is required to be filed. Any
26 such corporation, joint-stock company or association which ceases to be
27 subject to the tax imposed by section 11-663 of this subchapter by
28 reason of a liquidation, dissolution, merger or consolidation with any
29 other corporation, or any other cause, shall, on the date of such cessa-
30 tion or at such other time as the commissioner of finance may require,
31 make a written report to the commissioner of finance of the amount of
32 its gross earnings subject to the tax imposed by section 11-663 of this
33 subchapter for any period for which no report was therefor filed.

34 3. The commissioner of finance may for good cause shown extend the
35 time within which any corporation is required to report by this subchap-
36 ter.

37 4. Every report required by this subchapter shall have annexed thereto
38 a certification by the president, vice-president, treasurer, assistant
39 treasurer, or chief accounting officer or any other officer of the
40 corporation, association or joint-stock company duly authorized so to
41 act, or of the person or one of the persons, or the members of the part-
42 nership making the same, to the effect that the statements contained
43 therein are true. The fact that an individual's name is signed on a
44 certification attached to a corporate report shall be prima facie
45 evidence that such individual is authorized to certify the report on
46 behalf of the corporation. Such reports shall contain any other data,
47 information or matter which the commissioner of finance may require to
48 be included therein, and it may prescribe the form in which such reports
49 shall be made. When so prescribed such forms shall be used in making
50 the report. The commissioner of finance may require at any time a
51 further or supplemental report under this subchapter which shall contain
52 information and data upon such matters as the commissioner of finance
53 may specify. Reports shall be preserved for five years, and thereafter
54 until the commissioner of finance orders them to be destroyed.

55 § 11-668 Payment of tax and penalties. 1. The taxes imposed by
56 sections 11-662 and 11-663 of this subchapter shall be due and payable

1 at the time of the filing of the report required by section 11-667 of
2 this subchapter or, in case such a report is not filed when due, on the
3 last day specified for the filing thereof, except that the tax upon
4 dividends imposed by section 11-663 of this subchapter shall be due and
5 payable at the time of filing the report for the period ending June
6 thirtieth, or, in case such report is not filed when due, on the last
7 day specified for the filing thereof.

8 2. Where an application for consent to dissolution, as provided by
9 section one thousand four of the business corporation law, is filed with
10 the commissioner of finance prior to the commencement of any tax year or
11 period by a corporation subject to tax under this subchapter, such
12 corporation shall not be liable for any tax imposed by this subchapter
13 for such following year or period, except as may be otherwise provided
14 in section 11-664 of this subchapter, provided that the certificate of
15 dissolution for such corporation is duly filed in the office of the
16 secretary of state within twenty days after the filing of such applica-
17 tion.

18 3. Notwithstanding any other provision of this subchapter, the commis-
19 sioner of finance may grant a reasonable extension of time for payment
20 of any tax imposed by this subchapter under such conditions as the
21 commissioner deems just and proper.

22 § 11-669 Taxable years to which taxes apply. The taxes imposed by
23 this subchapter are imposed for each taxable year or period beginning
24 with taxable years or periods ending in or with the calendar year nine-
25 teen hundred sixty-six, provided, however, no tax shall be imposed
26 pursuant to this subchapter for any taxable year or period ending after
27 December thirty-first, nineteen hundred eighty-eight.

28 § 11-670 First reports for payments for nineteen hundred sixty-six.
29 If any report under this subchapter is due prior to September eleventh,
30 nineteen hundred sixty-six, such report and the payments therewith shall
31 be filed and paid by such date.

32 SUBCHAPTER 5
33 CORPORATE TAX PROCEDURE AND ADMINISTRATION

34 § 11-671 Application of subchapter. 1. General. The provisions of
35 this subchapter shall apply to the administration of and the procedures
36 with respect to the taxes imposed by subchapters two, three, three-A and
37 four of this chapter.

38 2. Definitions. As used in this subchapter: (a) the term "named
39 subchapters" means subchapters two, three, three-A and four of this
40 chapter;

41 (b) The term "return" means a report or return of tax, but does not
42 include a declaration of estimated tax;

43 (c) The term "corporation" includes a corporation, association, joint-
44 stock company or other entity subject to tax under any of the named
45 subchapters; and

46 (d) The term "person" includes a corporation, association, company,
47 partnership, estate, trust, liquidator, fiduciary or other entity or
48 individual liable for the tax imposed by any of the named subchapters or
49 under a duty to perform an act under any of the named subchapters. Upon
50 notice to the commissioner of finance that any person is acting for any
51 corporation in a fiduciary capacity, such fiduciary shall assume the
52 powers, rights, duties and privileges of such corporation in respect of
53 a tax imposed by any of the named subchapters, except as otherwise
54 specifically provided and except that the tax shall be collected from

1 the estate or other assets of such corporation in the hands of such
2 fiduciary, until notice is given that the fiduciary capacity has termi-
3 nated.

4 § 11-672 Notice of deficiency. 1. General. If upon examination of a
5 taxpayer's return, the commissioner of finance determines that there is
6 a deficiency of tax, the commissioner may mail a notice of deficiency to
7 the taxpayer. If a taxpayer fails to file a tax return, the commissioner
8 of finance is authorized to estimate the taxpayer's city tax liability
9 from any information in the commissioner's possession, and to mail a
10 notice of deficiency to the taxpayer. A notice of deficiency shall be
11 mailed by certified or registered mail to the taxpayer, at its last
12 known address in or out of the city. If the taxpayer has terminated its
13 existence, a notice of deficiency may be mailed to its last known
14 address in or out of the city, and such notice shall be sufficient for
15 purposes of this subchapter. If the commissioner of finance has received
16 notice that a person is acting for the taxpayer in a fiduciary capacity,
17 a copy of such notice shall also be mailed to the fiduciary named in
18 such notice.

19 2. Notice of deficiency as assessment. After ninety days from the
20 mailing of a notice of deficiency or, if the commissioner of finance has
21 established a conciliation procedure pursuant to section 11-124 of this
22 title and the taxpayer has requested a conciliation conference in
23 accordance therewith, after ninety days from the mailing of the concil-
24 iation decision or the date of the commissioner's confirmation of the
25 discontinuance of the conciliation proceeding, such notice shall be an
26 assessment of the amount of tax specified therein, together with the
27 interest, additions to tax and penalties stated in such notice, except
28 only for any such tax or other amounts as to which the taxpayer has
29 within such ninety day period filed with the tax appeals tribunal a
30 petition under section 11-680 of this subchapter. If the notice of defi-
31 ciency or conciliation decision is addressed to a taxpayer whose last
32 known address is outside of the United States, such period shall be one
33 hundred fifty days instead of ninety days.

34 3. Restrictions on assessment and levy. No assessment of a deficiency
35 in tax and no levy or proceeding in court for its collection shall be
36 made, begun or prosecuted, except as otherwise provided in section
37 11-685 of this subchapter, until a notice of deficiency has been mailed
38 to the taxpayer, nor until the expiration of the time for filing a peti-
39 tion with the tax appeals tribunal contesting such notice, nor, if a
40 petition with respect to the taxable year has been both served on the
41 commissioner of finance and filed with the tax appeals tribunal, until
42 the decision of the tax appeals tribunal has become final. For excep-
43 tion in the case of judicial review of the decision of the tax appeals
44 tribunal, see subdivision three of section 11-681 of this subchapter.

45 4. Exceptions for mathematical errors. If a mathematical error appears
46 on a return, including an overstatement of the amount paid as estimated
47 tax, the commissioner of finance shall notify the taxpayer that an
48 amount of tax in excess of that shown upon the return is due, and that
49 such excess has been assessed. Such notice shall not be considered as a
50 notice of deficiency for the purposes of this section, subdivision six
51 of section 11-678, limiting credits or refunds after petition to the tax
52 appeals tribunal, or subdivision two of section 11-680 of this subchap-
53 ter, authorizing the filing of a petition with the tax appeals tribunal
54 based on a notice of deficiency, nor shall such assessment or collection
55 be prohibited by the provisions of subdivision three of this section.

1 5. Exception where federal or New York state change or correction is
2 not reported.

3 (a) If the taxpayer fails to comply with subchapter two, three or
4 three-A of this chapter in not reporting a change or correction or rene-
5 gotiation, or computation or recomputation of tax, increasing or
6 decreasing its federal or New York state taxable income, alternative
7 minimum taxable income or other basis of tax as reported on its federal
8 or New York state income tax return or in not reporting a change or
9 correction or renegotiation, or computation or recomputation of tax,
10 which is treated in the same manner as if it were a deficiency for
11 federal or New York state income tax purposes or in not filing an
12 amended return or in not reporting the execution of a notice of waiver
13 executed pursuant to subsection (d) of section six thousand two hundred
14 thirteen of the internal revenue code or pursuant to subdivision (f) of
15 section one thousand eighty-one of the tax law, instead of the mode and
16 time of assessment provided for in subdivision two of this section, the
17 commissioner of finance may assess a deficiency based upon such
18 increased or decreased federal or New York state taxable income, alter-
19 native minimum taxable income or other basis of tax by mailing to the
20 taxpayer a notice of additional tax due specifying the amount of the
21 deficiency, and such deficiency, together with the interest, additions
22 to tax and penalties stated in such notice, shall be deemed assessed on
23 the date such notice is mailed unless within thirty days after the mail-
24 ing of such notice a report of the federal or New York state change or
25 correction or renegotiation, or computation or recomputation of tax, or
26 an amended return, where such return was required by subchapter two or
27 three of this chapter, is filed accompanied by a statement showing wher-
28 ein such federal or New York state determination and such notice of
29 additional tax due are erroneous.

30 (b) Such notice shall not be considered as a notice of deficiency for
31 the purposes of this section, subdivision six of section 11-678, limit-
32 ing credits or refunds after petition to the tax appeals tribunal, or
33 subdivision two of section 11-680 of this subchapter, authorizing the
34 filing of a petition with the tax appeals tribunal based on a notice of
35 deficiency, nor shall such assessment or the collection thereof be
36 prohibited by the provisions of subdivision three of this section.

37 (c) If the taxpayer has terminated its existence, a notice of addi-
38 tional tax due may be mailed to the taxpayer's last known address in or
39 out of the city, and such notice shall be sufficient for purposes of
40 this subchapter. If the commissioner of finance has received notice that
41 a person is acting for the taxpayer in a fiduciary capacity, a copy of
42 such notice shall also be mailed to the fiduciary named in such notice.

43 6. Waiver of restrictions. The taxpayer shall at any time, whether or
44 not a notice of deficiency has been issued, have the right to waive the
45 restrictions on assessment and collection of the whole or any part of
46 the deficiency by a signed notice in writing filed with the commissioner
47 of finance.

48 7. Two or more corporations. In case of a combined return under
49 subchapter two or three-A or a consolidated return under subchapter
50 three of two or more corporations, the commissioner of finance may
51 determine a deficiency of tax under subchapter two, three or three-A of
52 this chapter with respect to the entire tax due upon such return against
53 any taxpayer included therein. In the case of a taxpayer which might
54 have been included in such a return under subchapter two, three or
55 three-A of this chapter when the tax was originally reported, the
56 commissioner of finance may determine a deficiency of tax under subchap-

1 ter two, three or three-A of this chapter against such taxpayer and
2 against any other taxpayers which might have been included in such a
3 return.

4 8. Deficiency defined. For the purposes of this subchapter, a defi-
5 ciency means the amount of the tax imposed by the named subchapters, or
6 any of them, less: (a) the amount shown as the tax upon the taxpayer's
7 return, whether the return was made or the tax computed by it or by the
8 commissioner of finance, and less (b) the amounts previously assessed,
9 or collected without assessment, as a deficiency and plus (c) the amount
10 of any rebates. For the purpose of this definition, the tax imposed by
11 subchapter two, three or three-A of this chapter and the tax shown on
12 the return shall both be determined without regard to any payment of
13 estimated tax; and a rebate means so much of an abatement, credit,
14 refund or other repayment, whether or not erroneous, as was made on the
15 ground that the amounts entering into the definition of a deficiency
16 showed a balance in favor of the taxpayer.

17 9. Exception where change or correction of sales and compensating use
18 tax liability is not reported.

19 (a) If a taxpayer fails to comply with subchapter two or three-A of
20 this chapter in not reporting a change or correction of its sales and
21 compensating use tax liability or in not filing a copy of an amended
22 return or report relating to its sales and compensating use tax liabil-
23 ity, instead of the mode and time of assessment provided for in subdivi-
24 sion two of this section, the commissioner of finance may assess a defi-
25 ciency based upon such changed or corrected sales and compensating use
26 tax liability, as same relates to credits claimed under subchapter two
27 or three-A of this chapter, by mailing to the taxpayer a notice of addi-
28 tional tax due specifying the amount of the deficiency, and such defi-
29 ciency, together with the interest, additions to tax and penalties stat-
30 ed in such notice, shall be deemed assessed on the date such notice is
31 mailed unless within thirty days after the mailing of such notice a
32 report of the state change or correction or a copy of an amended return
33 or report, where such copy was required by subchapter two or three-A, is
34 filed accompanied by a statement showing wherein such state determi-
35 nation and such notice of additional tax due are erroneous.

36 (b) Such notice shall not be considered as a notice of deficiency for
37 the purposes of this section, subdivision six of section 11-678, limit-
38 ing credits or refunds after petition to the tax appeals tribunal, or
39 subdivision two of section 11-680, authorizing the filing of a petition
40 with the tax appeals tribunal based on a notice of deficiency, nor shall
41 such assessment or the collection thereof be prohibited by the
42 provisions of subdivision three of this section.

43 (c) If the taxpayer has terminated its existence, a notice of addi-
44 tional tax due may be mailed to its last known address in or out of the
45 city, and such notice shall be sufficient for purposes of this subchap-
46 ter. If the commissioner of finance has received notice that a person is
47 acting for the taxpayer in a fiduciary capacity, a copy of such notice
48 shall also be mailed to the fiduciary named in such notice.

49 § 11-673 Assessment. 1. Assessment date. The amount of tax which a
50 return shows to be due, or the amount of tax which a return would have
51 shown to be due but for a mathematical error, shall be deemed to be
52 assessed on the date of filing of the return, including any amended
53 return showing an increase of tax. If a notice of deficiency has been
54 mailed, the amount of the deficiency shall be deemed to be assessed on
55 the date specified in subdivision two of section 11-672 of this subchap-
56 ter if no petition is both served on the commissioner of finance and

1 filed with the tax appeals tribunal, or if a petition is so served and
2 filed, then upon the date when a decision of the tax appeals tribunal
3 establishing the amount of the deficiency becomes final. If a report or
4 an amended return filed pursuant to subchapter two, three or three-A of
5 this chapter concedes the accuracy of a federal or New York state
6 adjustment or change or correction or renegotiation or computation or
7 recomputation of tax, any deficiency in tax under subchapter two, three
8 or three-A of this chapter resulting therefrom shall be deemed to be
9 assessed on the date of filing such report or amended return, and such
10 assessment shall be timely notwithstanding section 11-674 of this
11 subchapter.

12 If a report filed pursuant to subchapter two of this chapter concedes
13 the accuracy of a state change or correction of sales and compensating
14 use tax liability, any deficiency in tax under subchapter two or three-A
15 of this chapter resulting therefrom shall be deemed assessed on the date
16 of filing such report, and such assessment shall be timely notwithstand-
17 ing section 11-674 of this subchapter.

18 If a notice of additional tax due, as prescribed in subdivision five
19 of section 11-672 of this subchapter, has been mailed, the amount of the
20 deficiency shall be deemed to be assessed on the date specified in such
21 subdivision unless within thirty days after the mailing of such notice a
22 report of the federal or New York state adjustment or change or
23 correction or renegotiation or computation or recomputation of tax, or
24 an amended return, where such return was required by subchapter two,
25 three or three-A of this chapter, is filed accompanied by a statement
26 showing wherein such federal or New York state determination and such
27 notice of additional tax due are erroneous.

28 If a notice of additional tax due, as prescribed in subdivision nine
29 of section 11-672 of this subchapter, has been mailed, the amount of the
30 deficiency shall be deemed to be assessed on the date specified in such
31 subdivision unless within thirty days after the mailing of such notice a
32 report of the state change or correction, or a copy of an amended return
33 or report, where such copy was required by subchapter two or three-A of
34 this chapter, is filed accompanied by a statement showing wherein such
35 state determination and such notice of additional tax due are erroneous.

36 Any amount paid as a tax or in respect of a tax, other than amounts
37 paid as estimated tax, shall be deemed to be assessed upon the date of
38 receipt of payment notwithstanding any other provisions.

39 2. Other assessment powers. If the mode or time for the assessment of
40 any tax under the named subchapters, including interest, additions to
41 tax and assessable penalties, is not otherwise provided for, the commis-
42 sioner of finance may establish the same by regulations.

43 3. Estimated tax. No unpaid amount of estimated tax under subchapter
44 two, three or three-A of this chapter shall be assessed.

45 4. Supplemental assessment. The commissioner of finance may, at any
46 time within the period described for assessment, make a supplemental
47 assessment, subject to the provisions of section 11-672 of this subchap-
48 ter where applicable, whenever it is ascertained that any assessment is
49 imperfect or incomplete in any material respect.

50 5. Cross reference. For assessment in case of jeopardy, see section
51 11-685 of this subchapter.

52 § 11-674 Limitations on assessment. 1. General. Except as otherwise
53 provided in this section, any tax under the named subchapters shall be
54 assessed within three years after the return was filed, whether or not
55 such return was filed on or after the date prescribed.

1 2. Time return deemed filed. For the purposes of this section, a
2 return of tax filed before the last day prescribed by law or by regu-
3 lations promulgated pursuant to law for the filing thereof shall be
4 deemed to be filed on such last day.

5 3. Exceptions.

6 (a) Assessment at any time. The tax may be assessed at any time if:

7 (1) no return is filed,

8 (2) a false or fraudulent return is filed with intent to evade tax,

9 (3) in the case of the tax imposed under subchapter two, three or
10 three-A of this chapter, the taxpayer fails to file a report or amended
11 return required thereunder, in respect of an increase or decrease in
12 federal or New York state taxable income, alternative minimum taxable
13 income or other basis of tax or federal or New York state tax, or in
14 respect of a change or correction or renegotiation or in respect of the
15 execution of a notice of waiver report of which is required thereunder,
16 or computation or recomputation of tax, which is treated in the same
17 manner as if it were a deficiency for federal or New York state income
18 tax purposes, or

19 (4) in the case of the tax imposed under subchapter two or three-A of
20 this chapter, the taxpayer fails to file a report or amended return or
21 report required thereunder, in respect of a change or correction of
22 sales and compensating use tax liability, relating to the purchase or
23 use of items for which a sales or compensating use tax credit against
24 the tax imposed by subchapter two or three-A was claimed.

25 (b) Extension by agreement. Where, before the expiration of the time
26 prescribed in this section for the assessment of tax, both the commis-
27 sioner of finance and the taxpayer have consented in writing to its
28 assessment after such time, the tax may be assessed at any time prior to
29 the expiration of the period agreed upon. The period so agreed upon may
30 be extended by subsequent agreements in writing made before the expira-
31 tion of the period previously agreed upon.

32 (c) Report of federal or New York state change or correction. In the
33 case of the tax imposed under subchapter two, three or three-A of this
34 chapter, if the taxpayer files a report or amended return required ther-
35 eunder, in respect of an increase or decrease in federal or New York
36 state taxable income, alternative minimum taxable income or other basis
37 of tax or federal or New York state tax, or in respect of a change or
38 correction or renegotiation, or in respect of the execution of a notice
39 of waiver report of which is required thereunder, or computation or
40 recomputation of tax, which is treated in the same manner as if it were
41 a deficiency for federal or New York state income tax purposes, the
42 assessment, if not deemed to have been made upon the filing of the
43 report or amended return may be made at any time within two years after
44 such report or amended return was filed. The amount of such assessment
45 of tax shall not exceed the amount of the increase in city tax attribut-
46 able to such federal or New York state change or correction or renegoti-
47 ation, or computation or recomputation of tax. The provisions of this
48 paragraph shall not affect the time within which or the amount for which
49 an assessment may otherwise be made.

50 (d) Deficiency attributable to net operating loss carryback. If a
51 deficiency of tax under subchapter two or three-A of this chapter is
52 attributable to the application to taxpayer of a net operating loss
53 carryback or a capital loss carryback, it may be assessed at any time
54 that a deficiency for the taxable year of the loss may be assessed.

55 (e) Recovery of erroneous refund. An erroneous refund shall be
56 considered an underpayment of tax on the date made, and an assessment of

1 a deficiency arising out of an erroneous refund may be made at any time
2 within two years from the making of the refund, except that the assess-
3 ment may be made within five years from the making of the refund if it
4 appears that any part of the refund was induced by fraud or misrepresen-
5 tation of a material fact.

6 (f) Request for prompt assessment. The tax shall be assessed within
7 eighteen months after written request therefor, made after the return is
8 filed, by the taxpayer or by a fiduciary representing the taxpayer, but
9 not more than three years after the return was filed, except as other-
10 wise provided in this subdivision and subdivision four of this section.
11 This subdivision shall not apply unless:

12 (1) (A) such written request notifies the commissioner of finance that
13 the taxpayer contemplates dissolution at or before the expiration of
14 such eighteen-month period, (B) the dissolution is in good faith begun
15 before the expiration of such eighteen-month period, (C) the dissolution
16 is completed;

17 (2) (A) such written request notifies the commissioner of finance that
18 a dissolution has in good faith been begun, and (B) the dissolution is
19 completed; or

20 (3) a dissolution has been completed at the time such written request
21 is made.

22 (g) Change of the allocation of taxpayer's income or capital. (1)
23 With regard to taxable years beginning before January first, two thou-
24 sand fifteen, no change of the allocation of income or capital upon
25 which the taxpayer's return, or any additional assessment, was based
26 shall be made where an assessment of tax is made during the additional
27 period of limitation under subparagraph three or four of paragraph (a)
28 of this subdivision, or under paragraph (c), (d) or (i) of this subdivi-
29 sion; and where any such assessment has been made, or where a notice of
30 deficiency has been mailed to the taxpayer on the basis of any such
31 proposed assessment, no change of the allocation of income or capital
32 shall be made in a proceeding on the taxpayer's claim for refund of such
33 assessment or on the taxpayer's petition for redetermination of such
34 deficiency.

35 (2) With regard to taxable years beginning on or after January first,
36 two thousand fifteen, no change of the allocation of income or capital
37 upon which the taxpayer's return, or any additional assessment, was
38 based shall be made where an assessment of tax is made during the addi-
39 tional period of limitation under subparagraph three or four of para-
40 graph (a) or under paragraph (c), (d) or (i) of this subdivision, except
41 to the extent such assessment is based on an increase or decrease in New
42 York state taxable income or other basis of tax or New York state tax,
43 or based on a change, correction or renegotiation of tax, or based on
44 the execution of a notice of waiver report which is required there-
45 under, or computation or recomputation of tax, which is treated in the
46 same manner as if it were a deficiency for New York state income tax
47 purposes; and where any such assessment has been made, or where a notice
48 of deficiency has been mailed to the taxpayer on the basis of any such
49 proposed assessment, no change of the allocation of income or capital
50 shall be made in a proceeding on the taxpayer's claim for refund of
51 such assessment or on the taxpayer's petition for redetermination of
52 such deficiency, except to the extent such assessment is based on an
53 increase or decrease in New York state taxable income or other basis of
54 tax or New York state tax, or based on a change or correction or renego-
55 tiation of tax, or based on the execution of a notice of waiver report
56 which is required thereunder, or computation or recomputation of tax,

1 which is treated in the same manner as if it were an overpayment for New
2 York state income tax purposes.

3 (h) Report concerning waste treatment facility. Under the circum-
4 stances described in subparagraph three of paragraph (g) of subdivision
5 eight of section 11-602 of this chapter or in subparagraph three of
6 paragraph (g) of subdivision eight of section 11-652 of this chapter,
7 the tax may be assessed within three years after the filing of the
8 report containing the information required by such paragraph.

9 (i) Report of changed or corrected sales and compensating use tax
10 liability. In the case of a tax imposed under subchapter two or three-A
11 of this chapter, if the taxpayer files a report or amended return or
12 report required thereunder, in respect of a change or correction of
13 sales and compensating use tax liability, the assessment, if not deemed
14 to have been made upon the filing of the report, may be made at any time
15 within two years after such report or amended return or report was
16 filed. The amount of such assessment of tax shall not exceed the amount
17 of the increase in city tax attributable to such state change or
18 correction. The provisions of this paragraph shall not affect the time
19 within which or the amount for which an assessment may otherwise be
20 made.

21 4. Omission of income on return. The tax may be assessed at any time
22 within six years after the return was filed if a taxpayer omits from
23 gross income required to be reported on a return under any of the named
24 subchapters an amount properly includable therein which is in excess of
25 twenty-five per centum of the amount of gross income stated in the
26 return.

27 For the purposes of this subdivision:

28 (a) the term "gross income" means gross income for federal income tax
29 purposes as reportable on a return under subchapter two or three-A of
30 this chapter and "gross earnings", "gross income," "gross operating
31 income" and "gross direct premiums less return premiums," as those terms
32 are used in whichever of the named subchapters is applicable;

33 (b) there shall not be taken into account any amount which is omitted
34 in the return if such amount is disclosed in the return, or in a state-
35 ment attached to the return, in a manner adequate to apprise the commis-
36 sioner of finance of the nature and amount of such item.

37 5. Suspension of running of period of limitations. The running of the
38 period of limitations on assessment or collection of tax or other
39 amount, or of a transferee's liability, shall, after the mailing of a
40 notice of deficiency, be suspended for the period during which the
41 commissioner of finance is prohibited under subdivision three of section
42 11-672 of this subchapter from making the assessment or from collecting
43 by levy.

44 § 11-675 Interest on underpayment. 1. General. If any amount of tax
45 is not paid on or before the last date prescribed in whichever of the
46 named subchapters is applicable for payment, interest on such amount at
47 the underpayment rate set by the commissioner of finance pursuant to
48 section 11-687 of this subchapter, or, if no rate is set, at the rate of
49 seven and one-half percent per annum shall be paid for the period from
50 such last date to the date paid, whether or not any extension of time
51 for payment was granted. Interest under this subdivision shall not be
52 paid if the amount thereof is less than one dollar.

53 2. Exception as to estimated tax. This section shall not apply to any
54 failure to pay estimated tax under subchapter two, three or three-A of
55 this chapter.

1 3. Exception for mathematical error. No interest shall be imposed on
2 any underpayment of tax due solely to mathematical error if the taxpayer
3 files a return within the time prescribed in whichever of the named
4 subchapters is applicable, including any extension of time, and pays the
5 amount of underpayment within three months after the due date of such
6 return, as it may be extended.

7 4. Suspension of interest on deficiencies. If a waiver of
8 restrictions on assessment of a deficiency has been filed by the taxpay-
9 er, and if notice and demand by the commissioner of finance for payment
10 of such deficiency is not made within thirty days after the filing of
11 such waiver, interest shall not be imposed on such deficiency for the
12 period beginning immediately after such thirtieth day and ending with
13 the date of notice and demand.

14 5. Tax reduced by carryback. If the amount of tax under subchapter
15 two or three-A for any taxable year is reduced by reason of a carryback
16 of a net operating loss or a capital loss, such reduction in tax shall
17 not affect the computation of interest under this section for the period
18 ending with the filing date for the taxable year in which the net oper-
19 ating loss or capital loss arises. Such filing date shall be determined
20 without regard to extensions of time to file.

21 6. Interest treated as tax. Interest under this section shall be paid
22 upon notice and demand and shall be assessed, collected and paid in the
23 same manner as the taxes under the named subchapters. Any reference in
24 this subchapter to the tax imposed by the named subchapters, or any of
25 them, shall be deemed also to refer to interest imposed by this section
26 on such tax.

27 7. Interest on penalties or addition to tax. Interest shall be
28 imposed under subdivision one in respect to any assessable penalty or
29 addition to tax only if such assessable penalty or addition to tax is
30 not paid within ten days from the date of the notice and demand therefor
31 under subdivision two of section 11-683 of this subchapter in such case
32 interest shall be imposed only for the period from such date of the
33 notice and demand to the date of payment.

34 8. Payment within ten days after notice and demand. If notice and
35 demand is made for payment of any amount under subdivision two of
36 section 11-683 of this subchapter, and if such amount is paid within ten
37 days after the date of such notice and demand, interest under this
38 section on the amount so paid shall not be imposed for the period after
39 the date of such notice and demand.

40 9. Limitation on assessment and collection. Interest prescribed under
41 this section may be assessed and collected at any time during the period
42 within which the tax or other amount to which such interest relates may
43 be assessed and collected respectively.

44 10. Interest on erroneous refund. Any portion of tax or other amount
45 which has been erroneously refunded, and which is recoverable by the
46 commissioner of finance, shall bear interest at the underpayment rate
47 set by the commissioner of finance pursuant to section 11-687 of this
48 subchapter, or, if no rate is set, at the rate of seven and one-half
49 percent per annum from the date of the payment of the refund, but only
50 if it appears that any part of the refund was induced by fraud or a
51 misrepresentation of a material fact.

52 11. Satisfaction by credits. If any portion of a tax is satisfied by
53 credit of an overpayment, then no interest shall be imposed under this
54 section on the portion of the tax so satisfied for any period during
55 which, if the credit had not been made, interest would have been allow-
56 able with respect to such overpayment.

1 § 11-676 Additions to tax and civil penalties. 1. (a) Failure to file
2 return. (A) In case of failure to file a return under the named
3 subchapters on or before the prescribed date, determined with regard to
4 any extension of time for filing, unless it is shown that such failure
5 is due to reasonable cause and not due to willful neglect, there shall
6 be added to the amount required to be shown as tax on such return five
7 percent of the amount of such tax if the failure is for not more than
8 one month, with an additional five percent for each additional month or
9 fraction thereof during which such failure continues, not exceeding
10 twenty-five percent in the aggregate.

11 (B) In the case of a failure to file a return of tax within sixty days
12 of the date prescribed for filing of such return, determined with regard
13 to any extension of time for filing, unless it is shown that such fail-
14 ure is due to reasonable cause and not due to willful neglect, the addi-
15 tion to tax under subparagraph (A) of this paragraph shall not be less
16 than the lesser of one hundred dollars or one hundred percent of the
17 amount required to be shown as tax on such return.

18 (C) For purposes of this paragraph, the amount of tax required to be
19 shown on the return shall be reduced by the amount of any part of the
20 tax which is paid on or before the date prescribed for payment of the
21 tax and by the amount of any credit against the tax which may be claimed
22 upon the return.

23 (b) Failure to pay tax shown on return. In case of failure to pay the
24 amounts shown as tax on any return required to be filed under the named
25 subchapters on or before the prescribed date, determined with regard to
26 any extension of time for payment, unless it is shown that such failure
27 is due to reasonable cause and not due to willful neglect, there shall
28 be added to the amount shown as tax on such return one-half of one
29 percent of the amount of such tax if the failure is not for more than
30 one month, with an additional one-half of one percent for each addi-
31 tional month or fraction thereof during which such failure continues,
32 not exceeding twenty-five percent in the aggregate. For the purpose of
33 computing the addition for any month the amount of tax shown on the
34 return shall be reduced by the amount of any part of the tax which is
35 paid on or before the beginning of such month and by the amount of any
36 credit against the tax which may be claimed upon the return. If the
37 amount of tax required to be shown on a return is less than the amount
38 shown as tax on such return, this paragraph shall be applied by substi-
39 tuting such lower amount.

40 (c) Failure to pay tax required to be shown on return. In case of
41 failure to pay any amount in respect of any tax required to be shown on
42 a return required to be filed under the named subchapters which is not
43 so shown, including an assessment made pursuant to subdivision one of
44 section 11-673 of this subchapter, within ten days of the date of a
45 notice and demand therefor, unless it is shown that such failure is due
46 to reasonable cause and not due to willful neglect, there shall be added
47 to the amount of tax stated in such notice and demand one-half of one
48 percent of such tax if the failure is not for more than one month, with
49 an additional one-half of one percent for each additional month or frac-
50 tion thereof during which such failure continues, not exceeding twenty-
51 five percent in the aggregate. For the purpose of computing the addition
52 for any month, the amount of tax stated in the notice and demand shall
53 be reduced by the amount of any part of the tax which is paid before the
54 beginning of such month.

55 (d) Limitations on additions.

1 (A) With respect to any return, the amount of the addition under para-
2 graph (a) of this subdivision shall be reduced by the amount of the
3 addition under paragraph (b) of this subdivision for any month to which
4 an addition applies under both paragraphs (a) and (b). In any case
5 described in subparagraph (B) of paragraph (a) of this subdivision, the
6 amount of the addition under such paragraph (a) shall not be reduced
7 below the amount provided in such subparagraph.

8 (B) With respect to any return, the maximum amount of the addition
9 permitted under paragraph (c) of this subdivision shall be reduced by
10 the amount of the addition under paragraph (a) of this subdivision,
11 determined without regard to subparagraph (B) of such paragraph (a),
12 which is attributable to the tax for which the notice and demand is made
13 and which is not paid within ten days of such notice and demand.

14 2. Deficiency due to negligence. (a) If any part of a deficiency is
15 due to negligence or intentional disregard of this subchapter or any of
16 the named subchapters or rules or regulations thereunder, but without
17 intent to defraud, there shall be added to the tax an amount equal to
18 five percent of the deficiency.

19 (b) There shall be added to the tax, in addition to the amount deter-
20 mined under paragraph (a) of this subdivision, an amount equal to fifty
21 percent of the interest payable under subdivision one of section 11-675
22 with respect to the portion of the deficiency described in such para-
23 graph (a) which is attributable to the negligence or intentional disre-
24 gard referred to in such paragraph (a), for the period beginning on the
25 last date prescribed by law for payment of such deficiency, determined
26 without regard to any extension, and ending on the date of the assess-
27 ment of the tax, or, if earlier, the date of the payment of the tax.

28 (c) If any payment is shown on a return made by a payor with respect
29 to dividends, patronage dividends and interest under subsection (a) of
30 section six thousand forty-two, subsection (a) of section six thousand
31 forty-four or subsection (a) of section six thousand forty-nine of the
32 internal revenue code of nineteen hundred fifty-four, respectively, and
33 the payee fails to include any portion of such payment in gross income,
34 as that term is defined in paragraph (a) of subdivision four of section
35 11-674, any portion of an underpayment attributable to such failure
36 shall be treated, for purposes of this subdivision, as due to negligence
37 in the absence of clear and convincing evidence to the contrary. If any
38 addition to tax is imposed under this subdivision by reason of the
39 preceding sentence, the amount of the addition to tax imposed by para-
40 graph (a) of this subdivision shall be five percent of the portion of
41 the underpayment which is attributable to the failure described in this
42 paragraph.

43 3. Failure to file declaration or underpayment of estimated tax. If
44 any taxpayer fails to file a declaration of estimated tax under subchap-
45 ter two, three or three-A of this chapter, or fails to pay all or any
46 part of an amount which is applied as an installment against such esti-
47 mated tax, it shall be deemed to have made an underpayment of estimated
48 tax. There shall be added to the tax for the taxable year an amount at
49 the underpayment rate set by the commissioner of finance pursuant to
50 section 11-687 of this subchapter, or, if no rate is set, at the rate of
51 seven and one-half percent per annum upon the amount of the underpayment
52 for the period of the underpayment but not beyond the fifteenth day of
53 the fourth month following the close of the taxable year. Provided,
54 however, that, for taxable years beginning on or after January first,
55 two thousand seventeen and before January first, two thousand eighteen,
56 no amount shall be added to the tax with respect to the portion of such

1 tax related to the amount of any interest deductions directly or indi-
2 rectly attributable to the amount included in exempt CFC income pursuant
3 to subparagraph (ii) of paragraph (b) of subdivision five-a of section
4 11-652 of this chapter or the forty percent reduction of such exempt CFC
5 income in lieu of interest attribution if the election described in
6 paragraph (b) of subdivision five-a of such section is made. The amount
7 of the underpayment shall be, with respect to any installment of esti-
8 mated tax computed on the basis of either the preceding year's tax or
9 the second preceding year's tax, the excess of the amount required to be
10 paid over the amount, if any, paid on or before the last day prescribed
11 for such payment or, with respect to any other installment of estimated
12 tax, the excess of the amount of the installment which would be required
13 to be paid if the estimated tax were equal to ninety percent of the tax
14 shown on the return for the taxable year, or if no return was filed,
15 ninety percent of the tax for such year, over the amount, if any, of the
16 installment paid on or before the last day prescribed for such payment.
17 In any case in which there would be no underpayment if "eighty percent"
18 were substituted for "ninety percent" each place it appears in this
19 subdivision, the addition to the tax shall be equal to seventy-five
20 percent of the amount otherwise determined. No underpayment shall be
21 deemed to exist with respect to a declaration or installment otherwise
22 due on or after the termination of existence of the taxpayer.

23 4. Exception to addition for underpayment of estimated tax. The addi-
24 tion to tax under subdivision three of this section with respect to any
25 underpayment of any amount which is applied as an installment against
26 estimated tax under subchapter two, three or three-A of this chapter
27 shall not be imposed if the total amount of all payments of estimated
28 tax made on or before the last date prescribed for the payment of any
29 such amount equals or exceeds the amount which would have been required
30 to be paid on or before such date if the estimated tax were whichever of
31 the following is the least:

32 (a) The tax shown on the return of the taxpayer for the preceding
33 taxable year, if a return showing a liability for tax was filed by the
34 taxpayer for the preceding taxable year and such preceding year was a
35 taxable year of twelve months, or

36 (b) An amount equal to the tax computed at the rates applicable to the
37 taxable year, but otherwise on the basis of the facts shown on the
38 return of the taxpayer for, and the law applicable to, the preceding
39 taxable year, or

40 (c) (i) An amount equal to ninety per centum of the tax for the taxa-
41 ble year computed by placing on an annualized basis the taxable income:

42 (1) for the first three months or the first five months of the taxable
43 year, in the case of the installment required to be paid in the sixth
44 month,

45 (2) for the first six months or the first eight months of the taxable
46 year, in the case of the installment required to be paid in the ninth
47 month, and

48 (3) for the first nine months or the first eleven months of the taxa-
49 ble year, in the case of the installment required to be paid in the
50 twelfth month.

51 (ii) For purposes of subparagraph (i) of this paragraph the taxable
52 income shall be placed on an annualized basis by:

53 (1) multiplying it by twelve, or, in the case of a taxable year of
54 less than twelve months, the number of months in the taxable year, and

1 (2) dividing the resulting amount by the number of months in the taxa-
2 ble year, three, five, six, eight, nine or eleven, as the case may be,
3 referred to in subparagraph (i) of this paragraph, or

4 (d) (i) If the base period percentage for any six consecutive months
5 of the taxable year equals or exceeds seventy percent, an amount equal
6 to ninety percent of the tax determined in the following manner:

7 (A) take the taxable income for all months during the taxable year
8 preceding the filing month,

9 (B) divide such amount by the base period percentage for all months
10 during the taxable year preceding the filing month,

11 (C) determine the tax on the amount determined under clause (B) of
12 this subparagraph, and

13 (D) multiply the tax determined under clause (C) of this subparagraph
14 by the base period percentage for the filing month and all months during
15 the taxable year preceding the filing month.

16 (ii) For purposes of subparagraph (i) of this paragraph:

17 (A) the base period percentage for any period of months shall be the
18 average percent which the taxable income for the corresponding months in
19 each of the three preceding taxable years bears to the taxable income
20 for the three preceding taxable years. The commissioner of finance may
21 by regulations provide for the determination of the base period percent-
22 age in the case of reorganizations, new corporations, and other similar
23 circumstances, and

24 (B) the term "filing month" means the month in which the installment
25 is required to be paid.

26 5. (a) Except as provided in paragraph (b) of this subdivision, para-
27 graphs (a) and (b) of subdivision four of this section shall not apply
28 in the case of any corporation, or any predecessor corporation, which
29 had entire net income, or the portion thereof allocated within the city,
30 of one million dollars or more for any taxable year during the three
31 taxable years immediately preceding the taxable year involved.

32 (b) The amount treated as the estimated tax under paragraphs (a) and
33 (b) of subdivision four of this section shall in no event be less than
34 seventy-five percent of the tax shown on the return for the taxable year
35 beginning in nineteen hundred eighty-three or, if no return was filed,
36 seventy-five percent of the tax for such year.

37 6. Deficiency due to fraud. (a) If any part of a deficiency is due to
38 fraud, there shall be added to the tax an amount equal to two times the
39 deficiency.

40 (b) The addition to tax under this subdivision shall be in lieu of any
41 other addition to tax imposed by subdivision one or two of this section.

42 7. Additional penalty. Any person who with fraudulent intent shall
43 fail to pay under the named subchapters any tax, or to make, render,
44 sign or certify any return or declaration of estimated tax, or to supply
45 any information within the time required by or under any of the named
46 subchapters, shall be liable to penalty of not more than one thousand
47 dollars, in addition to any other amounts required under this subchapter
48 to be imposed, assessed and collected by the commissioner of finance.
49 The commissioner of finance shall have the power, in his or her
50 discretion, to waive, reduce or compromise any penalty under this subdivi-
51 sion.

52 8. Additions treated as tax. The additions to tax and penalties
53 provided by this section shall be paid upon notice and demand and shall
54 be assessed, collected and paid in the same manner as taxes, and any
55 reference in this subchapter to tax imposed by any of the named subchap-
56 ters shall be deemed also to refer to the additions to tax and penalties

1 provided by this section. For purposes of section 11-672 of this
2 subchapter, this subdivision shall not apply to:

3 (a) any addition to tax under subdivision one of this section except
4 as to that portion attributable to a deficiency;

5 (b) any addition to tax under subdivision three or fourteen of this
6 section; and

7 (c) any additional penalties under subdivisions seven and twelve of
8 this section.

9 9. Determination of deficiency. For purposes of subdivisions two and
10 six of this section the amount shown as the tax by the taxpayer upon its
11 return shall be taken into account in determining the amount of the
12 deficiency only if such return was filed on or before the last day
13 prescribed for the filing of such return, determined with regard to any
14 extension of time for such filing.

15 10. Person defined. For purposes of subdivisions seven and twelve of
16 this section, the term "person" includes an individual, corporation or
17 partnership or an officer or employee of any corporation, including a
18 dissolved corporation, or a member or employee of any partnership, who
19 as such officer, employee, or member is under a duty to perform the act
20 in respect of which the violation occurs.

21 11. Substantial understatement of liability. If there is a substantial
22 understatement of tax for any taxable year, there shall be added to the
23 tax an amount equal to ten percent of the amount of any underpayment
24 attributable to such understatement. For purposes of this subdivision,
25 there is a substantial understatement of tax for any taxable year if the
26 amount of the understatement for the taxable year exceeds the greater of
27 ten percent of the tax required to be shown on the return for the taxa-
28 ble year or five thousand dollars. For purposes of this subdivision, the
29 term "understatement" means the excess of the amount of the tax required
30 to be shown on the return for the taxable year, over the amount of the
31 tax imposed which is shown on the return, reduced by any rebate, within
32 the meaning of subdivision eight of section 11-672 of this subchapter.
33 The amount of such understatement shall be reduced by that portion of
34 the understatement which is attributable to the tax treatment of any
35 item by the taxpayer if there is or was substantial authority for such
36 treatment, or any item with respect to which the relevant facts affect-
37 ing the item's tax treatment are adequately disclosed in the return or
38 in a statement attached to the return. The commissioner of finance may
39 waive all or any part of the addition to tax provided by this subdivi-
40 sion on a showing by the taxpayer that there was reasonable cause for
41 the understatement, or part thereof, and that the taxpayer acted in good
42 faith.

43 12. Aiding or assisting in the giving of fraudulent returns, reports,
44 statements or other documents. (a) Any person who, with the intent that
45 tax be evaded, shall, for a fee or other compensation or as an incident
46 to the performance of other services for which such person receives
47 compensation, aid or assist in, or procure, counsel, or advise the prep-
48 aration or presentation under, or in connection with any matter arising
49 under this chapter of any return, report, declaration, statement or
50 other document which is fraudulent or false as to any material matter,
51 or supply any false or fraudulent information, whether or not such
52 falsity or fraud is with the knowledge or consent of the person author-
53 ized or required to present such return, report, declaration, statement
54 or other document shall pay a penalty not exceeding ten thousand
55 dollars.

1 (b) For purposes of paragraph (a) of this subdivision, the term
2 "procures" includes ordering, or otherwise causing, a subordinate to do
3 an act, and knowing of, and not attempting to prevent, participation by
4 a subordinate in an act. The term "subordinate" means any other person,
5 whether or not a director, officer, employee, or agent of the taxpayer
6 involved, over whose activities the person has direction, supervision,
7 or control.

8 (c) For purposes of paragraph (a) of this subdivision, a person
9 furnishing typing, reproducing, or other mechanical assistance with
10 respect to a document shall not be treated as having aided or assisted
11 in the preparation of such document by reason of such assistance.

12 (d) The penalty imposed by this subdivision shall be in addition to
13 any other penalty provided by law.

14 13. Failure to file report of information relating to certain interest
15 payments. In case of failure to file the report of information required
16 under either subdivision two-a of section 11-605 of this chapter or
17 subdivision two-a of section 11-655 of this chapter, unless it is shown
18 that such failure is due to reasonable cause and not due to willful
19 neglect, there shall be added to the tax a penalty of five hundred
20 dollars.

21 14. Failure to include on return information relating to issuer's
22 allocation percentage. Where a return is filed but does not contain (1)
23 the information necessary to compute the taxpayer's issuer's allocation
24 percentage, as defined in subparagraph one of paragraph (b) of subdivi-
25 sion three of section 11-604 of this chapter, where the same is called
26 for on the return, or, (2) the taxpayer's issuer's allocation percent-
27 age, where the same is called for on the return but where all of the
28 information necessary for the computation of such percentage is not
29 called for on the return, then unless it is shown that such failure is
30 due to reasonable cause and not due to willful neglect there shall be
31 added to the tax a penalty of five hundred dollars.

32 15. False or fraudulent document penalty. Any taxpayer that submits a
33 false or fraudulent document to the department shall be subject to a
34 penalty of one hundred dollars per document submitted, or five hundred
35 dollars per tax return submitted. Such penalty shall be in addition to
36 any other penalty or addition provided by law.

37 § 11-677 Overpayment. 1. General. The commissioner of finance,
38 within the applicable period of limitations, may credit an overpayment
39 of tax and interest on such overpayment against any liability in respect
40 of any tax imposed by this title on the taxpayer who made the overpay-
41 ment, and the balance shall be refunded out of the proceeds of the tax.
42 Such credit of an overpayment shall be applied before such overpay-
43 ment, or any portion thereof, is paid to the state commissioner of taxa-
44 tion and finance pursuant to section one hundred seventy-one-m of the
45 tax law.

46 2. Credits against estimated tax. The commissioner of finance may
47 prescribe regulations providing for the crediting against the estimated
48 tax under subchapter two, three or three-A of this chapter for any taxa-
49 ble year of the amount determined to be an overpayment of tax under any
50 such subchapter for a preceding taxable year. If any overpayment of tax
51 is so claimed as a credit against estimated tax for the succeeding taxa-
52 ble year, such amount shall be considered as a payment of the tax under
53 subchapter two, three or three-A of this chapter for the succeeding
54 taxable year, whether or not claimed as a credit in the declaration of
55 estimated tax for such succeeding taxable year, and no claim for credit

1 or refund of such overpayment shall be allowed for the taxable year for
2 which the overpayment arises.

3 3. Rule where no tax liability. If there is no tax liability for a
4 period in respect of which an amount is paid as tax, such amount shall
5 be considered an overpayment.

6 4. Assessment and collection after limitation period. If any amount
7 of tax is assessed or collected after the expiration of the period of
8 limitations properly applicable thereto, such amount shall be considered
9 an overpayment.

10 5. Assignment of overpayment. A credit for an overpayment of tax
11 under any of the named subchapters may be assigned by the taxpayer to a
12 corporation liable to pay taxes under any of the named subchapters, and
13 the assignee of the whole or any part of such credit, on filing such
14 assignment with the commissioner of finance, shall thereupon be entitled
15 to credit upon the books of the commissioner of finance for the amount
16 thereof on its current account for taxes, in the same manner and to the
17 same effect as though the credit had originally been allowed in its
18 favor.

19 6. Notwithstanding article fifty-two of the civil practice law and
20 rules or any other provision of law to the contrary, the procedures for
21 the enforcement of money judgments shall not apply to the department of
22 finance, or to any officer or employee of such department, as a garnish-
23 ee, with respect to any amount of money to be refunded or credited to a
24 taxpayer under this chapter.

25 § 11-678 Limitations on credit or refund. 1. General. Claim for
26 credit or refund of an overpayment of tax under any of the named
27 subchapters shall be filed by the taxpayer within three years from the
28 time the return was filed or two years from the time the tax was paid,
29 whichever of such periods expires the later, or if no return was filed
30 within two years from the time the tax was paid. If the claim is filed
31 within the three year period, the amount of the credit or refund shall
32 not exceed the portion of the tax paid within the three years immediat-
33 ely preceding the filing of the claim plus the period of any extension of
34 time for filing the return. If the claim is not filed within the three
35 year period, but is filed within the two year period, the amount of the
36 credit or refund shall not exceed the portion of the tax paid during the
37 two years immediately preceding the filing of the claim. Except as
38 otherwise provided in this section, if no claim is filed, the amount of
39 a credit or refund shall not exceed the amount which would be allowable
40 if a claim had been filed on the date the credit or refund is allowed.
41 For special restriction in a proceeding on a claim for refund of tax
42 paid pursuant to an assessment made as a result of: (a) a net operating
43 loss carryback, or (b) an increase or decrease in federal or New York
44 state taxable income or other basis of tax or federal or New York state
45 tax, or (c) a federal or New York state change or correction or renego-
46 tiation, or computation or recomputation of tax, which is treated in the
47 same manner as if it were a deficiency for federal or New York state
48 income tax purposes, see paragraph (g) of subdivision three of section
49 11-674 of this subchapter.

50 2. Extension of time by agreement. If any agreement under the
51 provisions of paragraph (b) of subdivision three of section 11-674 of
52 this subchapter, extending the period of assessment of tax, is made
53 within the period prescribed in subdivision one of this section for the
54 filing of a claim for credit or refund, the period for filing a claim
55 for credit or refund, or for making credit or refund if no claim is
56 filed, shall not expire prior to six months after the expiration of the

1 period within which an assessment may be made pursuant to the agreement
2 or any extension thereof. The amount of such credit or refund shall not
3 exceed the portion of the tax paid after the execution of the agreement
4 and before the filing of the claim or the making of the credit or
5 refund, as the case may be, plus the portion of the tax paid within the
6 period which would be applicable under subdivision one if a claim had
7 been filed on the date the agreement was executed.

8 3. Notice of change or correction of federal or New York state income
9 or other basis of tax. If a taxpayer is required by subchapter two,
10 three or three-A of this chapter to file a report or amended return in
11 respect of (a) a decrease or increase in federal or New York state taxa-
12 ble income, alternative minimum taxable income or other basis of tax or
13 federal or New York state tax, (b) a federal or New York state change or
14 correction or renegotiation, or computation or recomputation of tax,
15 which is treated in the same manner as if it were an overpayment for
16 federal or New York state income tax purposes, claim for credit or
17 refund of any resulting overpayment of tax shall be filed by the taxpay-
18 er within two years from the time such report or amended return was
19 required to be filed with the commissioner of finance. If the report or
20 amended return required by subchapter two, three or three-A of this
21 chapter is not filed within the ninety day period therein specified, no
22 interest shall be payable on any claim for credit or refund of the over-
23 payment attributable to the federal or New York state change or
24 correction. The amount of such credit or refund: (c) shall, (i) for
25 taxable years beginning before January first, two thousand fifteen, be
26 computed without change of the allocation of income or capital upon
27 which the taxpayer's return, or any additional assessment, was based,
28 and, (ii) for taxable years beginning on or after January first, two
29 thousand fifteen, be computed without change of the allocation of
30 income or capital upon which the taxpayer's return, or any additional
31 assessment, was based to the extent that the claim for refund arises
32 from a decrease or increase in federal taxable income or other basis
33 of tax or federal tax, or from a federal change, correction, renegoti-
34 ation, computation or recomputation of tax, which is treated in the
35 same manner as if it were an overpayment for federal income tax
36 purposes, and (d) shall not exceed the amount of the reduction in tax
37 attributable to such decrease or increase in federal or New York state
38 taxable income, alternative minimum taxable income or other basis of tax
39 or federal or New York state tax or to such federal or New York state
40 change or correction or renegotiation, or computation or recomputation
41 of tax.

42 This subdivision shall not affect the time within which or the amount
43 for which a claim for credit or refund may be filed apart from this
44 subdivision.

45 4. Overpayment attributable to net operating loss carryback or capital
46 loss carryback. A claim for credit or refund of so much of an overpay-
47 ment under subchapter two or three-A of this chapter as is attributable
48 to the application to the taxpayer of a net operating loss carryback or
49 a capital loss carryback shall be filed within three years from the time
50 the return was due, including extensions thereof, for the taxable year
51 of the loss, or within the period prescribed in subdivision two of this
52 section in respect of such taxable year, or within the period prescribed
53 in subdivision three of this section, where applicable, in respect to
54 the taxable year to which the net operating loss or capital loss is
55 carried back, whichever expires the latest. Where such claim for credit
56 or refund is filed after the expiration of the period prescribed in

1 subdivision one or in subdivision two of this section where applicable,
2 in respect to the taxable year to which the net operating loss is
3 carried back, the amount of such credit or refund shall be computed
4 without change of the allocation of income or capital upon which the
5 taxpayer's return, or any additional assessment, was based.

6 5. Failure to file claim within prescribed period. No credit or
7 refund shall be allowed or made, except as provided in subdivision six
8 of this section or subdivision four of section 11-681 of this subchap-
9 ter, after the expiration of the applicable period of limitation speci-
10 fied in this subchapter, unless a claim for credit or refund is filed by
11 the taxpayer within such period. Any later credit shall be void and
12 any later refund erroneous. No period of limitations specified in any
13 other law shall apply to the recovery by a taxpayer of moneys paid in
14 respect of taxes under the named subchapters.

15 6. Effect of a petition to tax appeals tribunal. If a notice of defi-
16 ciency for a taxable year has been mailed to the taxpayer under section
17 11-672 of this subchapter and if the taxpayer files a timely petition
18 with the tax appeals tribunal under section 11-680 of this subchapter,
19 the tax appeals tribunal may determine that the taxpayer has made an
20 overpayment for such year, whether or not it also determines a deficien-
21 cy for such year. No separate claim for credit or refund for such year
22 shall be filed, and no credit or refund for such year shall be allowed
23 or made, except:

24 (a) as to overpayment determined by a decision of the tax appeals
25 tribunal which has become final; and

26 (b) as to any amount collected in excess of an amount computed in
27 accordance with the decision of the tax appeals tribunal which has
28 become final; and

29 (c) as to any amount collected after the period of limitation upon the
30 making of levy for collection has expired; and

31 (d) as to any amount claimed as a result of a change or correction
32 described in subdivision three of this section.

33 7. Limit on amount of credit or refund. The amount of overpayment
34 determined under subdivision six of this section shall, when the deci-
35 sion of the tax appeals tribunal has become final, be credited or
36 refunded in accordance with subdivision one of section 11-677 of this
37 subchapter and shall not exceed the amount of tax which the tax appeals
38 tribunal determines as part of its decision was paid:

39 (a) after the mailing of the notice of deficiency, or

40 (b) within the period which would be applicable under subdivision one,
41 two or three of this section, if on the date of the mailing of the
42 notice of deficiency a claim had been filed, whether or not filed, stat-
43 ing the ground upon which the tax appeals tribunal finds that there is
44 an overpayment.

45 For special restriction on credit or refund in a proceeding on a peti-
46 tion for redetermination of a deficiency where the notice of deficiency
47 is issued as a result of (i) a net operating loss carryback, or (ii) an
48 increase or decrease in federal or New York state taxable income or
49 other basis of tax or federal or New York state tax, or (iii) a federal
50 or New York state change or correction or renegotiation, or computation
51 or recomputation of tax, which is treated in the same manner as if it
52 were a deficiency for federal or New York state income tax purposes, see
53 paragraph (g) of subdivision three of section 11-674 of this subchapter.

54 8. Early return. For purposes of this section, any return filed
55 before the last day prescribed for the filing thereof shall be consid-

1 ered as filed on such last day, determined without regard to any exten-
2 sion of time granted the taxpayer.

3 9. Prepaid tax. For purposes of this section, any tax paid by the
4 taxpayer before the last day prescribed for its payment, including any
5 amount paid by the taxpayer as estimated tax for a taxable year, shall
6 be deemed to have been paid by it on the fifteenth day of the third
7 month following the close of the taxable year the income of which is the
8 basis for tax under subchapter two, three or three-A of this chapter, or
9 on the last day prescribed in part one of subchapter three or subchapter
10 four of this chapter for the filing of a final return for such taxable
11 year, or portion thereof, determined in all cases without regard to any
12 extension of time granted the taxpayer.

13 10. Cross reference. For provision barring refund of overpayment
14 credited against tax of a succeeding year, see subdivision two of
15 section 11-677 of this subchapter.

16 11. Notice of change or correction of sales and compensating use tax
17 liability. (a) If a taxpayer is required by subchapter two or three-A of
18 this chapter to file a report or amended return in respect of a change
19 or correction of its sales and compensating use tax liability, claim for
20 credit or refund of any resulting overpayment of tax shall be filed by
21 the taxpayer within two years from the time such report or amended
22 return was required to be filed with the commissioner of finance. The
23 amount of such credit or refund shall be computed without change of the
24 allocation of income or capital upon which the taxpayer's return, or any
25 additional assessment, was based, and shall not exceed the amount of the
26 reduction in tax attributable to such change or correction of sales and
27 compensating use tax liability.

28 (b) This subdivision shall not affect the time within which or the
29 amount for which a claim for credit or refund may be filed apart from
30 this subdivision.

31 § 11-679 Interest on overpayment. 1. General. Notwithstanding the
32 provisions of section three-a of the general municipal law, interest
33 shall be allowed and paid as follows at the overpayment rate set by the
34 commissioner of finance pursuant to section 11-687 of this subchapter,
35 or, if no rate is set, at the rate of six percent per annum upon any
36 overpayment in respect to the tax imposed by any of the named subchap-
37 ters:

38 (a) from the date of the overpayment to the due date of an amount
39 against which a credit is taken;

40 (b) from the date of the overpayment to a date, to be determined by
41 the commissioner of finance, preceding the date of a refund check by not
42 more than thirty days, whether or not such refund check is accepted by
43 the taxpayer after tender of such check to the taxpayer. The acceptance
44 of such check shall be without prejudice to any right of the taxpayer to
45 claim any additional overpayment and interest thereon.

46 (c) Late and amended returns and claims for credit or refund.
47 Notwithstanding paragraph (a) or (b) of this subdivision, in the case of
48 an overpayment claimed on a return of tax which is filed after the last
49 date prescribed for filing such return, determined with regard to exten-
50 sions, or claimed on an amended return of tax or claimed on a claim for
51 credit or refund, no interest shall be allowed or paid for any day
52 before the date on which such return or claim is filed.

53 (d) Interest on certain refunds. To the extent provided for in regu-
54 lations promulgated by the commissioner of finance, if an item of
55 income, gain, loss, deduction or credit is changed from the taxable year
56 or period in which it is reported to the taxable year or period in which

1 it belongs and the change results in an underpayment in a taxable year
2 or period and an overpayment in some other taxable year or period, the
3 provisions of paragraph (c) of this subdivision with respect to an over-
4 payment shall not be applicable to the extent that the limitation in
5 such paragraph on the right to interest would result in a taxpayer not
6 being allowed interest for a length of time with respect to an overpay-
7 ment while being required to pay interest on an equivalent amount of the
8 related underpayment. However, this paragraph shall be not construed as
9 limiting or mitigating the effect of any statute of limitations or any
10 other provision of law relating to the authority of such commissioner to
11 issue a notice of deficiency or to allow a credit or refund of an over-
12 payment.

13 (e) Amounts of less than one dollar. No interest shall be allowed or
14 paid if the amount thereof is less than one dollar.

15 2. Advance payment of tax and estimated tax. The provisions of subdi-
16 visions eight and nine of section 11-678 of this subchapter applicable
17 in determining the date of payment of tax for purposes of determining
18 the period of limitations on credit or refund, shall be applicable in
19 determining the date of payment for purposes of this section.

20 3. Tax refund within three months of claim for overpayment. If any
21 overpayment of tax imposed by any of the named subchapters is credited
22 or refunded within three months after the last date prescribed, or
23 permitted by extension of time, for filing the return of such tax on
24 which such overpayment was claimed or within three months after such
25 return was filed, whichever is later, or within three months after an
26 amended return was filed claiming such overpayment or within three
27 months after a claim for credit or refund was filed on which such over-
28 payment was claimed, no interest shall be allowed under this section on
29 any such overpayment. For purposes of this subdivision, any amended
30 return or claim for credit or refund filed before the last day
31 prescribed, or permitted by extension of time, for the filing of the
32 return of tax for such year or period shall be considered as filed on
33 such last day.

34 4. Refund of tax caused by carryback. For purposes of this section,
35 if any overpayment of tax imposed by subchapter two or three-A of this
36 chapter results from a carryback of a net operating loss or a net capi-
37 tal loss, such overpayment shall be deemed not to have been made prior
38 to the filing date for the taxable year in which such net operating loss
39 or net capital loss arises. Such filing date shall be determined without
40 regard to extensions of time to file. For purposes of subdivision three
41 of this section any overpayment described herein shall be treated as an
42 overpayment for the loss year and such subdivision shall be applied with
43 respect to such overpayment by treating the return for the loss year as
44 not filed before claim for such overpayment is filed. The term "loss
45 year" means the taxable year in which such loss arises.

46 5. No interest until return in processible form.

47 (a) For purposes of subdivisions one and three of this section, a
48 return shall not be treated as filed until it is filed in processible
49 form.

50 (b) For purposes of paragraph (a) of this subdivision, a return is in
51 a processible form if:

52 (A) such return is filed on a permitted form, and

53 (B) such return contains:

54 (i) the taxpayer's name; address, and identifying number and the
55 required signatures, and

1 (ii) sufficient required information, whether on the return or on
2 required attachments, to permit the mathematical verification of tax
3 liability shown on the return.

4 6. Cross reference. For provision with respect to interest after
5 failure to file a report of federal or New York state change or
6 correction or amended return under subchapter two, three or three-A, see
7 subdivision three of section 11-678 of this subchapter.

8 § 11-680 Petition to tax appeals tribunal. 1. General. The form of a
9 petition to the tax appeals tribunal, and further proceedings before the
10 tax appeals tribunal in any case initiated by the filing of a petition,
11 shall be governed by such rules as the tax appeals tribunal shall
12 prescribe. No petition shall be denied in whole or in part without
13 opportunity for a hearing on reasonable prior notice. Such hearing and
14 any appeal to the tribunal sitting en banc from the decision rendered in
15 such hearing shall be conducted in the manner and subject to the
16 requirements prescribed by the tax appeals tribunal pursuant to sections
17 one hundred sixty-eight through one hundred seventy-two of the charter
18 of the preceding municipality as it existed January first, nineteen
19 hundred ninety-four. A decision of the tax appeals tribunal shall be
20 rendered, and notice thereof shall be given, in the manner provided by
21 section one hundred seventy-one of the charter of the preceding munici-
22 pality as it existed January first, nineteen hundred ninety-four.

23 2. Petition for redetermination of a deficiency. Within ninety days,
24 or one hundred fifty days if the notice is addressed to a taxpayer whose
25 last known address is outside of the United States, after the mailing of
26 the notice of deficiency authorized by section 11-672 of this subchap-
27 ter, or if the commissioner of finance has established a conciliation
28 procedure pursuant to section 11-124 of this title and the taxpayer has
29 requested a conciliation conference in accordance therewith, after nine-
30 ty days from the mailing of the conciliation decision or the date of the
31 commissioner's confirmation of the discontinuance of the conciliation
32 proceeding, the taxpayer may file a petition with the tax appeals tribu-
33 nal for redetermination of the deficiency. Such petition may also assert
34 a claim for refund for the same taxable year or years, subject to the
35 limitations of subdivision seven of section 11-678 of this subchapter.
36 For special restriction where the notice of deficiency relates to a
37 proposed assessment made as a result of: (a) a net operating loss carry-
38 back or a capital loss carryback, (b) an increase or decrease in federal
39 or New York state taxable income or other basis of tax or federal or New
40 York state tax, or (c) a federal or New York state change or correction
41 or renegotiation, or computation or recomputation of tax, which is
42 treated in the same manner as if it were a deficiency for federal or New
43 York state income tax purposes, see paragraph (g) of subdivision three
44 of section 11-674 of this subchapter.

45 3. Petition for refund. A taxpayer may file a petition with the tax
46 appeals tribunal for the amounts asserted in a claim for refund if:

47 (a) the taxpayer has filed a timely claim for refund with the commis-
48 sioner of finance,

49 (b) the taxpayer has not previously filed with the tax appeals tribu-
50 nal a timely petition under subdivision two of this section for the same
51 taxable year unless the petition under this subdivision relates to a
52 separate claim for credit or refund properly filed under subdivision six
53 of section 11-678 of this subchapter, and

54 (c) either: (1) six months have expired since the claim was filed, or
55 (2) the commissioner of finance has mailed to the taxpayer, by regis-

1 tered or certified mail, a notice of disallowance of such claim in whole
2 or in part.

3 No petition under this subdivision shall be filed more than two years
4 after the date of mailing of a notice of disallowance, unless prior to
5 the expiration of such two year period it has been extended by written
6 agreement between the taxpayer and the commissioner of finance. If a
7 taxpayer files a written waiver of the requirement that the taxpayer be
8 mailed a notice of disallowance, the two year period prescribed by this
9 subdivision for filing a petition for refund shall begin on the date
10 such waiver is filed.

11 (d) If the commissioner of finance has established a conciliation
12 procedure pursuant to section 11-124 of this title, a taxpayer which is
13 eligible to file a petition for refund with the tax appeals tribunal
14 pursuant to this subdivision may request a conciliation conference prior
15 to filing such petition, provided the request is made within the time
16 prescribed for filing the petition. Notwithstanding anything in this
17 subdivision to the contrary, if the taxpayer has requested a concil-
18 iation conference in accordance with the procedure established pursuant
19 to section 11-124 of this title, a petition for refund may be filed no
20 later than ninety days from the mailing of the conciliation decision or
21 the date of the commissioner's confirmation of the discontinuance of the
22 conciliation proceeding.

23 4. Assertion of deficiency after filing petition.

24 (a) Petition for redetermination of deficiency. If a taxpayer files
25 with the tax appeals tribunal a petition for redetermination of a defi-
26 ciency, the tax appeals tribunal shall have power to determine a greater
27 deficiency than asserted in the notice of deficiency and to determine if
28 there should be assessed any addition to tax or penalty provided in
29 section 11-676 of this subchapter, if claim therefor is asserted at or
30 before the hearing under rules of the tax appeals tribunal.

31 (b) Petition for refund. If the taxpayer files with the tax appeals
32 tribunal a petition for credit or refund for a taxable year, the tax
33 appeals tribunal may:

34 (1) determine a deficiency for such year as to any amount of deficien-
35 cy asserted at or before the hearing under rules of the tax appeals
36 tribunal and within the period in which an assessment would be timely
37 under section 11-674 of this subchapter, or

38 (2) deny so much of the amount for which credit or refund is sought in
39 the petition, as is offset by other issues pertaining to the same taxa-
40 ble year which are asserted at or before the hearing under rules of the
41 tax appeals tribunal.

42 (c) Opportunity to respond. A taxpayer shall be given a reasonable
43 opportunity to respond to any matters asserted by the commissioner of
44 finance under this subdivision.

45 (d) Restriction on further notices of deficiency. If the taxpayer
46 files a petition with the tax appeals tribunal under this section, no
47 notice of deficiency under section 11-672 of this subchapter may there-
48 after be issued by the commissioner of finance for the same taxable
49 year, except in case of fraud or with respect to an increase or decrease
50 in federal or New York state taxable income, alternative minimum taxable
51 income or other basis of tax or federal or New York state tax or a
52 federal or New York state change or correction or renegotiation, or
53 computation or recomputation of tax, which is treated in the same manner
54 as if it were a deficiency for federal or New York state income tax
55 purposes, required to be reported under subchapter two, three or three-A
56 of this chapter or with respect to a state change or correction of sales

1 and compensating use tax liability required to be reported under
2 subchapter two or three-A of this chapter.

3 5. Burden of proof. In any case before the tax appeals tribunal under
4 this subchapter, the burden of proof shall be upon the petitioner except
5 for the following issues, as to which the burden of proof shall be upon
6 the commissioner of finance:

7 (a) whether the petitioner has been guilty of fraud with intent to
8 evade tax;

9 (b) whether the petitioner is liable as the transferee of property of
10 a taxpayer, but not to show that the taxpayer was liable for the tax;

11 (c) whether the petitioner is liable for any increase in a deficiency
12 where such increase is asserted initially after a notice of deficiency
13 was mailed and a petition under this section filed, unless such increase
14 in deficiency is the result of an increase or decrease in federal or New
15 York state taxable income, alternative minimum taxable income or other
16 basis of tax or federal or New York state tax or a federal or New York
17 state change or correction or renegotiation, or computation or recompu-
18 tation of tax, which is treated in the same manner as if it were a defi-
19 ciency for federal or New York state income tax purposes, required to be
20 reported under subchapter two, three or three-A of this chapter, and of
21 which increase, decrease, change or correction or renegotiation, or
22 computation or recomputation, the commissioner of finance had no notice
23 at the time he or she mailed the notice of deficiency or unless such
24 increase in deficiency is the result of a change or correction of sales
25 and compensating use tax liability required to be reported under
26 subchapter two or three-A of this chapter, and of which change or
27 correction the commissioner of finance had no notice at the time he or
28 she mailed the notice of deficiency; and

29 (d) whether any person is liable for a penalty under subdivision
30 twelve of section 11-676 of this subchapter.

31 6. Evidence of related federal or state determination. Evidence of a
32 federal or state determination relating to issues raised in a case
33 before the tax appeals tribunal under this section shall be admissible,
34 under rules established by the tax appeals tribunal.

35 7. Jurisdiction over other years. The tax appeals tribunal shall
36 consider such facts with relation to the taxes for other years as may be
37 necessary correctly to determine the tax for the taxable year, but in so
38 doing shall have no jurisdiction to determine whether or not the tax for
39 any other year has been overpaid or underpaid.

40 § 11-681 Review of tax appeals tribunal's decision. 1. General. A
41 decision of the tax appeals tribunal sitting en banc shall be subject to
42 judicial review at the instance of any taxpayer affected thereby in the
43 manner provided by law for the review of a final decision or action of
44 administrative agencies of the city. An application by a taxpayer for
45 such review must be made within four months after notice of the decision
46 is sent by certified mail, return receipt requested, to the taxpayer and
47 the commissioner of finance.

48 2. Judicial review exclusive remedy. The review of a decision of the
49 tax appeals tribunal provided by this section shall be the exclusive
50 remedy available to any taxpayer for the judicial determination of the
51 liability of the taxpayer for the taxes imposed by the named subchap-
52 ters.

53 3. Assessment pending review; review bond. Irrespective of any
54 restrictions on the assessment and collection of deficiencies, the
55 commissioner of finance may assess a deficiency determined by the tax
56 appeals tribunal in a decision rendered pursuant to section one hundred

1 seventy-one of the charter of the preceding municipality as it existed
2 January first, nineteen hundred ninety-four after the expiration of the
3 period specified in subdivision one, notwithstanding that an application
4 for judicial review in respect of such deficiency has been duly made by
5 the taxpayer unless the taxpayer, at or before the time the taxpayer's
6 application for review is made, has paid the deficiency, has deposited
7 with the commissioner of finance the amount of the deficiency, or has
8 filed with the commissioner of finance a bond, which may be a jeopardy
9 bond under subdivision eight of section 11-685 of this subchapter, in
10 the amount of the portion of the deficiency, including interest and
11 other amounts, in respect of which the application for review is made
12 and all costs and charges which may accrue against the taxpayer in the
13 prosecution of the proceeding, including costs of all appeals, and with
14 surety approved by a justice of the supreme court of the state, condi-
15 tioned upon the payment of the deficiency, including interest and other
16 amounts, as finally determined and such costs and charges. If, as a
17 result of a waiver of the restrictions on the assessment and collection
18 of a deficiency, any part of the amount determined by the tax appeals
19 tribunal is paid after the filing of the review bond, such bond shall,
20 at the request of the taxpayer, be proportionately reduced.

21 4. Credit, refund or abatement after review. If the amount of a defi-
22 ciency determined by the tax appeals tribunal is disallowed in whole or
23 in part by the court of review, the amount so disallowed shall be cred-
24 ited or refunded to the taxpayer, without the making of claim therefor,
25 or, if payment has not been made, shall be abated.

26 5. Date of finality of tax appeals tribunal decision. A decision of
27 the tax appeals tribunal shall become final upon the expiration of the
28 period specified in subdivision one of this section for making an appli-
29 cation for review, if no such application has been duly made within such
30 time, or if such application has been duly made, upon expiration of the
31 time for all further judicial review, or upon the rendering by the tax
32 appeals tribunal of a decision in accordance with the mandate of the
33 court on review provided, however, for the purpose of making an applica-
34 tion for review, the decision of the tax appeals tribunal shall be
35 deemed final on the date the notice of decision is sent by certified
36 mail to the taxpayer and the commissioner of finance.

37 § 11-682 Mailing rules; holidays; miscellaneous. 1. Timely mailing.
38 (a) If any return, declaration of estimated tax, claim, statement,
39 notice, petition, or other document required to be filed, or any payment
40 required to be made, within a prescribed period or on or before a
41 prescribed date under authority of any provision of this subchapter or
42 of the named subchapters is, after such period or such date, delivered
43 by United States mail to the commissioner of finance, tax appeals tribu-
44 nal, bureau, office, officer or person with which or with whom such
45 document is required to be filed, or to which or to whom such payment is
46 required to be made, the date of the United States postmark stamped on
47 the envelope shall be deemed to be the date of delivery. This subdivi-
48 sion shall apply only if the postmark date falls within the prescribed
49 period or on or before the prescribed date for the filing of such docu-
50 ment, or for making the payment, including any extension granted for
51 such filing or payment, and only if such document or payment was depos-
52 ited in the mail, postage prepaid, properly addressed to the commission-
53 er of finance, tax appeals tribunal, bureau, office, officer or person
54 with which or with whom the document is required to be filed or to which
55 or to whom such payment is required to be made. If any document is sent
56 by United States registered mail, such registration shall be prima facie

1 evidence that such document was delivered to the commissioner of
2 finance, tax appeals tribunal, bureau, office, officer or person to
3 which or to whom addressed. To the extent that the commissioner of
4 finance or, where relevant, the tax appeals tribunal shall prescribe by
5 regulation, certified mail may be used in lieu of registered mail under
6 this subdivision. Except as provided in paragraph (b) of this subdivi-
7 sion, this subdivision shall apply in the case of postmarks not made by
8 the United States postal service only if and to the extent provided by
9 regulations of the commissioner of finance or, where relevant, the tax
10 appeals tribunal.

11 (b) (i) Any reference in paragraph (a) of this subdivision to the
12 United States mail shall be treated as including a reference to any
13 delivery service designated by the secretary of the treasury of the
14 United States pursuant to section seventy-five hundred two of the inter-
15 nal revenue code and any reference in paragraph (a) of this subdivision
16 to a United States postmark shall be treated as including a reference to
17 any date recorded or marked in the manner described in section seventy-
18 five hundred two of the internal revenue code by a designated delivery
19 service. If the commissioner of finance finds that any delivery service
20 designated by such secretary is inadequate for the needs of the city,
21 the commissioner may withdraw such designation for purposes of this
22 title. The commissioner may also designate additional delivery services
23 meeting the criteria of section seventy-five hundred two of the internal
24 revenue code for purposes of this title, or may withdraw any such desig-
25 nation if the commissioner of finance finds that a delivery service so
26 designated is inadequate for the needs of the city. Any reference in
27 paragraph (a) of this subdivision to the United States mail shall be
28 treated as including a reference to any delivery service designated by
29 the commissioner of finance and any reference in paragraph (a) of this
30 subdivision to a United States postmark shall be treated as including a
31 reference to any date recorded or marked in the manner described in
32 section seventy-five hundred two of the internal revenue code by a
33 delivery service designated by the commissioner of finance, provided,
34 however, any withdrawal of designation or additional designation by the
35 commissioner of finance shall not be effective for purposes of service
36 upon the tax appeals tribunal, unless and until such withdrawal of
37 designation or additional designation is ratified by the president of
38 the tax appeals tribunal.

39 (ii) Any equivalent of registered or certified mail designated by the
40 United States secretary of the treasury, or as may be designated by the
41 commissioner of finance pursuant to the same criteria used by such
42 secretary for such designations pursuant to section seventy-five hundred
43 two of the internal revenue code, shall be included within the meaning
44 of registered or certified mail as used in paragraph (a) of this subdivi-
45 sion. If the commissioner of finance finds that any equivalent of
46 registered or certified mail designated by such secretary or the commis-
47 sioner of finance is inadequate for the needs of the city, the commis-
48 sioner of finance may withdraw such designation for purposes of this
49 title, provided, however, any withdrawal of designation or additional
50 designation by the commissioner of finance shall not be effective for
51 purposes of service upon the tax appeals tribunal, unless and until such
52 withdrawal of designation or additional designation is ratified by the
53 president of the tax appeals tribunal.

54 2. Last known address. For purposes of this subchapter, a taxpayer's
55 last known address shall be the address given in the last return filed

1 by it, unless subsequently to the filing of such return the taxpayer
2 shall have notified the commissioner of finance of a change of address.

3 3. Last day a Saturday, Sunday or legal holiday. When the last day
4 prescribed under authority of this subchapter or the named subchapters,
5 including any extension of time, for performing any act falls on a
6 Saturday, Sunday, or legal holiday in the state, the performance of such
7 act shall be considered timely if it is performed on the next succeeding
8 day which is not a Saturday, Sunday or legal holiday.

9 4. Certificate; unfiled return. For purposes of this subchapter and
10 sections one hundred sixty-eight through one hundred seventy-two of the
11 charter of the preceding municipality as it existed January first, nine-
12 teen hundred ninety-four, the certificate of the commissioner of finance
13 to the effect that a tax has not been paid, that a return or declaration
14 of estimated tax has not been filed, or that information has not been
15 supplied, as required by or under the provisions of this chapter, shall
16 be prima facie evidence that such tax has not been paid, that such
17 return or declaration has not been filed, or that such information has
18 not been supplied.

19 § 11-683 Collection, levy and liens. 1. Collection procedures. The
20 taxes imposed by the named subchapters shall be collected by the commis-
21 sioner of finance, and he or she may establish the mode or time for the
22 collection of any amount due him or her thereunder if not otherwise
23 specified. The commissioner of finance shall, upon request, give a
24 receipt for any sum collected thereunder. The commissioner of finance
25 may authorize banks or trust companies which are depositaries or finan-
26 cial agents of the city to receive and give a receipt for any tax
27 imposed under the named subchapters in such manner, at such times, and
28 under such conditions as the commissioner of finance may prescribe; and
29 the commissioner of finance shall prescribe the manner, times and condi-
30 tions under which the receipt of such tax by such banks and trust compa-
31 nies is to be treated as payment of such tax to the commissioner of
32 finance.

33 2. Notice and demand for tax. The commissioner of finance shall as
34 soon as practicable give notice to each taxpayer liable for any amount
35 of tax, addition to tax, penalty or interest, which has been assessed
36 but remains unpaid, stating the amount and demanding payment thereof.
37 Such notice shall be left at the principal office of the taxpayer in the
38 city or shall be sent by mail to such taxpayer's last known address.
39 Except where the commissioner of finance determines that collection
40 would be jeopardized by delay, if any tax is assessed prior to the last
41 date, including any date fixed by extension, prescribed for payment of
42 such tax, payment of such tax shall not be demanded until after such
43 date.

44 3. Issuance of warrant after notice and demand. If any corporation or
45 other person liable under the named subchapters for the payment of any
46 tax, addition to tax, penalty or interest neglects or refuses to pay the
47 same within ten days after notice and demand therefor is given to such
48 corporation or other person under subdivision two of this section, the
49 commissioner of finance may within six years after the date of such
50 assessment issue a warrant directed to the sheriff of any county of the
51 state, or to any officer or employee of the department of finance,
52 commanding him or her to levy upon and sell the real and personal prop-
53 erty of such corporation or other person for the payment of the amount
54 assessed, with the cost of executing the warrant, and to return such
55 warrant to the commissioner of finance, and pay to the commissioner the
56 money collected by virtue thereof within sixty days after the receipt of

1 the warrant. If the commissioner of finance finds that the collection
2 of the tax or other amount is in jeopardy, notice and demand for immedi-
3 ate payment of such tax may be made by the commissioner of finance and
4 upon failure or refusal to pay such tax or other amount the commissioner
5 of finance may issue a warrant without regard to the ten-day period
6 provided in this subdivision.

7 4. Copy of warrant to be filed and lien to be created. Any sheriff or
8 officer or employee who receives a warrant under subdivision three of
9 this section shall within five days thereafter file a copy with the
10 clerk of the appropriate county. The clerk shall thereupon enter in the
11 judgment docket, in the column for judgment debtors, the name of the
12 taxpayer mentioned in the warrant, and in appropriate columns the tax or
13 other amounts for which the warrant is issued and the date when such
14 copy is filed; and such amount shall thereupon be a binding lien upon
15 the real, personal and other property of the taxpayer.

16 5. Judgment. When a warrant has been filed with the county clerk the
17 commissioner of finance shall, on behalf of the city, be deemed to have
18 obtained judgment against the taxpayer for the tax or other amounts.

19 6. Execution. The sheriff or officer or employee shall thereupon
20 proceed upon the judgment in all respects, with like effect, and in the
21 same manner prescribed by law in respect to executions issued against
22 property upon judgments of a court of record, and a sheriff shall be
23 entitled to the same fees for his or her services in executing the
24 warrant, to be collected in the same manner. An officer or employee of
25 the department of finance may proceed in any county or counties of this
26 state and shall have all the powers of execution conferred by law upon
27 sheriffs, but shall be entitled to no fee or compensation in excess of
28 actual expenses paid in connection with the execution of the warrant.

29 7. Foreign corporations. Where a notice and demand under subdivision
30 two of this section shall have been given to a foreign corporation or
31 other person who is not then a resident, and it appears to the commis-
32 sioner of finance that it is not practicable to find in the state prop-
33 erty of such foreign corporation or nonresident person sufficient to pay
34 the entire balance of tax or other amount owing by such foreign corpo-
35 ration or nonresidential person, the commissioner of finance may, in
36 accordance with subdivision three of this section, issue a warrant
37 directed to an officer or employee of the department of finance, a copy
38 of which warrant shall be mailed by certified or registered mail to such
39 foreign corporation or nonresident person at its last known address,
40 subject to the rules of mailing provided in subdivision one of section
41 11-672 of this subchapter. Such warrant shall command the officer or
42 employee to proceed in Richmond county, and he or she shall, within five
43 days after receipt of the warrant, file the warrant and obtain a judg-
44 ment in accordance with this section. Thereupon the commissioner of
45 finance may authorize the institution of any action or proceeding to
46 collect or enforce the judgment in any place and by any procedure that a
47 civil judgment of the supreme court of the state of New York could be
48 collected or enforced. The commissioner of finance may also, in his or
49 her discretion, designate agents or retain counsel for the purpose of
50 collecting, outside the state, any unpaid taxes, additions to tax,
51 penalties or interest which have been assessed under this subchapter or
52 under any of the named subchapters, against foreign corporations or
53 other non-resident persons, may fix the compensation of such agents and
54 counsel to be paid out of money appropriated or otherwise lawfully
55 available for payment thereof, and may require of them bonds or other
56 security for the faithful performance of their duties, in such form and

1 in such amount as the commissioner of finance shall deem proper and
2 sufficient.

3 8. Action by city for recovery of taxes. Action may be brought by the
4 corporation counsel of the city at the instance of the commissioner of
5 finance to recover the amount of any unpaid taxes, additions to tax,
6 penalties or interest which have been assessed under this subchapter or
7 under the named subchapters within six years prior to the date the
8 action is commenced.

9 9. Release of lien. The commissioner of finance, if he or she finds
10 that the interests of the city will not thereby be jeopardized, and upon
11 such conditions as it may require, may release any property from the
12 lien of any warrant filed under subdivision four or seven of this
13 section for unpaid taxes, additions to tax, penalties and interest filed
14 pursuant to this section, and such release or vacating of the warrant
15 may be recorded in the office of any recording officer in which such
16 warrant has been filed. The clerk shall thereupon cancel and discharge
17 as of the original date of docketing the vacated warrant.

18 10. Lien from due date of return. (a) In addition to any other lien
19 provided for in this section, each tax imposed by the named subchapters
20 shall become a lien on the date on which the return is required to be
21 filed, without regard to any extension of time for filing such return,
22 except that such tax shall become a lien not later than the date the
23 taxpayer ceases to be subject to the tax imposed by any of the named
24 subchapters, or to do business in this state in a corporate or organized
25 capacity. Each such tax shall be a lien and binding upon the real and
26 personal property of the taxpayer, or of a transferee liable to pay the
27 same, until the same is paid in full, except that no lien for any addi-
28 tional tax assessed pursuant to this subchapter shall be enforceable
29 against property which prior to the issuance to the taxpayer of a notice
30 of deficiency under section 11-672 of this subchapter had been trans-
31 ferred in good faith to a bona fide transferee for value. But the lien
32 of each such tax shall be subject to the lien of any mortgage indebt-
33 edness existing against real property previous to the time when the tax
34 became a lien and where such mortgage indebtedness has been incurred in
35 good faith and was not given, directly or indirectly, to any officer or
36 stockholder of the corporation owning such real property, whether as a
37 purchase money mortgage or otherwise, and shall also be subject to the
38 lien of local taxes and assessments, without regard to when the lien for
39 such taxes and assessments may have accrued. If the return is filed and
40 the tax shown on the report to be due is paid on or before the date on
41 which the report is required to be filed, without regard to any exten-
42 sions of time for filing such report, the lien shall not be enforceable
43 against the interest of any purchaser or mortgagee in property which is
44 thereafter, but prior to the issuance to the taxpayer of a notice of
45 deficiency under section 11-672 of this subchapter transferred to a bona
46 fide purchaser for value, or mortgaged where the mortgage indebtedness
47 is incurred in good faith and the mortgage is not given, directly or
48 indirectly, to any officer or stockholder of the corporation. In any
49 action to foreclose any such mortgage, or to foreclose the lien of local
50 taxes or assessments, to which the people of the state, or the city
51 shall have been made a party defendant by reason of the existence of a
52 lien for any such tax, or if no such tax was due or was a lien at the
53 time of the commencement of such action and the filing of the notice of
54 pendency thereof but such a tax becomes due or becomes a lien subsequent
55 to the time of the commencement of such action and the filing of the
56 notice of pendency thereof, such real property shall be sold and

1 conveyed in such action free from any such tax lien, and any such tax
2 lien may become a lien on any surplus moneys which may result from such
3 sale, to be determined in the proceedings for the distribution of such
4 surplus moneys. Where title to real property passes from an individual,
5 or from a corporation owing no tax, to another corporation which is in
6 default for such tax, the lien herein provided shall not be enforceable
7 except as to any equity after the prior mortgage or purchase money mort-
8 gage encumbrance.

9 (b) The commissioner of finance may, upon application made to the
10 commissioner and the payment of a fee of twenty-five dollars, release
11 any real property from the lien under this subdivision, provided payment
12 be made to the commissioner of finance of such a sum as the commissioner
13 of finance shall deem adequate consideration for such release, or depos-
14 it be made of such security or such bond be filed as the commissioner of
15 finance shall deem proper to secure payment of any such tax. The appli-
16 cation for such release shall contain an accurate description of the
17 property to be released together with such information as the commis-
18 sioner of finance may require. Such release may be recorded in any
19 office in which conveyances of real estate are entitled to be recorded.

20 (c) All taxes, additions to tax, penalties and interest which have
21 become a lien under this subdivision shall cease to be a lien after the
22 expiration of twenty years from the date they become due and payable,
23 except that taxes, additions to tax, penalties and interest which have
24 become a lien under this subdivision (1) as to real estate in the hands
25 of persons who are owners thereof who would be purchasers in good faith
26 but for such taxes, additions to tax, penalties or interest and (2) as
27 to the lien on real estate of mortgages held by persons who would be
28 holders thereof in good faith but for such taxes, additions to tax,
29 penalties or interest, as against such purchasers or holders, shall
30 cease to be a lien after the expiration of ten years from the date they
31 become due and payable. The limitations herein provided for shall not
32 apply to any transfer from a corporation to a person or corporation with
33 intent to avoid payment of any taxes, or where with like intent the
34 transfer is made to a grantee corporation, or any subsequent grantee
35 corporation, controlled by such grantor or which has any community of
36 interest with it, either through stock ownership or otherwise.

37 § 11-684 Transferees. 1. General. The liability, at law or in equi-
38 ty, of a transferee of property of a taxpayer for any tax, additions to
39 tax, penalty or interest due the commissioner of finance under this
40 subchapter or under the named subchapters, shall be assessed, paid, and
41 collected in the same manner and subject to the same provisions and
42 limitations as in the case of the tax to which the liability relates,
43 except that the period of limitations for assessment against the trans-
44 feree shall be extended by one year for each successive transfer, in
45 order, from the original taxpayer to the transferee involved, but not by
46 more than three years in the aggregate. The term transferee includes,
47 in case of successive transfers, donee, heir, legatee, devisee, distri-
48 butee, and successor by merger, consolidation or other reorganization.

49 2. Exceptions.

50 (a) If before the expiration of the period of limitations for assess-
51 ment of liability of the transferee, a claim has been filed by the
52 commissioner of finance in any court against the original taxpayer or
53 the last preceding transferee based upon the liability of the original
54 taxpayer, then the period of limitation for assessment of liability of
55 the transferee shall in no event expire prior to one year after such
56 claim has been finally allowed, disallowed or otherwise disposed of.

1 (b) If, before the expiration of the time prescribed in subdivision
2 one or paragraph (a) of this subdivision for the assessment of the
3 liability, the commissioner of finance and the transferee have both
4 consented in writing to its assessment after such time, the liability
5 may be assessed at any time prior to the expiration of the period agreed
6 upon. The period so agreed upon may be extended by subsequent agree-
7 ments in writing made before the expiration of the period previously
8 agreed upon. For the purpose of determining the period of limitation on
9 credit or refund to the transferee or overpayments of tax made by such
10 transferee or overpayments of tax made by the transferor as to which the
11 transferee is legally entitled to credit or refund, such agreement and
12 any extension thereof shall be deemed an agreement and extension thereof
13 referred to in subdivision two of section 11-678 of this subchapter. If
14 the agreement is executed after the expiration of the period of limita-
15 tion for assessment against the original taxpayer, then in applying the
16 limitations under subdivision two of section 11-678 of this subchapter
17 on the amount of the credit or refund, the period specified in subdivi-
18 sion one of section 11-678 of this subchapter shall be increased by the
19 period from the date of such expiration to the date of the agreement.

20 3. Period for assessment against certain transferors. For purposes of
21 this section, if any person is deceased or is a corporation which has
22 terminated its existence, the period of limitation for assessment
23 against such person or corporation shall be the period that would be in
24 effect had death or termination of existence not occurred.

25 4. Evidence. The commissioner of finance shall use his or her powers
26 to make available to the transferee evidence necessary to enable the
27 transferee to determine the liability of the original taxpayer and of
28 any preceding transferees, but without undue hardship to the original
29 taxpayer or preceding transferee. See subdivision five of section
30 11-680 of this subchapter for rule as to burden of proof.

31 § 11-685 Jeopardy assessments. 1. Authority for making. If the commis-
32 sioner of finance believes that the assessment or collection of a defi-
33 ciency will be jeopardized by delay, the commissioner shall, notwith-
34 standing the provisions of section 11-672 of this subchapter immediately
35 assess such deficiency, together with all interest, penalties and addi-
36 tions to tax provided for by law, and notice and demand shall be made by
37 the commissioner of finance for the payment thereof.

38 2. Notice of deficiency. If the jeopardy assessment is made before any
39 notice in respect of the tax to which the jeopardy assessment relates
40 has been mailed under section 11-672 of this subchapter, then the
41 commissioner of finance shall mail a notice under such section within
42 sixty days after the making of the assessment.

43 3. Amount assessable before decision of the tax appeals tribunal. The
44 jeopardy assessment may be made in respect of a deficiency greater or
45 less than that of which notice is mailed to the taxpayer and whether or
46 not the taxpayer has theretofore filed a petition with the tax appeals
47 tribunal. The commissioner of finance may, at any time before tax
48 appeals tribunal renders its decision, abate such assessment, or any
49 unpaid portion thereof, to the extent that the commissioner believes the
50 assessment to be excessive in amount. The tax appeals tribunal may in
51 its decision redetermine the entire amount of the deficiency and of all
52 amounts assessed at the same time in connection therewith.

53 4. Amounts assessable after decision of the tax appeals tribunal. If
54 the jeopardy assessment is made after the decision of the tax appeals
55 tribunal is rendered, such assessment may be made only in respect of the
56 deficiency determined by the tax appeals tribunal in its decision.

1 5. Expiration of right to assess. A jeopardy assessment may not be
2 made after the decision of the tax appeals tribunal has become final or
3 after the taxpayer has made an application for review of the decision of
4 the tax appeals tribunal.

5 6. Collection of unpaid amounts. When a petition has been filed with
6 the tax appeals tribunal and when the amount which should have been
7 assessed has been determined by a decision of the tax appeals tribunal
8 which has become final, then any unpaid portion, the collection of which
9 has been stayed by bond, shall be collected as part of the tax upon
10 notice and demand from the commissioner of finance, and any remaining
11 portion of the assessment shall be abated. If the amount already
12 collected exceeds the amount determined as the amount which should have
13 been assessed, such excess shall be credited or refunded to the taxpayer
14 as provided in section 11-677 of this subchapter without the filing of
15 claim therefor. If the amount determined as the amount which should
16 have been assessed is greater than the amount actually assessed, then
17 the difference shall be assessed and shall be collected as part of the
18 tax upon notice and demand from the tax appeals tribunal.

19 7. Abatement if jeopardy does not exist. The commissioner of finance
20 may abate the jeopardy assessment if the commissioner finds that jeopar-
21 dy does not exist. Such abatement may not be made after a decision of
22 the tax appeals tribunal in respect of the deficiency has been rendered
23 or, if no petition is filed with the tax appeals tribunal, after the
24 expiration of the period for filing such petition. The period of limita-
25 tion on the making of assessments and levy or a proceeding for
26 collection, in respect of any deficiency, shall be determined as if the
27 jeopardy assessment so abated had not been made, except that the running
28 of such period shall in any event be suspended for the period from the
29 date of such jeopardy assessment until the expiration of the tenth day
30 after the day on which such jeopardy assessment is abated.

31 8. Bond to stay collection. The collection of the whole or any amount
32 of any jeopardy assessment may be stayed by filing with the commissioner
33 of finance, within such time as may be fixed by regulation, a bond in an
34 amount equal to the amount as to which the stay is desired, conditioned
35 upon the payment of the amount, together with interest thereon, the
36 collection of which is stayed at the time of which, but for the making
37 of the jeopardy assessment, such amount would be due. Upon the filing
38 of the bond the collection of so much of the amount assessed as is
39 covered by the bond shall be stayed. The taxpayer shall have the right
40 to waive such stay at any time in respect of the whole or any part of
41 the amount covered by the bond, and if as a result of such waiver any
42 part of the amount covered by the bond is paid, then the bond shall at
43 the request of the taxpayer, be proportionately reduced. If any portion
44 of the jeopardy assessment is abated, or if a notice of deficiency under
45 section 11-672 of this subchapter is mailed to the taxpayer in a lesser
46 amount, the bond shall, at the request of the taxpayer, be proportion-
47 ately reduced.

48 9. Petition to tax appeals tribunal. If the bond is given before the
49 taxpayer has filed its petition under section 11-680 of this subchapter,
50 the bond shall contain a further condition that if a petition is not
51 filed within the period provided in such section, then the amount, the
52 collection of which is stayed by the bond, will be paid on notice and
53 demand at any time after the expiration of such period, together with
54 interest thereon from the date of the jeopardy notice and demand to the
55 date of notice and demand under this subdivision. The bond shall be
56 conditioned upon the payment of so much of such assessment, collection

1 of which is stayed by the bond, as is not abated by a decision of the
2 tax appeals tribunal which has become final. If the tax appeals tribunal
3 determines that the amount assessed is greater than the amount which
4 should have been assessed, then the bond shall, at the request of the
5 taxpayer, be proportionately reduced when the decision of the tax
6 appeals tribunal is rendered.

7 10. Stay of sale of seized property pending tax appeals tribunal's
8 decision. Where a jeopardy assessment is made, the property seized for
9 the collection of the tax shall not be sold:

10 (a) if subdivision two of this section is applicable, prior to the
11 issuance of the notice of deficiency and the expiration of the time
12 provided in section 11-680 of this subchapter for filing a petition with
13 the tax appeals tribunal, and

14 (b) if a petition is filed with the tax appeals tribunal, whether
15 before or after the making of such jeopardy assessment, prior to the
16 expiration of the period during which the assessment of the deficiency
17 would be prohibited if subdivision one of this section were not applica-
18 ble.

19 Such property may be sold if the taxpayer consents to the sale, or if
20 the commissioner of finance determines that the expenses of conservation
21 and maintenance will greatly reduce the net proceeds, or if the property
22 is perishable.

23 11. Interest. For the purpose of subdivision one of section 11-675 of
24 this subchapter, the last date prescribed for payment shall be deter-
25 mined without regard to any notice and demand for payment issued under
26 this section prior to the last date otherwise prescribed for such
27 payment.

28 12. Early termination of taxable year. If the commissioner of finance
29 finds that a taxpayer designs quickly to remove its property from this
30 state, or to conceal its property therein, or to do any other act tend-
31 ing to prejudice or to render wholly or partly ineffectual proceedings
32 to collect the tax for the current or the preceding taxable year unless
33 such proceedings be brought without delay, the commissioner of finance
34 shall declare the taxable period for such taxpayer immediately termi-
35 nated, and shall cause notice of such finding and declaration to be
36 given the taxpayer, together with a demand for immediate payment of the
37 tax for the taxable period so declared terminated and of the tax for the
38 preceding taxable year so much of such tax as is unpaid, whether or not
39 the time otherwise allowed by law for filing return and paying the tax
40 has expired; and such taxes shall thereupon become immediately due and
41 payable. In any proceeding brought to enforce payment of taxes made due
42 and payable by virtue of the provisions of this subdivision, the finding
43 of the commissioner of finance made as herein provided, whether made
44 after notice to the taxpayer or not, shall be for all purposes presump-
45 tive evidence of jeopardy.

46 13. Reopening of taxable period. Notwithstanding the termination of
47 the taxable period of the taxpayer by the commissioner of finance, as
48 provided in subdivision twelve of this section, the commissioner of
49 finance may reopen such taxable period each time the taxpayer is found
50 by the commissioner of finance to have received income, within the
51 current taxable year, since the termination of such period. A taxable
52 period so terminated by the commissioner of finance may be reopened by
53 the taxpayer if it files with the commissioner of finance a true and
54 accurate return under any of the named subchapters for such taxable
55 period, together with such other information as the commissioner of
56 finance may by regulations prescribe.

1 14. Furnishing of bond where taxable year is closed by the commission-
2 er of finance. Payment of taxes shall not be enforced by any proceedings
3 under the provisions of subdivision twelve of this section prior to the
4 expiration of the time otherwise allowed for paying such taxes if the
5 taxpayer furnishes, under regulations prescribed by the commissioner of
6 finance, a bond to insure the timely making of returns with respect to,
7 and payment of, such taxes or any taxes for prior years.

8 § 11-686 Criminal penalties; cross-reference. For criminal penalties,
9 see chapter forty of this title.

10 § 11-687 General powers of the commissioner of finance. 1. General.
11 The commissioner of finance shall administer and enforce the tax imposed
12 by the named subchapters and the commissioner is authorized to make such
13 rules and regulations, and to require such facts and information to be
14 reported, as the commissioner may deem necessary to enforce the
15 provisions of this subchapter and of the named subchapters; and the
16 commissioner may delegate the commissioner's powers and functions under
17 all subchapters of this chapter to one of the commissioner's deputies or
18 to any employee or employees of his or her department.

19 2. Examination of books and witnesses. The commissioner of finance,
20 for the purpose of ascertaining the correctness of any return, or for
21 the purpose of making an estimate of tax liability of any corporation,
22 shall have power to examine or to cause to have examined, by any agent
23 or representative designated by the commissioner for that purpose, any
24 books, papers, records or memoranda bearing upon the matters required to
25 be included in the return, and may require the attendance of the corpo-
26 ration rendering the return through any officer or employee of such
27 corporation, or the attendance of any other person having knowledge in
28 the premises, and may take testimony and require proof material for the
29 commissioner's information, with power to administer oaths to such
30 person or persons.

31 3. Abatement authority. The commissioner of finance, of the commis-
32 sioner's own motion, may abate any small unpaid balance of an assessment
33 of tax, or any liability in respect thereof, if the commissioner of
34 finance determines under uniform rules prescribed by the commissioner
35 that the administration and collection costs involved would not warrant
36 collection of the amount due. The commissioner may also abate, of his
37 or her own motion, the unpaid portion of the assessment of any tax or
38 any liability in respect thereof, which is excessive in amount, or is
39 assessed after the expiration of the period of limitation properly
40 applicable thereto, or is erroneously or illegally assessed. No claim
41 for abatement under this subdivision shall be filed by a taxpayer.

42 4. Special refund authority. Where no questions of fact or law are
43 involved and it appears from the records of the commissioner of finance
44 that any moneys have been erroneously or illegally collected from any
45 taxpayer or other person, or paid by such taxpayer or other person under
46 a mistake of facts, pursuant to the provisions of this subchapter or any
47 of the named subchapters, the commissioner of finance at anytime, with-
48 out regard to any period of limitations, shall have the power, upon
49 making a record of his or her reasons therefor in writing, to cause such
50 moneys so paid and being erroneously and illegally held to be refunded.

51 5. (a) Authority to set interest rates. The commissioner of finance
52 shall set the overpayment and underpayment rates of interest to be paid
53 pursuant to sections 11-606, 11-608, 11-645, 11-647, 11-656, 11-658,
54 11-675, 11-676, and 11-679 of this chapter, but if no such rate or rates
55 of interest are set, such overpayment rate shall be deemed to be set at
56 six percent per annum and such underpayment rate shall be deemed to be

1 set at seven and one-half percent per annum. Such overpayment and
2 underpayment rates shall be the rates prescribed in paragraph (b) of
3 this subdivision but the underpayment rate shall not be less than seven
4 and one-half percent per annum. Any such rates set by the commissioner
5 of finance shall apply to taxes, or any portion thereof, which remain or
6 become due or overpaid on or after the date on which such rates become
7 effective and shall apply only with respect to interest computed or
8 computable for periods or portions of periods occurring in the period
9 during which such rates are in effect.

10 (b) General rule. (A) Overpayment rate. The overpayment rate set under
11 this subdivision shall be the sum of (i) the federal short-term rate as
12 provided under paragraph (c) of this subdivision, plus (ii) two percent-
13 age points.

14 (B) Underpayment rate. The underpayment rate set under this subdivi-
15 sion shall be the sum of (i) the federal short-term rate as provided
16 under paragraph (c) of this subdivision, plus (ii) seven percentage
17 points.

18 (c) Federal short-term rate. For purposes of this subdivision:

19 (A) The federal short-term rate for any month shall be the federal
20 short-term rate determined by the United States secretary of the treas-
21 ury during such month in accordance with subsection (d) of section
22 twelve hundred seventy-four of the internal revenue code for use in
23 connection with section six thousand six hundred twenty-one of the
24 internal revenue code. Any such rate shall be rounded to the nearest
25 full percent, or, if a multiple of one-half of one percent, such rate
26 shall be increased to the next highest full percent.

27 (B) Period during which rate applies.

28 (i) In general. Except as provided in clause (ii) of this subpara-
29 graph, the federal short-term rate for the first month in each calendar
30 quarter shall apply during the first calendar quarter beginning after
31 such month.

32 (ii) Special rule for the month of September, nineteen hundred eight-
33 y-nine. The federal short-term rate for the month of April, nineteen
34 hundred eighty-nine shall apply with respect to setting the overpayment
35 and underpayment rates for the month of September, nineteen hundred
36 eighty-nine.

37 (d) Publication of interest rates. The commissioner of finance shall
38 cause to be published in the city record, and give other appropriate
39 general notice of, the interest rates to be set under this subdivision
40 no later than twenty days preceding the first day of the calendar quar-
41 ter during which such interest rates apply. The setting and publication
42 of such interest rates shall not be included within paragraph (a) of
43 subdivision five of section one thousand forty-one of the city charter
44 relating to the definition of a rule.

45 (e) Cross-reference. For provisions relating to the power of the
46 commissioner of finance to abate small amounts of interest, see subdivi-
47 sion three of this section.

48 6. In computing the amount of any interest required to be paid under
49 this subchapter or any of the named subchapters by the commissioner of
50 finance or by the taxpayer, or any other amount determined by reference
51 to such amount of interest, such interest and such amount shall be
52 compounded daily. The preceding sentence shall not apply for purposes of
53 computing the amount of any addition to tax for failure to pay estimated
54 tax under subdivision three of section 11-676 of this subchapter.

55 § 11-688 Secrecy required of official; penalty for violation. 1.
56 Except in accordance with proper judicial order or as otherwise provided

1 by law, it shall be unlawful for the commissioner of finance, the
2 department of finance of the city, any officer or employee of the
3 department of finance of the city, the tax appeals tribunal, any commis-
4 sioner or employee of such tribunal, any person who, pursuant to this
5 section, is permitted to inspect any report or return, or to whom any
6 information contained in any report or return is furnished, any person
7 engaged or retained by such department on an independent contract basis,
8 or any person who in any manner may acquire knowledge of the contents of
9 a report filed pursuant to this chapter, to divulge or make known in any
10 manner the amount of income or any particulars set forth or disclosed in
11 any report or return, under this chapter. The officers charged with the
12 custody of such reports and returns shall not be required to produce any
13 of them or evidence of anything contained in them in any action or
14 proceeding in any court, except on behalf of the city in an action or
15 proceeding involving the collection of a tax due under this chapter to
16 which the city is a party or a claimant, or on behalf of any party to
17 any action or proceeding under the provisions of this chapter when the
18 reports, returns or facts shown thereby are directly involved in such
19 action or proceeding, in any of which events the court may require the
20 production of, and may admit in evidence, so much of said reports or
21 returns or of facts shown thereby as are pertinent to the action or
22 proceeding, and no more. Nothing herein shall be construed to prohibit
23 the delivery to a taxpayer or its duly authorized representative of a
24 copy of any report filed by it, nor to prohibit the publication of
25 statistics so classified as to prevent the identification of particular
26 reports or returns and the items thereof, or the inspection by the
27 corporation counsel or other legal representatives of the city of the
28 report or return of any taxpayer which shall bring action to set aside
29 or review the tax based thereon, or against which an action or proceed-
30 ing under this chapter or under any local law of the city imposed as
31 authorized by the act authorizing the adoption of this chapter has been
32 recommended by the commissioner of finance or the corporation counsel or
33 has been instituted, or the inspection of the reports or returns of any
34 taxpayer by the duly designated officers or employees of the city for
35 purposes of an audit under this chapter or an audit authorized by the
36 act authorizing the adoption of this chapter; and nothing in this
37 subchapter or chapter eleven of this title shall be construed to prohib-
38 it the publication of the issuer's allocation percentage, as defined in
39 subparagraph one of paragraph (b) of subdivision three of section 11-604
40 of this chapter, of any corporation which may be required to be allo-
41 cated within the city for purposes of the tax imposed by any of the
42 named subchapters or chapter eleven of this title.

43 2. (a) Any officer or employee of the state or city who willfully
44 violates the provisions of subdivision one of this section shall be
45 dismissed from office and be incapable of holding any public office in
46 the city or this state for a period of five years thereafter.

47 (b) Cross-reference: For criminal penalties, see chapter forty of this
48 title.

49 3. Notwithstanding any provisions of this section, the commissioner of
50 finance may permit the secretary of the treasury of the United States or
51 his or her delegates, or the proper officer of this or any other state
52 charged with tax administration, or the authorized representative of
53 either such officer, to inspect the returns or reports filed under any
54 of the named subchapters, or may furnish to such officer or his or her
55 authorized representative an abstract of any such return or report or
56 supply information concerning an item contained in any such return or

1 report, or supply him or her with information concerning an item
2 contained in any such return or report, or disclosed by an investigation
3 of tax liability under any of the named subchapters, but such permission
4 shall be granted or such information furnished to such officer or his or
5 her representative only if the laws of the United States or of such
6 state, as the case may be, grant substantially similar privileges to the
7 commissioner of finance and such information is to be used for tax
8 purposes only; and provided further the commissioner of finance may
9 furnish to the secretary of the treasury of the United States or his or
10 her delegates or to the tax commission of the state of New York or its
11 delegates such returns or reports filed under any of the named subchap-
12 ters and other tax information, as he or she may consider proper, for
13 use in court actions or proceedings under the internal revenue code or
14 the tax law of the state of New York, whether civil or criminal, where a
15 written request therefor has been made to the commissioner of finance by
16 the secretary of the treasury or by such tax commission or by their
17 delegates, provided the laws of the United States or the laws of the
18 state of New York grant substantially similar powers to the secretary of
19 the treasury or his or her delegates or to such tax commission or its
20 delegates. Where the commissioner of finance has so authorized use of
21 returns, reports or other information in such actions or proceedings,
22 officers and employees of the department of finance may testify in such
23 actions or proceedings in respect to such returns, reports of other
24 information.

25 4. Notwithstanding the provisions of subdivision one of this section,
26 the commissioner of finance, in his or her discretion, may require or
27 permit any or all persons liable for any tax imposed by this chapter to
28 make payments on account of estimated tax and payment of any tax, penal-
29 ty or interest imposed by this chapter to banks, banking houses or trust
30 companies designated by the commissioner of finance and to file declara-
31 tions of estimated tax, applications for automatic extensions of time to
32 file reports, and reports with such banks, banking houses or trust
33 companies as agents of the commissioner of finance, in lieu of making
34 any such payment directly to the commissioner of finance. However, the
35 commissioner of finance shall designate only such banks, banking houses
36 or trust companies as are depositories or financial agents of the city.

37 5. This section shall be deemed a state statute for purposes of para-
38 graph (a) of subdivision two of section eighty-seven of the public offi-
39 cers law.

40 6. Notwithstanding anything in subdivision one of this section to the
41 contrary, if a taxpayer has petitioned the tax appeals tribunal for
42 administrative review as provided in section one hundred seventy of the
43 charter of the preceding municipality as it existed January first, nine-
44 teen hundred ninety-four, the commissioner of finance shall be author-
45 ized to present to the tribunal any report or return of such taxpayer,
46 or any information contained therein or relating thereto, which may be
47 material or relevant to the proceeding before the tribunal. The tax
48 appeals tribunal shall be authorized to publish a copy or a summary of
49 any decision rendered pursuant to section one hundred seventy-one of the
50 charter of the preceding municipality as it existed January first, nine-
51 teen hundred ninety-four.

52 7. Notwithstanding anything in subdivision one of this section, the
53 commissioner of finance may disclose to a taxpayer or a taxpayer's
54 related member, as defined in paragraph (n) of subdivision eight of
55 section 11-602, paragraph (n) of subdivision eight of section 11-652 or
56 paragraph one of subdivision (q) of section 11-641 of this chapter,

1 information relating to any royalty paid, incurred or received by such
2 taxpayer or related member to or from the other, including the treatment
3 of such payments by the taxpayer or the related member in any report or
4 return transmitted to the commissioner of finance under this title.

5 § 11-689 Disposition of revenues. All revenues resulting from the
6 imposition of the taxes under this chapter shall be paid into the treas-
7 ury of the city and shall be credited to and deposited in the general
8 fund of the city, but no part of such revenues may be expended unless
9 appropriated in the annual budget of the city.

10 § 11-690 Inconsistencies with other laws. If any provision of this
11 chapter is inconsistent with, in conflict with, or contrary to any other
12 provision of law, such provision of this chapter shall prevail over such
13 other provision and such other provision shall be deemed to have been
14 amended, superseded or repealed to the extent of such inconsistency,
15 conflict or contrariety.

16 CHAPTER 7

17 COMMERCIAL RENT OR OCCUPANCY TAX

18 § 11-701 Definitions. When used in this chapter the following terms
19 shall mean or include:

20 1. "Person." An individual, partnership, society, association, joint
21 stock company, corporation, estate, receiver, assignee, trustee or any
22 other person acting in a fiduciary capacity, whether appointed by a
23 court or otherwise, and any combination of individuals.

24 2. "Landlord." A person who grants the right to use or occupy premises
25 to any lessee, sublessee, licensee or concessionaire, whether or not
26 such person is the owner of the premises.

27 3. "Tenant." A person paying or required to pay rent for premises as a
28 lessee, sublessee, licensee or concessionaire.

29 4. "Premises." Any real property or part thereof, and any structure
30 thereon or space therein.

31 5. "Taxable premises." Any premises in the city occupied, used or
32 intended to be occupied or used for the purpose of carrying on or exer-
33 cising any trade, business, profession, vocation or commercial activity,
34 including any premises so used even though it is used solely for the
35 purpose of renting, or granting the right to occupy or use, the same
36 premises in whole or in part to tenants.

37 6. "Rent." The consideration paid or required to be paid by a tenant
38 for the use or occupancy of premises, valued in money, whether received
39 in money or otherwise, including all credits and property or services of
40 any kind and including any payment required to be made by a tenant on
41 behalf of his or her landlord for real estate taxes, water rents or
42 charges, sewer rents or any other expenses, including insurance, normal-
43 ly payable by a landlord who owns the realty other than expenses for the
44 improvement, repair or maintenance of the tenant's premises.

45 7. "Base rent." The rent paid for each taxable premises by a tenant to
46 his or her landlord for a period, less the amounts received by or due
47 such tenant for the same period from any tenant of any part of such
48 premises:

49 (i) as rent for premises which constitute taxable premises of such
50 tenant except where such tenant is exempt from tax thereon pursuant to
51 subdivision b or paragraph six of subdivision c of section 11-704 of
52 this chapter; provided, however, that for tax periods beginning on and
53 after June first, nineteen hundred eighty-five, rent received or due
54 from a tenant exempt from tax thereon pursuant to paragraph two of
55 subdivision b of section 11-704 of this chapter, as such paragraph two

1 was in effect immediately prior to its amendment by local law number
2 fifty-seven for the year nineteen hundred ninety-three, may be deducted
3 if such tenant occupies or uses the premises pursuant to a written
4 agreement made prior to June first, nineteen hundred eighty-four, the
5 terms and conditions of which have not been changed or amended; and
6 provided, further, that for tax periods beginning on and after June
7 first, nineteen hundred eighty-five, with respect to a tenant exempt
8 from tax pursuant to paragraph two of subdivision b of section 11-704 of
9 this chapter, as such paragraph two was in effect immediately prior to
10 its amendment by local law number fifty-seven for the year nineteen
11 hundred ninety-three, because of the reduction in base rent provided for
12 in subdivision h of section 11-704 of this chapter, rent received or due
13 from such tenant may be deducted if such tenant occupies or uses the
14 premises pursuant to a written agreement made prior to June first, nine-
15 teen hundred eighty-five, the terms and conditions of which have not
16 been changed or amended; and provided, further, that for tax periods
17 beginning on and after June first, nineteen hundred ninety-four, with
18 respect to a tenant exempt from tax pursuant to paragraph two of subdivi-
19 sion b of section 11-704 of this chapter as a result of the amendment
20 of such paragraph two by local law number fifty-seven for the year nine-
21 teen hundred ninety-three, whether or not such exemption is due to the
22 reduction in base rent provided for in subdivision h of section 11-704
23 of this chapter, rent received or due from such tenant may be deducted
24 if such tenant occupies or uses the premises pursuant to a written
25 agreement made prior to June first, nineteen hundred ninety-three, the
26 terms and conditions of which have not been changed or amended; and
27 provided, further, that for tax periods beginning on and after July
28 twenty-ninth, nineteen hundred eighty-seven, with respect to a tenant
29 exempt from tax pursuant to paragraph two of subdivision b of section
30 11-704 of this chapter because of the reduction in base rent provided
31 for in subdivision f of section 11-704 of this chapter, rent received or
32 due from such tenant may be deducted; and provided, further, that,
33 notwithstanding anything in this paragraph to the contrary, for tax
34 periods beginning on and after June first, nineteen hundred ninety-five,
35 with respect to a tenant exempt from tax pursuant to paragraph two of
36 subdivision b of section 11-704 of this chapter, rents received or due
37 from such tenant may be deducted;

38 (ii) as rent for premises which do not constitute taxable premises and
39 which are used by such tenant as lodging or residential premises,
40 including such residential premises in hotels, apartment hotels or lodg-
41 ing houses as defined in former title V of chapter forty-six of the code
42 of the preceding municipality;

43 (iii) who is exempt from tax under subdivision a of section 11-704 of
44 this chapter;

45 (iv) as rent for premises which do not constitute taxable premises
46 where such rent is, or to the extent that such rent is, deductible from
47 the base rent of such tenant by reason of paragraph five of subdivision
48 c of section 11-704 of this chapter; and

49 (v) as rent for premises which do not constitute taxable premises,
50 pursuant to a common law relationship of landlord and tenant, notwith-
51 standing the definition given to those terms by paragraphs two and three
52 of this section, except where it is received as rent, whether or not
53 such landlord-tenant relationship exists, for premises which are occu-
54 pied as or constitute:

55 (a) a locker, safe deposit box or beach cabana;

1 (b) storage space in part of a warehouse or in part of any other
2 structure or area in which goods are stored;

3 (c) garage space or parking space in any part of a garage, of a park-
4 ing lot or of a parking area where the entire garage, entire parking lot
5 or entire parking area accommodates more than two motor vehicles;

6 (d) an occupancy of a type which customarily has not been the subject
7 of such a common law relationship of landlord and tenant. Nothing
8 contained in this chapter shall be construed to permit a tenant to
9 deduct the same rent from his or her base rent more than once.

10 8. "Premises used for railroad transportation purposes." The portion
11 of any premises of any person actually operating a railroad, used by
12 such person for normal or necessary railroad transportation purposes.
13 The words normal or necessary railroad transportation purposes, as used
14 in this definition, shall not include any activities which are normally
15 carried on by persons not engaged in furnishing railroad transportation
16 service such as the operation of retail stores, barber shops, restau-
17 rants, theatres, hotels, and newsstands; nor shall such words include
18 any activities which are not deemed transportation purposes under
19 sections four hundred eighty-nine-b and four hundred eighty-nine-m of
20 the real property tax law.

21 9. "Premises used for air transportation purposes." The portion of any
22 premises, located within an airport or within an air transportation
23 terminal shared by more than one air line, of any person actually oper-
24 ating an air line as a common carrier, used by such person for normal or
25 necessary air transportation purposes. The words normal or necessary air
26 transportation purposes, as used in this definition, shall not include
27 any activities which are normally carried on by persons not engaged in
28 furnishing air transportation service such as the operation of retail
29 stores, barber shops, restaurants, theatres, hotels and newsstands.

30 10. "Return." Any return filed or required to be filed as herein
31 provided other than an information return.

32 11. "Tax period." The period for which any return is required to be
33 filed under this chapter.

34 12. "Tax year." June first of any calendar year through May thirty-
35 first of the following calendar year.

36 13. "Day." A calendar day or any part thereof.

37 14. "City." The city of Staten Island.

38 15. "Commissioner of finance." The commissioner of finance of the
39 city.

40 16. "Comptroller." The comptroller of the city.

41 17. "Dramatic or musical arts performance." A performance or repe-
42 tition thereof in a theatre, opera house or concert hall of a live
43 dramatic performance, whether or not musical in part. The performance
44 encompassed by this definition shall include so-called legitimate thea-
45 tre plays, musical comedies and operettas. They shall not include
46 circuses, ice skating shows or aqua shows; they shall not include
47 performances of any kind in a roof garden, cabaret or other similar
48 place; and they shall not include radio or television performances,
49 whether or not such performances are prerecorded for later broadcast.

50 18. "Premises used for omnibus transportation purposes." The portion
51 of any premises located within a passenger terminal of any person actu-
52 ally operating an omnibus line or route as a common carrier, used by
53 such person for normal or necessary omnibus line or route transportation
54 purposes. The words normal or necessary omnibus line or route transpor-
55 tation purposes, as used in this definition, shall not include any
56 activities, which are normally carried on by persons not engaged in

1 furnishing omnibus line or route transportation services such as the
2 operation of retail stores, barber shops, restaurants, theatres, hotels
3 and newsstands.

4 19. "Tax appeals tribunal." The tax appeals tribunal established by
5 section one hundred sixty-eight of the charter of the preceding munici-
6 pality as it existed January first, nineteen hundred ninety-four.

7 20. "Premises used for retail sales purposes." Premises primarily used
8 for the selling or otherwise disposing or furnishing of tangible goods
9 directly to the ultimate user or consumer.

10 § 11-702 Imposition of tax. a. (1) For each tax year commencing on
11 or after June first, nineteen hundred sixty-three and ending on or
12 before May thirty-first, nineteen hundred seventy, every tenant shall
13 pay a tax of two and one-half per centum of his or her base rent for
14 such tax year where his or her base rent is not in excess of twenty-five
15 hundred dollars per year or where his or her base rent is for a period
16 of less than one year and would not exceed twenty-five hundred dollars
17 for a year if it were paid on an equivalent basis for an entire year or
18 a tax of five per centum of his or her base rent for such tax year where
19 his or her base rent is in excess of twenty-five hundred dollars per
20 year or where his or her base rent is for a period of less than one year
21 and would exceed twenty-five hundred dollars a year if it were paid on
22 an equivalent basis for an entire year.

23 (2) For each tax year commencing on or after, June first, nineteen
24 hundred seventy, every tenant shall pay a tax at the rates shown in the
25 following table:

26 When the annual rent is:	But not more than:	The rate shall be:
27 0.....	\$2,499	2 1/2% of the rent
28 \$ 2,500 or over.....	\$4,999	5% of the rent
29 \$ 5,000 or over.....	\$7,999	6 1/4% of the rent
30 \$ 8,000 or over.....	\$10,999	7% of the rent
31 \$11,000 and over.....		7 1/2% of the rent

32 For tax years embraced within the period beginning after May thirty-
33 first, nineteen hundred seventy-seven and ending May thirty-first, nine-
34 teen hundred eighty, the tax shall be imposed at rates equal to ninety
35 percent of the rates shown in such table.

36 For tax years beginning after May thirty-first, nineteen hundred
37 eighty and ending May thirty-first, nineteen hundred eighty-one, the tax
38 shall be imposed at rates equal to eighty-five percent of the rates
39 shown in such table.

40 For tax years beginning after May thirty-first, nineteen hundred
41 eighty-one, the tax shall be imposed at rates equal to eighty percent of
42 the rates shown in such table.

43 Where the rent is for a period of less than one year, the rate shall
44 be determined by assuming that the rent is on an equivalent basis for
45 the entire year.

46 b. Nothing contained in this chapter shall be deemed to require
47 payment of a double or multiple tax pursuant to this chapter on any part
48 of any taxable premises.

49 c. Where a tenant pays an undivided rent for premises used both for
50 residential purposes and as taxable premises, the tax shall be applica-
51 ble to so much of the rent as is ascribable to the portion of such prem-
52 ises used as taxable premises. Where, however, the rent ascribable to
53 so much of such premises as is used as taxable premises does not exceed
54 fifty dollars a month, such rent shall be excluded from such tenant's
55 base rent. Nothing contained in this subdivision shall be construed as
56 indicating an intent to exclude any base rent from the tax imposed by

1 this chapter merely because it is paid as part of an undivided rent for
2 premises which are only partially used as taxable premises.

3 d. The tax imposed by this chapter shall be in addition to any and
4 all other taxes including the public housing tax imposed by chapter ten
5 of this title.

6 e. Nothing contained in this section shall be construed as permitting
7 base rent of a tenant for one taxable premises to be reduced by deduct-
8 ing rents received by him or her for another taxable premises of which
9 he or she is also a tenant.

10 § 11-703 Presumptions and burden of proof. a. For the purpose of
11 the proper administration of this chapter and to prevent evasion of the
12 tax hereby imposed it shall be presumed that all premises are taxable
13 premises and that all rent paid or required to be paid by a tenant is
14 base rent until the contrary is established, and the burden of proving
15 that such presumptive base rent or any portion thereof is not included
16 in the measure of the tax imposed by this chapter shall be on the
17 tenant.

18 b. Where a tenant uses premises both for residential purposes and as
19 taxable premises and the tenant pays an undivided rent for the premises
20 so used, it shall be conclusively presumed against such tenant that the
21 rent ascribable to so much of such premises as is used as taxable prem-
22 ises shall be the amount which such tenant deducts as rent for such
23 premises in determining the tenant's federal income tax, as reduced by
24 any disallowance of such deduction which is not being contested, which
25 is fairly attributable to the tax period or tax year.

26 § 11-704 Exemptions and deductions from base rent. a. The following
27 shall be exempt from the payment of the tax imposed by this chapter:

28 1. The state of New York, or any public corporation, including a
29 public corporation created pursuant to agreement or compact with another
30 state or the Dominion of Canada, improvement district or other political
31 subdivision of the state;

32 2. The United States of America, insofar as it is immune from taxa-
33 tion;

34 3. The United Nations or other world-wide international organizations
35 of which the United States of America is a member;

36 4. Any corporation, or association, or trust, or community chest, fund
37 or foundation, organized and operated exclusively for religious, chari-
38 table, or educational purposes, or for the prevention of cruelty to
39 children or animals, and no part of the net earnings of which inures to
40 the benefit of any private shareholder or individual and no substantial
41 part of the activities of which is carrying on propaganda, or otherwise
42 attempting to influence legislation; provided, however, that nothing in
43 this paragraph shall include an organization operated for the primary
44 purpose of carrying on a trade or business for profit, whether or not
45 all of its profits are payable to one or more organizations described in
46 this paragraph;

47 5. Any tenant who would be subject to taxes under this chapter aggreg-
48 ating not more than one dollar for a tax year with respect to all taxa-
49 ble premises used by the tenant; and

50 6. Any tenant located in the "World Trade Center Area," as defined as
51 follows: the area in the borough of Manhattan bounded by Church Street
52 on the east starting at the intersection of Liberty Street and Church
53 Street; running northerly along the center line of Church Street to the
54 intersection of Church Street and Vesey Street; running westerly along
55 the center line of Vesey Street to the intersection of Vesey Street and
56 West Broadway; running northerly along the center line of West Broadway

1 to the intersection of West Broadway and Barclay Street; running wester-
2 ly along the center line of Barclay Street to the intersection of
3 Barclay Street and Washington Street; running southerly along the center
4 line of Washington Street to the intersection of Washington Street and
5 Vesey Street; running westerly along the center line of Vesey Street to
6 the intersection of Vesey Street and West Street; running southerly
7 along the center line of West Street to the intersection of West Street
8 and Liberty Street; running easterly along the center line of Liberty
9 Street to the intersection of Liberty Street and Washington Street;
10 running southerly along the center line of Washington Street to the
11 intersection of Washington Street and Albany Street; running easterly
12 along the center line of Albany Street to the intersection of Albany
13 Street and Greenwich Street; running northerly along the center line of
14 Greenwich Street to Liberty Street; and running easterly along the
15 center line of Liberty Street to the intersection of Liberty Street and
16 Church Street.

17 b. 1. A tenant who uses premises for no more than fourteen days in a
18 tax year whether or not consecutive, where his or her agreement with his
19 or her landlord does not require him or her to pay rent for a longer
20 period shall be exempt from the payment of the tax imposed by this chap-
21 ter in respect to the rent paid by him or her for such premises.

22 2. A tenant whose base rent, (i) for tax years beginning on or after
23 June first, nineteen hundred eighty-one and ending on or before May
24 thirty-first, nineteen hundred eighty-four, is not in excess of four
25 thousand nine hundred ninety-nine dollars per year, (ii) for the tax
26 year beginning June first, nineteen hundred eighty-four and ending May
27 thirty-first, nineteen hundred eighty-five, is not in excess of seven
28 thousand nine hundred ninety-nine dollars per year, (iii) for tax years
29 beginning on or after June first, nineteen hundred eighty-five and
30 ending on or before May thirty-first, nineteen hundred ninety-four, is
31 not in excess of ten thousand nine hundred ninety-nine dollars per year,
32 (iv) for the tax year beginning June first, nineteen hundred ninety-four
33 and ending May thirty-first, nineteen hundred ninety-five, is not in
34 excess of twenty thousand nine hundred ninety-nine dollars per year, (v)
35 for the tax year beginning June first, nineteen hundred ninety-five and
36 ending May thirty-first, nineteen hundred ninety-six, is not in excess
37 of thirty thousand nine hundred ninety-nine dollars per year, (vi) for
38 the tax year beginning June first, nineteen hundred ninety-six and
39 ending May thirty-first, nineteen hundred ninety-seven, is not in excess
40 of thirty-nine thousand nine hundred ninety-nine dollars per year, (vii)
41 for tax years beginning on or after June first, nineteen hundred nine-
42 ty-seven and ending on or before May thirty-first, two thousand, is not
43 in excess of ninety-nine thousand nine hundred ninety-nine dollars per
44 year, calculated without regard to any reduction in base rent allowed by
45 paragraph two of subdivision h of this section, (viii) for the period
46 beginning June first, two thousand and ending November thirtieth, two
47 thousand, is not in excess of ninety-nine thousand nine hundred ninety-
48 nine dollars per year, calculated without regard to any reduction in
49 base rent allowed by paragraph two of subdivision h of this section,
50 (ix) for the period beginning December first, two thousand and ending
51 May thirty-first, two thousand one, is not in excess of one hundred
52 forty-nine thousand nine hundred ninety-nine dollars per year, calcu-
53 lated without regard to any reduction in base rent allowed by paragraph
54 two of subdivision h of this section, and (x) for tax years beginning on
55 or after June first, two thousand one, is not in excess of two hundred
56 forty-nine thousand nine hundred ninety-nine dollars per year, calcu-

1 lated without regard to any reduction in base rent allowed by paragraph
2 two of subdivision h of this section, shall be exempt from the payment
3 of the tax imposed by this chapter with respect to such rent, provided,
4 however, that where the base rent of such tenant is for a period of less
5 than one year, such base rent shall, for purposes of this paragraph, be
6 determined as if it had been on an equivalent basis for the entire year;
7 and provided, further, that for purposes of subparagraphs (viii) and
8 (ix) of this paragraph, base rent for the period specified in each of
9 such subparagraphs shall be separately annualized as if it had been on
10 an equivalent basis for an entire year, irrespective of the actual base
11 rent for the tax year including the period specified in such subpara-
12 graph. Provided, however, (xi) a tenant whose base rent for the tax year
13 beginning June first, nineteen hundred eighty-four and ending May thir-
14 ty-first, nineteen hundred eighty-five, is at least eight thousand
15 dollars per year, but not in excess of ten thousand nine hundred nine-
16 ty-nine dollars per year, shall be exempt from the payment of the tax
17 imposed by this chapter with respect to such rent for the period begin-
18 ning December first, nineteen hundred eighty-four and ending May thir-
19 ty-first, nineteen hundred eighty-five, and (xii) a tenant whose base
20 rent for the tax year beginning June first, nineteen hundred ninety-five
21 and ending May thirty-first, nineteen hundred ninety-six, is at least
22 thirty-one thousand dollars per year, but not in excess of thirty-nine
23 thousand nine hundred ninety-nine dollars per year, shall be exempt from
24 the payment of the tax imposed by this chapter with respect to such rent
25 for the period beginning September first, nineteen hundred ninety-five
26 and ending May thirty-first, nineteen hundred ninety-six.

27 c. Base rent shall be reduced by the amount of the taxpayer's rent
28 for, or reasonably ascribable to, the taxpayer's own use of the prem-
29 ises:

- 30 1. As premises used for railroad transportation purposes.
- 31 2. As premises used for air transportation purposes.
- 32 3. As piers insofar as such premises are used in interstate or foreign
33 commerce.
- 34 4. Which are located in, upon, above or under any public street, high-
35 way or other public place, and which are defined as special franchise
36 property in the real property tax law.
- 37 5. Which are taxed pursuant to subchapter one of chapter twenty of
38 this title to the extent that such premises are subject to, and during
39 the period that they are subject to, such tax.
- 40 6. Which are taxed pursuant to subdivision b or c of section 11-1005
41 of this title.
- 42 7. Which are advertising signs, advertising space, vending machines or
43 newsstands within or attached to stations, platforms, stairways,
44 entranceways, passageways, mezzanines or tracks of a rapid transit
45 subway or elevated railroad operated by the New York city transit
46 authority when the rent of the tenant or of the tenant's landlord is
47 payable to such authority.
- 48 8. As premises used for omnibus transportation purposes.
- 49 9. As premises used for retail sales purposes where such premises are
50 located in the area in the borough of Manhattan bounded by Murray Street
51 on the north starting at the intersection of West Street and Murray
52 Street; running easterly along the center line of Murray Street,
53 connecting through City Hall Park with the center line of Frankfort
54 Street and running easterly along the center lines of Frankfort and
55 Dover Streets to the intersection of Dover Street and South Street;
56 running southerly along the center line of South Street to Peter Minuit

1 Plaza; connecting through Peter Minit Plaza to the center line of State
2 Street and running northwesterly along the center line of State Street
3 to the intersection of State Street and Battery Place; running westerly
4 along the center line of Battery Place to the intersection of Battery
5 Place and West Street; and running northerly along the center line of
6 West Street to the intersection of West Street and Murray Street. Any
7 tax lot which is partly located inside such area shall be deemed to be
8 entirely located inside such area.

9 d. A tenant who uses taxable premises for renting to others for resi-
10 dential purposes to the extent of seventy-five per centum or more of the
11 rentable floor space shall be exempt from the tax imposed by this chap-
12 ter in respect to the rent paid for such premises from the time that
13 construction thereof commences, provided, however, that this paragraph
14 shall not be applicable to hotels, apartment hotels or lodging houses as
15 defined in former title V of chapter forty-six of the code of the
16 preceding municipality.

17 e. (1) A tenant who uses taxable premises for a dramatic or musical
18 arts performance for less than four weeks where there is no indication
19 prior to or at the time that such performance commences that the
20 performance is intended to continue for less than four weeks shall be
21 exempt from the tax imposed by this chapter with respect to the rent
22 paid for such taxable premises.

23 (2) (i) Notwithstanding any other provision of law to the contrary, a
24 tenant who uses taxable premises for the production and performance of a
25 theatrical work shall be exempt from the tax imposed by this chapter
26 with respect to the rent paid for such taxable premises for a period not
27 exceeding fifty-two weeks beginning on the date that the production of
28 such theatrical work commences, provided, however, that this subpara-
29 graph shall not apply to any theatrical work the production of which
30 commenced prior to June first, nineteen hundred ninety-five.

31 (ii) For purposes of this paragraph, the term "theatrical work" shall
32 mean a performance or repetition thereof in a theater of a live dramatic
33 performance, whether or not musical in part, that contains sustained
34 plots or recognizable thematic material, including so-called legitimate
35 theater plays or musicals, dramas, melodramas, comedies, compilations,
36 farces or reviews, provided that such performance is intended to be open
37 to the public for at least two weeks. The term "theatrical work" shall
38 not include performances of any kind in a roof garden, cabaret or simi-
39 lar place, circuses, ice skating shows, aqua shows, variety shows, magic
40 shows, animal acts, concerts, industrial shows or similar performances,
41 or radio or television performances, whether or not such performances
42 are pre-recorded for later broadcast.

43 f. 1. A tenant who is an eligible business and has obtained the
44 certifications required by paragraph four of this subdivision shall be
45 permitted to reduce his or her base rent for particular premises to
46 which he or she has relocated by an amount determined by multiplying
47 such base rent by a fraction the numerator of which is the number of
48 eligible aggregate employment shares maintained by such tenant with
49 respect to such premises in the tax year for which such tenant claims
50 the reduction and the denominator of which is a number equal to the
51 number of aggregate employment shares maintained by such tenant in such
52 premises in the tax year for which such tenant claims the reduction
53 allowed by this subdivision, provided, however, that such denominator
54 shall not exceed the highest number of aggregate employment shares main-
55 tained by such tenant in such premises in any of the tax years described
56 below which commence prior to or concurrently with the tax year for

1 which such tenant claims the reduction allowed by this subdivision: (i)
2 the tax year during which such tenant relocates to such particular prem-
3 ises; and (ii) each of the three tax years immediately succeeding the
4 tax year during which such tenant relocates to such premises. Base rent
5 for a particular premises may be reduced as provided in this subdivision
6 for the tax year during which the tenant relocates to such premises and
7 for any of the twelve immediately succeeding tax years during which the
8 tenant maintains eligible aggregate employment shares with respect to
9 such premises, provided, however, that there shall be no such reduction
10 with respect to base rent for any part of the tax year preceding the
11 date of relocation to such premises, and provided, further, however, in
12 the twelfth succeeding tax year there shall be a reduction only with
13 respect to base rent for the period, commencing on the first day of such
14 tax year, equal to the difference between the total number of days in
15 the tax year of relocation and the number of days in such tax year of
16 relocation commencing with and following the date of relocation, and
17 provided, further, that there shall be no such reduction with respect to
18 premises used for retail activity or hotel services.

19 2. (i) For purposes of this subdivision, the terms "eligible area,"
20 "eligible aggregate employment shares," "relocate," "retail activity"
21 and "hotel services" shall have the meanings ascribed by section 22-621
22 of the code of the preceding municipality, provided that whenever the
23 term "taxable year " appears in such section 22-621, such term shall be
24 read as "tax year," as the term "tax year" is defined in subdivision
25 twelve of section 11-701 of this chapter except when the taxable year
26 referred to is the taxable year immediately preceding the taxable year
27 during which such tenant relocates.

28 (ii) For purposes of this subdivision, the term "eligible business"
29 shall have the meaning ascribed by section 22-621 of the code of the
30 preceding municipality, provided that such term shall in addition
31 include any person subject to a tax imposed under subchapter four of
32 chapter six of this title and any person who is an insurance corporation
33 as defined in section one thousand five hundred of the tax law, which:
34 (A) has been conducting substantial business operations at one or more
35 business locations outside the eligible area for the twenty-four consec-
36 utive months immediately preceding the taxable year during which such
37 eligible business relocates; and (B) on or after May twenty-seventh,
38 nineteen hundred eighty-seven relocates all or part of such business
39 operations; and (C) on or after May twenty-seventh, nineteen hundred
40 eighty-seven first enters into a lease for the premises to which it
41 relocates or a parcel on which will be constructed such premises.

42 3. The reduction allowed by this subdivision may be claimed on an
43 estimated basis on the returns filed for the tax periods ending on the
44 last days of August, November and February of each year if, and to the
45 extent, permitted by regulations promulgated by the commissioner of
46 finance.

47 4. No tenant shall be authorized to receive a reduction in base rent
48 subject to tax under the provisions of this subdivision, until the prem-
49 ises with respect to which it is claiming a reduction in base rent meet
50 the requirements in the definition of eligible premises and until it has
51 obtained a certification of eligibility from the mayor or an agency
52 designated by the mayor, and an annual certification from the mayor or
53 an agency designated by the mayor as to the number of eligible aggregate
54 employment shares maintained by such tenant which may qualify for
55 obtaining a base rent reduction for the tenant's tax year. Any written
56 documentation submitted to the mayor or such agency or agencies in order

1 to obtain any such certification shall be deemed a written instrument
2 for purposes of section 175.00 of the penal law. Application fees for
3 such certifications shall be determined by the mayor or such agency or
4 agencies. No certification of eligibility shall be issued to an eligible
5 business on or after July first, two thousand three unless such business
6 meets the requirements of either subparagraph (a) or (b) of this para-
7 graph:

8 (a) (1) prior to such date such business has purchased, leased or
9 entered into a contract to purchase or lease particular premises or a
10 parcel on which will be constructed such premises or already owned such
11 premises or parcel;

12 (2) prior to such date improvements have been commenced on such prem-
13 ises or parcel which improvements will meet the requirements of subdivi-
14 sion (e) of section 22-621 of the code of the preceding municipality
15 relating to expenditures for improvements;

16 (3) prior to such date such business submits a preliminary application
17 for a certification of eligibility to such mayor or such agency or agen-
18 cies with respect to a proposed relocation to such particular premises;
19 and

20 (4) such business relocates to such particular premises not later than
21 thirty-six months or, in a case in which the expenditures made for the
22 improvements specified in clause two of this subparagraph are in excess
23 of fifty million dollars within seventy-two months from the date of
24 submission of such preliminary application; or

25 (b) (1) not later than June thirtieth, two thousand ten, such business
26 has purchased, leased or entered into a contract to purchase or lease
27 particular premises wholly contained in a building in which at least an
28 aggregate of forty per centum or two hundred thousand square feet,
29 whichever is less, of the nonresidential floor area of such building has
30 been purchased or leased by a business or businesses which meet or will
31 meet the requirements of subparagraph (a) of this paragraph with respect
32 to such floor area and which are or will become certified as eligible to
33 receive a credit under section 22-622 of the code of the preceding muni-
34 cipality with respect to such floor area;

35 (2) not later than June thirtieth, two thousand ten, such business
36 submits a preliminary application for a certification of eligibility to
37 such mayor or such agency or agencies with respect to a proposed relo-
38 cation to such particular premises; and

39 (3) not later than June thirtieth, two thousand ten, such business
40 relocates to such particular premises.

41 Any tenant subject to a tax imposed under chapter five, or subchapter
42 two, three or three-A of chapter six, of this title obtaining a certif-
43 ication of eligibility pursuant to subdivision (b) of section 22-622 of
44 the code of the preceding municipality shall be deemed to have obtained
45 the certification of eligibility required by this paragraph.

46 g. Whenever the rent paid by a tenant for his or her occupancy of
47 taxable premises is measured in whole or in part by the gross receipts
48 from the tenant's sales within such place, the tenant's rent, to the
49 extent paid on the basis of such gross receipts, shall be deemed not to
50 exceed fifteen percent of such gross receipts.

51 h. (1) In the case of any taxable premises located in the borough of
52 Manhattan north of the center line of ninety-sixth street or in the
53 boroughs of the Bronx, Brooklyn, Queens and Staten Island, the base rent
54 for such premises shall be reduced by ten percent for the period begin-
55 ning on January first, nineteen hundred eighty-six and ending May thir-
56 ty-first, nineteen hundred eighty-seven, by twenty percent for the peri-

1 od beginning June first, nineteen hundred eighty-seven and ending May
2 thirty-first, nineteen hundred eighty-nine, and by thirty percent for
3 the period beginning June first, nineteen hundred eighty-nine and ending
4 August thirty-first, nineteen hundred ninety-five, such reduction to be
5 made after all other exemptions and deductions authorized by this chap-
6 ter have been taken. For periods beginning September first, nineteen
7 hundred ninety-five and thereafter, a tenant of taxable premises located
8 in that part of the city specified in this paragraph shall be exempt
9 from the payment of the tax imposed by this chapter with respect to the
10 rent for such taxable premises.

11 (2) In the case of any taxable premises located in the borough of
12 Manhattan south of the center line of ninety-sixth street, the base rent
13 for such premises shall be reduced by (i) fifteen percent for the period
14 beginning March first, nineteen hundred ninety-six and ending May thir-
15 ty-first, nineteen hundred ninety-six, (ii) twenty-five percent for the
16 period beginning June first, nineteen hundred ninety-six and ending
17 August thirty-first, nineteen hundred ninety-eight, and (iii) thirty-
18 five percent for periods beginning September first, nineteen hundred
19 ninety-eight and thereafter, such reduction to be made after all other
20 exemptions and deductions authorized by this chapter have been taken.

21 i. (1) (a) (i) For purposes of, and to the extent relevant to, this
22 subdivision, the following terms shall, except to the extent hereinafter
23 modified, have the definitions assigned to such terms in section four
24 hundred ninety-nine-a of the real property tax law, and such definitions
25 shall apply with the same force and effect as if they had been set forth
26 in full in this subdivision: "abatement zone," "aggregate floor area,"
27 "applicant," "department of finance," "eligible building," "eligibility
28 period," "eligible premises," "expansion premises," "expansion tenant,"
29 "governmental agency," "landlord," "lease commencement date," "mixed-use
30 building," "new tenant," "person," "relocation area," "renewal tenant,"
31 "rent commencement date," "subtenant" and "tenant."

32 (ii) For purposes of this subdivision, the definitions assigned by
33 clause (i) of this subparagraph to the terms "eligible premises,"
34 "expansion tenant," "landlord," "new tenant" and "renewal tenant" shall
35 be modified as follows: (A) whenever the term "eligible building"
36 appears in any of such definitions, such term, notwithstanding anything
37 to the contrary, shall be deemed to include an eligible government-owned
38 building and, for purposes of subparagraph (b-2) of paragraph two of
39 subdivision i of this section, a non-residential or mixed-use building
40 located south of the center line of Canal Street in the borough of
41 Manhattan, regardless of when it received its initial certificate of
42 occupancy or initial temporary certificate of occupancy and regardless
43 of when it was constructed and shall be deemed to include an eligible
44 government-owned building; and (B) a reference in any of such defi-
45 nitions to a lease which meets the eligibility requirements of section
46 four hundred ninety-nine-c of the real property tax law shall be deemed
47 to include, in the case of a lease of premises in an eligible govern-
48 ment-owned building, a lease which meets the eligibility requirements of
49 paragraph four of this subdivision.

50 (b) When used in this subdivision, the following terms shall mean or
51 include: (i) "Eligible government-owned building." A building that
52 would be an eligible building, as such term is defined in section four
53 hundred ninety-nine-a of the real property tax law, but for the fact
54 that it is owned by a governmental agency.

55 (ii) "Eligible taxable premises." Taxable premises that are eligible
56 premises or expansion premises.

1 (iii) "Eligible tenant." A tenant with respect to whose lease of
2 eligible taxable premises there has been issued a certificate of abate-
3 ment or a certificate of eligibility.

4 (iv) "Base year." The twelve-month period that commences on the rent
5 commencement date.

6 (v) "Base rent for the base year." The total base rent for eligible
7 taxable premises for the base year, determined without regard to the
8 special reduction allowed by this subdivision.

9 (vi) "Certificate of abatement." The certificate of abatement issued
10 pursuant to section four hundred ninety-nine-d of the real property tax
11 law.

12 (vii) "Certificate of eligibility." The certificate of eligibility
13 issued pursuant to paragraph five of this subdivision.

14 (2) (a) An eligible tenant of eligible taxable premises shall be
15 allowed a special reduction in determining the taxable base rent for
16 such eligible taxable premises. Such special reduction shall be allowed
17 with respect to the rent for such eligible taxable premises for a period
18 not exceeding sixty months or, with respect to a lease commencing on or
19 after April first, nineteen hundred ninety-seven with an initial lease
20 term of less than five years, but not less than three years, for a peri-
21 od not exceeding thirty-six months, commencing on the rent commencement
22 date applicable to such eligible taxable premises, provided, however,
23 that in no event shall any special reduction be allowed for any period
24 beginning after March thirty-first, two thousand thirty-four. For
25 purposes of applying such special reduction, the base rent for the base
26 year shall, where necessary to determine the amount of the special
27 reduction allowable with respect to any number of months falling within
28 a tax period, be prorated by dividing the base rent for the base year by
29 twelve and multiplying the result by such number of months.

30 (a-1) Notwithstanding paragraph one of this subdivision, for purposes
31 of, and to the extent relevant to, the special reduction allowed by this
32 subparagraph, the definitions set forth in section four hundred ninety-
33 nine-aa of the real property tax law shall apply with the same force and
34 effect as if they had been set forth in full in this subdivision, except
35 as such definitions are hereinafter modified. An eligible tenant of
36 eligible taxable premises shall be allowed a special reduction in deter-
37 mining the taxable base rent for such eligible taxable premises,
38 provided, however, that (i) such eligible taxable premises are eligible
39 premises as defined in paragraph (c) of subdivision ten of section four
40 hundred ninety-nine-aa of the real property tax law, (ii) such eligible
41 taxable premises are located in the special garment center district
42 identified in the abatement zone defined in paragraph (c) of subdivision
43 two of section four hundred ninety-nine-aa of the real property tax law,
44 (iii) the lease for such eligible taxable premises commences within the
45 eligibility period applicable to the abatement zone defined in paragraph
46 (c) of subdivision two of section four hundred ninety-nine-aa of the
47 real property tax law, (iv) the lease for such eligible taxable premises
48 has an initial lease term of at least three years and (v) such special
49 reduction is limited to the benefit period, as defined in subdivision
50 five of section four hundred ninety-nine-aa of the real property tax
51 law, applicable to a lease commencing on or after July first, two thou-
52 sand five for eligible premises located within the abatement zone
53 defined in paragraph (c) of subdivision two of section four hundred
54 ninety-nine-aa of the real property tax law.

55 (a-2) The amount of the special reduction allowed by subparagraph
56 (a-1) of this paragraph shall be determined as follows: (i) For the

1 base year the amount of such special reduction shall be equal to the
2 base rent for the base year.

3 (ii) For the first through ninth twelve-month periods following the
4 base year the amount of such special reduction shall be equal to the
5 lesser of (A) the base rent for each such twelve-month period or (B) the
6 base rent for the base year.

7 (a-3) When used in this subdivision, for purposes of the special
8 reduction allowed by subparagraph (a-1) of this paragraph, the following
9 terms shall mean or include: (i) "Eligible taxable premises." Taxable
10 premises that are eligible premises or expansion premises.

11 (ii) "Eligible tenant." A tenant with respect to whose lease of eligi-
12 ble taxable premises there has been issued a certificate of abatement.

13 (iii) "Base year." The twelve-month period that commences on the rent
14 commencement date.

15 (iv) "Base rent for the base year." The total base rent for eligible
16 taxable premises for the base year, determined without the special
17 reduction allowed by subparagraph (a-1) of this paragraph.

18 (v) "Certificate of abatement." The certificate of abatement issued
19 pursuant to section four hundred ninety-nine-dd of the real property tax
20 law.

21 (b) Except as provided in subparagraphs (b-1) and (b-2) of this para-
22 graph, the amount of the special reduction allowed by this subdivision
23 shall be determined as follows: (i) For the base year the amount of
24 such special reduction shall be equal to the base rent for the base
25 year.

26 (ii) For the first and second twelve-month periods following the base
27 year the amount of such special reduction shall be equal to the lesser
28 of (A) the base rent for each such twelve-month period or (B) the base
29 rent for the base year.

30 (iii) For the third twelve-month period following the base year the
31 amount of such special reduction shall be equal to two-thirds of the
32 lesser of (A) the base rent for such twelve-month period or (B) the base
33 rent for the base year.

34 (iv) For the fourth twelve-month period following the base year the
35 amount of such special reduction shall be equal to one-third of the
36 lesser of (A) the base rent for such twelve-month period or (B) the base
37 rent for the base year.

38 (b-1) The amount of the special reduction allowed by this subdivision
39 with respect to a lease commencing on or after April first, nineteen
40 hundred ninety-seven with an initial lease term of less than five years,
41 but not less than three years, shall be determined as follows: (i) For
42 the base year the amount of such special reduction shall be equal to the
43 base rent for the base year.

44 (ii) For the first twelve-month period following the base year the
45 amount of such special reduction shall be equal to two-thirds of the
46 lesser of (A) the base rent for such twelve-month period or (B) the base
47 rent for the base year.

48 (iii) For the second twelve-month period following the base year the
49 amount of such special reduction shall be equal to one-third of the
50 lesser of (A) the base rent for such twelve-month period or (B) the base
51 rent for the base year.

52 (b-2) The amount of the special reduction allowed by this subdivision
53 with respect to a lease other than a sublease commencing between July
54 first, two thousand five and June thirtieth, two thousand twenty-seven
55 with an initial or renewal lease term of at least five years shall be

1 determined as follows: (i) For the base year the amount of such special
2 reduction shall be equal to the base rent for the base year.

3 (ii) For the first, second, third and fourth twelve-month periods
4 following the base year the amount of such special reduction shall be
5 equal to the lesser of (A) the base rent for each such twelve-month
6 period or (B) the base rent for the base year.

7 (c) For purposes of determining (i) whether a tenant is, pursuant to
8 the provisions of paragraph two of subdivision b of this section, exempt
9 from payment of the tax imposed by this chapter with respect to the base
10 rent for eligible taxable premises or (ii) whether, and the extent to
11 which, a tenant is eligible for the credit allowed pursuant to the
12 provisions of section 11-704.3 of this chapter with respect to eligible
13 taxable premises, the term "base rent" as used in such provisions shall
14 be the base rent as determined prior to the allowance of any special
15 reduction allowed by this subdivision.

16 (d) Notwithstanding anything to the contrary, for purposes of this
17 subdivision, expansion premises shall be treated as separate and
18 distinct from any other premises of the expansion tenant in the same
19 eligible building.

20 (3) The special reduction allowed by this subdivision shall be allowed
21 commencing on the rent commencement date; however, if the date of the
22 certificate of abatement or certificate of eligibility is later than the
23 rent commencement date, the tenant shall not, in the first instance,
24 claim the special reduction on any return required to be filed for a tax
25 period ending prior to the date of such certificate of abatement or
26 certificate of eligibility. If the date of such certificate of abatement
27 or certificate of eligibility falls in a tax period subsequent to the
28 tax period in which the rent commencement date falls, but both such
29 dates fall within the same tax year, the special reduction that was not
30 claimed in the first instance for any period preceding the date of such
31 certificate of abatement or certificate of eligibility shall be
32 reflected in the final return for the tax year. If the date of the
33 certificate of abatement or certificate of eligibility falls in the tax
34 year following the tax year in which the rent commencement date falls,
35 an amended final return shall be filed for such earlier tax year in
36 which shall be reflected any special reduction allowable for such tax
37 year; in addition, the final return for such later tax year shall
38 reflect any special reduction that was not claimed in the first instance
39 for any period in such tax year preceding the date of the certificate of
40 abatement or certificate of eligibility.

41 (4) (a) With respect to premises located in an eligible government-
42 owned building, no special reduction shall be allowed under this subdivi-
43 sion unless: (i) the landlord enters into a lease for eligible prem-
44 ises with a new tenant or a renewal tenant and: (A) the lease
45 commencement date is within the eligibility period; and (B) (I) if, by
46 the sixtieth day following the rent commencement date, such new or
47 renewal tenant employs fifty or fewer employees in the eligible prem-
48 ises, the initial lease term is for a period of at least five years,
49 provided, however, that with respect to a lease commencing on or after
50 July first, nineteen hundred ninety-six if, by the sixtieth day follow-
51 ing the rent commencement date, such new or renewal tenant employs one
52 hundred twenty-five or fewer employees in the eligible premises, the
53 initial lease term is for a period of at least five years, and provided,
54 further, that with respect to a lease commencing on or after April
55 first, nineteen hundred ninety-seven if, by the sixtieth day following
56 the rent commencement date, such new or renewal tenant employs one

1 hundred twenty-five or fewer employees in the eligible premises, the
2 initial lease term is for a period of at least three years, or (II) if,
3 by the sixtieth day following the rent commencement date, such new or
4 renewal tenant employs more than fifty employees in the eligible prem-
5 ises, the initial lease term is for a period of at least ten years,
6 provided, however, that with respect to a lease commencing on or after
7 July first, nineteen hundred ninety-six if, by the sixtieth day follow-
8 ing the rent commencement date, such new or renewal tenant employs more
9 than one hundred twenty-five employees in the eligible premises, the
10 initial lease term is for a period of at least ten years; or

11 (ii) the landlord enters into a lease with an expansion tenant for
12 expansion premises and: (A) the lease commencement date is within the
13 eligibility period; (B) if the expansion premises are located in the
14 eligible building previously occupied by such expansion tenant, the
15 lease term for the premises in the eligible building previously occupied
16 by such expansion tenant will expire no earlier than the expiration date
17 of the initial lease term for the expansion premises, provided that
18 where such expansion tenant occupies premises in the eligible building
19 under more than one lease, the provisions of this subclause shall be
20 applied with reference to the lease for the premises containing the
21 largest amount of square feet, provided, however, that this subclause
22 shall not apply to a lease commencing on or after July first, nineteen
23 hundred ninety-six; and (C) (I) if, by the sixtieth day following the
24 rent commencement date, such expansion tenant employs fifty or fewer
25 employees in the eligible building in which the expansion premises are
26 located, the initial lease term for the expansion premises is for a
27 period of at least five years, provided, however, that with respect to a
28 lease commencing on or after July first, nineteen hundred ninety-six if,
29 by the sixtieth day following the rent commencement date, such expansion
30 tenant employs one hundred twenty-five or fewer employees in the expan-
31 sion premises, the initial lease term for the expansion premises is for
32 a period of at least five years, and provided, further, that with
33 respect to a lease commencing on or after April first, nineteen hundred
34 ninety-seven if, by the sixtieth day following the rent commencement
35 date, such expansion tenant employs one hundred twenty-five or fewer
36 employees in the expansion premises, the initial lease term for the
37 expansion premises is for a period of at least three years, or (II) if,
38 by the sixtieth day following the rent commencement date, such expansion
39 tenant employs more than fifty employees in such eligible building, the
40 initial lease term for the expansion premises is for a period of at
41 least ten years, provided, however, that with respect to a lease
42 commencing on or after July first, nineteen hundred ninety-six if, by
43 the sixtieth day following the rent commencement date, such expansion
44 tenant employs more than one hundred twenty-five employees in the expan-
45 sion premises, the initial lease term for the expansion premises is for
46 a period of at least ten years.

47 (b) Notwithstanding anything in this subdivision to the contrary, with
48 respect to premises located in an eligible government-owned building, no
49 certificate of eligibility shall be issued and no special reduction
50 shall be allowed under this subdivision if: (i) the tenant has relo-
51 cated to such premises from any area in the borough of Manhattan north
52 of the center line of 96th street or from any portion of the boroughs of
53 the Bronx, Brooklyn, Queens, or Staten Island; or (ii) the lease for
54 such premises provides that during the initial lease term required under
55 subparagraph (a) of this paragraph either the landlord or the tenant may
56 terminate such lease prior to the expiration of such required initial

1 lease term, provided that such lease may provide that either the land-
2 lord or the tenant may terminate such lease if (A) the other party is in
3 default of any of such party's obligations under the lease, (B) the
4 eligible premises are damaged or destroyed by fire or other casualty,
5 (C) the eligible premises are rendered unusable for any reason not
6 attributable to any act or failure to act of either tenant or landlord
7 or (D) the eligible premises are acquired by eminent domain.

8 (c) For purposes of this paragraph, the expiration date of a lease
9 shall be determined by the expiration date set forth in such lease,
10 without giving effect to any rights of the landlord or the tenant to
11 terminate such lease prior to the expiration date set forth therein.

12 (5) (a) (i) With respect to premises located in an eligible govern-
13 ment-owned building, an application for a certificate of eligibility
14 entitling a tenant to claim the special reduction allowed by this subdivi-
15 sion shall be filed by such tenant with the department of finance on
16 or after the date on which the lease for the eligible premises is
17 executed by the landlord and tenant but in no event more than one
18 hundred eighty days following the later of the rent commencement date or
19 the date that chapter four of the laws of nineteen hundred ninety-five
20 became a law, and no such certificate of eligibility shall be issued
21 unless such application is filed within such time.

22 (ii) Notwithstanding clause (i) of this subparagraph and any other
23 provision of law to the contrary, with respect to a lease commencing on
24 or after July first, nineteen hundred ninety-six in premises located in
25 an eligible government-owned building, an application for a certificate
26 of eligibility entitling a tenant to claim the special reduction allowed
27 by this subdivision shall be filed by such tenant with the department of
28 finance on or after the date on which the lease for the eligible prem-
29 ises is executed by the landlord and tenant but in no event more than
30 one hundred eighty days following the rent commencement date or sixty
31 days following the date that the chapter of the laws of nineteen hundred
32 ninety-seven that added this clause became a law, whichever is later,
33 and no such certificate of eligibility shall be issued unless such
34 application is filed within such time.

35 (iii) Notwithstanding any other provisions of law to the contrary, an
36 application for the special reduction allowed by subparagraph (b-2) of
37 paragraph two of this subdivision shall be considered timely filed if
38 filed by such tenant with the department of finance on or after the date
39 on which the lease for the eligible premises is executed by the landlord
40 and tenant but in no event more than one hundred eighty days following
41 the rent commencement date or by May thirtieth, two thousand fourteen,
42 whichever is later, and no such special reduction shall be permitted
43 unless such application is filed within such time.

44 (b) In addition to any other information required by the department of
45 finance, such application for a certificate of eligibility shall include
46 (i) an abstract of the lease for the eligible taxable premises, which
47 shall include the lease commencement date, the rent commencement date
48 and the expiration date of such lease, (ii) a statement as to the number
49 of persons employed by the tenant in the eligible taxable premises and,
50 where applicable, in the eligible building containing such premises, by
51 the sixtieth day following the rent commencement date, (iii) a statement
52 as to the location of all office or retail space in the city occupied by
53 the tenant prior to the execution of the lease for the eligible taxable
54 premises and the commencement and expiration dates of all leases for
55 such office or retail space located in the abatement zone. Such applica-
56 tion shall also state that the tenant agrees to comply with and be

1 subject to such rules as may be issued from time to time by the depart-
2 ment of finance.

3 (c) The department of finance shall issue a certificate of eligibility
4 upon determining that an application filed pursuant to this paragraph
5 meets the requirements set forth in this subdivision, provided, however,
6 that no such certificate of eligibility shall be issued if any payments
7 in lieu of taxes, water or sewer charges or other lienable charges are
8 due and owing with respect to such eligible government-owned building at
9 the time such application is pending, unless such payments in lieu of
10 taxes or charges are at such time being paid in timely installments
11 pursuant to a written agreement with the department of finance or other
12 appropriate agency.

13 (d) The burden of proof shall be on the tenant to show by clear and
14 convincing evidence that the requirements for granting a certificate of
15 eligibility have been satisfied. The department of finance shall have
16 the authority to require that statements in connection with applications
17 pursuant to this paragraph be made under oath.

18 (e) The department of finance may provide by rule for the payment by
19 tenants of premises in eligible government-owned buildings of reasonable
20 administrative charges or fees necessary to defray expenses in
21 connection with the determination of initial and continuing eligibility
22 for the special reduction allowed by this subdivision.

23 (6) (a) If an eligible tenant (i) sublets any portion of the eligible
24 taxable premises to any other person, or (ii) otherwise ceases to occupy
25 or use any portion of the premises as eligible taxable premises, such
26 tenant shall, immediately upon the occurrence of any such event, cease
27 to be eligible for the special reduction allowed by this subdivision
28 with respect to the portion of the premises which is sublet or which
29 ceases to be occupied or used by such tenant as eligible taxable prem-
30 ises, and for any period following the occurrence of any such event, the
31 special reduction otherwise allowed by this subdivision shall be reduced
32 by an amount determined by multiplying the amount of such special
33 reduction by the percentage of the premises which is sublet or which has
34 ceased to be occupied or used as eligible taxable premises.

35 Such tenant shall give written notice of the occurrence of any such
36 event to the department of finance within thirty days thereof. If the
37 tenant fails to give such notice, an assessment of any additional tax
38 that may become due as a result of the occurrence of any such event may
39 be made at any time, notwithstanding anything in section 11-717 of this
40 chapter to the contrary.

41 (b) Notwithstanding anything in this chapter to the contrary, a tenant
42 claiming the special reduction allowed by this subdivision shall file a
43 return for each tax period with respect to which such special reduction
44 is claimed. Each such return shall contain a certification by the
45 tenant, in such form as the department of finance may prescribe, to the
46 effect that such tenant meets all the requirements of this subdivision,
47 and no special reduction shall be allowed if such return does not
48 contain such certification by such tenant.

49 (c) If any special reduction allowed under this subdivision was
50 obtained by a tenant as a result of having made a false or misleading
51 statement as to a material fact or having omitted to state any material
52 fact necessary in order to make such statement not false or misleading,
53 no such special reduction shall be allowed and any additional tax that
54 becomes due as a result of such disallowance may be assessed at any
55 time, notwithstanding anything in section 11-717 of this chapter to the
56 contrary. In addition, the department of finance may declare any such

1 tenant to be ineligible to claim any special reduction under this subdivi-
2 vision in the future with respect to the same or any other premises.

3 7. A determination by the department of finance pursuant to subdivi-
4 sion six of section four hundred ninety-nine-f of the real property tax
5 law to deny, terminate or revoke any abatement applied for or granted
6 pursuant to title four of article four of the real property tax law
7 based on the relationship between the landlord and the tenant shall not
8 be dispositive of whether such tenant is eligible for a special
9 reduction under this subdivision. The department of finance may deter-
10 mine that such tenant is eligible for a special reduction under this
11 subdivision and may issue a certificate of eligibility to such tenant in
12 accordance with the procedures and pursuant to the standards applicable
13 to a tenant of premises located in an eligible government-owned build-
14 ing, provided, however, that any application filed pursuant to paragraph
15 five of this subdivision by a tenant whose application for a certificate
16 of abatement pursuant to title four of article four of the real property
17 tax law was denied by the department of finance pursuant to subdivision
18 six of section four hundred ninety-nine-f of the real property tax law
19 based on the relationship between the landlord and the tenant, or by a
20 tenant whose application for a certificate of abatement pursuant to
21 title four of article four of the real property tax law was granted by
22 the department of finance, but whose abatement was terminated or revoked
23 by the department of finance pursuant to subdivision six of section four
24 hundred ninety-nine-f of the real property tax law based on the
25 relationship between the landlord and the tenant, may be deemed by the
26 department of finance to have been filed on the date the application for
27 such certificate of abatement was filed. This paragraph shall only apply
28 to leases commencing on or after April first, nineteen hundred ninety-
29 seven.

30 § 11-704.2 Special credit. A tenant whose base rent for the tax year
31 beginning June first, nineteen hundred ninety-three and ending May thir-
32 ty-first, nineteen hundred ninety-four is at least eleven thousand
33 dollars per year but not in excess of thirteen thousand nine hundred
34 ninety-nine dollars per year shall be allowed a credit against the tax
35 imposed by this chapter for such tax year, such credit shall be equal to
36 twenty-five percent of the tax imposed on such base rent for such tax
37 year. Where the base rent of a tenant is for a period of less than one
38 year, such base rent shall, for purposes of this section, be determined
39 as if it had been on an equivalent basis for the entire year. The credit
40 allowed under this section shall be deducted prior to the deduction of
41 any credit allowable under section 11-704.1 of this chapter.

42 § 11-704.3 Tax credit. (a) (1) For the period beginning September
43 first, nineteen hundred ninety-five and ending May thirty-first, nine-
44 teen hundred ninety-six, a credit shall be allowed against the tax
45 imposed by this chapter, such credit to be determined in accordance with
46 the following table:

47	If the tenant's annualized		The credit shall be an amount equal
48	base rent for such period is:		to the following percentage of the
49			tax imposed on such annualized base
50			rent for such period:
51	At least:	But not over:	
52	\$40,000	\$44,999	80%
53	\$45,000	\$49,999	60%
54	\$50,000	\$54,999	40%
55	\$55,000	\$59,999	20%

1 If the tenant's annualized base rent for such period is over fifty-
 2 nine thousand nine hundred ninety-nine dollars, no credit shall be
 3 allowed under this paragraph.

4 (2) For the tax year beginning June first, nineteen hundred ninety-six
 5 and ending May thirty-first, nineteen hundred ninety-seven, a credit
 6 shall be allowed against the tax imposed by this chapter, such credit to
 7 be determined in accordance with the following table:

8	If the tenant's base rent is:		The credit shall be an amount equal
9			to the following percentage of the
10			tax imposed on such base rent for
11			the tax year:
12	At least:	But not over:	
13	\$40,000	\$44,999	80%
14	\$45,000	\$49,999	60%
15	\$50,000	\$54,999	40%
16	\$55,000	\$59,999	20%

17 If the tenant's base rent is over fifty-nine thousand nine hundred
 18 ninety-nine dollars, no credit shall be allowed under this paragraph.

19 (3) For each tax year beginning on or after June first, nineteen
 20 hundred ninety-seven and ending on or before May thirty-first, two thou-
 21 sand, a credit shall be allowed against the tax imposed by this chapter,
 22 such credit to be determined in accordance with the following table:

23	If the tenant's base rent is:		The credit shall be an amount equal
24			to the following percentage of the
25			tax imposed by this chapter for the
26			tax year:
27	At least:	But not over:	
28	\$100,000	\$109,999	80%
29	\$110,000	\$119,999	60%
30	\$120,000	\$129,999	40%
31	\$130,000	\$139,999	20%

32 If the tenant's base rent is over one hundred thirty-nine thousand
 33 nine hundred ninety-nine dollars, no credit shall be allowed under this
 34 paragraph. For purposes of this paragraph, 'base rent' shall be calcu-
 35 lated without regard to any reduction in base rent allowed by paragraph
 36 two of subdivision h of section 11-704 of this chapter.

37 (4) For the period beginning June first, two thousand and ending
 38 November thirtieth, two thousand, a credit shall be allowed against the
 39 tax imposed by this chapter, such credit to be determined in accordance
 40 with the following table:

41	If the tenant's annualized		The credit shall be an amount equal
42	base rent for such period is:		to the following percentage of the
43			tax imposed on such annualized base
44			rent for such period:
45	At least:	But not over:	
46	\$100,000	\$109,999	80%
47	\$110,000	\$119,999	60%
48	\$120,000	\$129,999	40%
49	\$130,000	\$139,999	20%

1 If the tenant's annualized base rent for such period is over one
 2 hundred thirty-nine thousand nine hundred ninety-nine dollars, no credit
 3 shall be allowed under this paragraph. For purposes of this paragraph
 4 'base rent' shall be calculated without regard to any reduction in base
 5 rent allowed by paragraph two of subdivision h of section 11-704 of this
 6 chapter.

7 (5) For the period beginning December first, two thousand and ending
 8 May thirty-first, two thousand one, a credit shall be allowed against
 9 the tax imposed by this chapter, such credit to be determined in accord-
 10 ance with the following table:

11	If the tenant's annualized		The credit shall be an amount equal
12	base rent for such period is:		to the following percentage of the
13			tax imposed on such annualized base
14			rent for such period:
15	At least:	But not over:	
16	\$150,000	\$159,999	80%
17	\$160,000	\$169,999	60%
18	\$170,000	\$179,999	40%
19	\$180,000	\$189,999	20%

20 If the tenant's annualized base rent for such period is over one
 21 hundred eighty-nine thousand nine hundred ninety-nine dollars, no credit
 22 shall be allowed under this paragraph. For purposes of this paragraph,
 23 'base rent' shall be calculated without regard to any reduction in base
 24 rent allowed by paragraph two of subdivision h of section 11-704 of this
 25 chapter.

26 (6) For each tax year beginning on or after June first, two thousand
 27 one, a credit shall be allowed against the tax imposed by this chapter
 28 as follows: a tenant whose base rent is at least two hundred and fifty
 29 thousand dollars but not more than three hundred thousand dollars shall
 30 be allowed a credit in an amount determined by multiplying three and
 31 nine-tenths percent of base rent by a fraction the numerator of which is
 32 three hundred thousand dollars minus the amount of base rent and the
 33 denominator of which is fifty thousand dollars. If the tenant's base
 34 rent is over three hundred thousand dollars, no credit shall be allowed
 35 under this paragraph. For purposes of this paragraph, 'base rent' shall
 36 be calculated without regard to any reduction in base rent allowed by
 37 paragraph two of subdivision h of section 11-704 of this chapter.

38 (b) (1) Where the base rent of a tenant is for a period of less than
 39 one year, such base rent shall, for purposes of this section, be deter-
 40 mined as if it had been on an equivalent basis for the entire year. The
 41 credits allowed under this section shall be deducted prior to the
 42 deduction of any credit allowable under section 11-704.1 of this chap-
 43 ter.

44 (2) For purposes of paragraphs four and five of subdivision (a) of
 45 this section, base rent for the period specified in each of such para-
 46 graphs shall be separately annualized as if it had been on an equivalent
 47 basis for an entire year, irrespective of the actual base rent for the
 48 tax year including the period specified in such paragraph.

49 § 11-704.4. Small business tax credit. a. As used in this section, the
 50 following terms have the following meanings:

51 1. Income factor. The term "income factor" shall mean:

52 (i) for a tenant with total income of not more than five million
 53 dollars, one;

1 (ii) for a tenant with total income of more than five million dollars
2 but not more than ten million dollars, a fraction the numerator of which
3 is ten million dollars minus the amount of total income and the denomi-
4 nator of which is five million dollars; and

5 (iii) for a tenant with total income of more than ten million dollars,
6 zero.

7 2. Rent factor. The term "rent factor" shall mean:

8 (i) for a tenant whose small business tax credit base rent is less
9 than five hundred thousand dollars, one; and

10 (ii) for a tenant whose small business tax credit base rent is at
11 least five hundred thousand dollars but not more than five hundred fifty
12 thousand dollars, a fraction the numerator of which is five hundred
13 fifty thousand dollars minus the amount of small business tax credit
14 base rent and the denominator of which is fifty thousand dollars.

15 3. Small business tax credit base rent. The term "small business tax
16 credit base rent" shall mean the base rent calculated without regard to
17 any reduction in base rent allowed by paragraph two of subdivision h of
18 section 11-704 of this chapter.

19 4. Total income. The term "total income" shall mean the amount
20 reported by a person, as defined by section seven thousand seven hundred
21 one of the internal revenue code, to the internal revenue service for
22 the purpose of the federal income tax in the tax year immediately
23 preceding the period for which the tenant is applying for the credit set
24 forth in subdivision b that is equal to the gross receipts or sales of
25 the person minus any returns and allowances, minus the cost of goods
26 sold plus the amount of any dividends, interest, gross rents, gross
27 royalties, capital gain net income, net gain or loss from the sale of
28 business property, net farm profit or loss, ordinary income or loss from
29 other partnerships, estates or trusts or other income or loss; except
30 that, if the tenant is a limited liability company or other business
31 entity that is not separate from its owner for federal income tax
32 purposes under section 301.7701-2(c)(2) of title 26 of the code of
33 federal regulations, total income as defined in this section shall mean
34 the total income of the person that reports the activities of the tenant
35 as its sole owner for federal income tax purposes.

36 b. Beginning on June first, two thousand eighteen and for each tax
37 year beginning thereafter, a credit shall be allowed against the tax
38 imposed by this chapter as follows: a tenant whose small business tax
39 credit base rent is at least two hundred fifty thousand dollars but not
40 more than five hundred fifty thousand dollars shall be allowed a credit
41 in the amount determined by multiplying the tax imposed on the tenant
42 pursuant to section 11-702 of this chapter minus any allowable credits
43 or exemptions set forth outside this section by the income factor and by
44 the rent factor. If the tenant's small business tax credit base rent is
45 over five hundred fifty thousand dollars, no credit shall be allowed
46 under this section.

47 c. The department of finance may promulgate any rules necessary to
48 implement the provisions of this section, including, but not limited to,
49 rules that prevent abuse of this section by related parties.

50 § 11-705 Returns. a. Every tenant subject to tax under this chapter
51 shall file with the commissioner of finance a return with respect to the
52 taxes payable for the three month periods ending on the last days of
53 August, November and February of each year and a final return with
54 respect to the taxes payable for the tax year ending on the last day of
55 May of each year. Such returns shall be filed within twenty days from
56 the expiration of the period covered thereby. A tenant who is exempt

1 from the tax by reason of paragraph two of subdivision b of section
2 11-704 of this chapter shall nevertheless be required to file a final
3 return, provided, however, that for tax years beginning on or after June
4 first, nineteen hundred ninety-five and ending on or before May thirty-
5 first, nineteen hundred ninety-seven, no such final return shall be
6 required from such exempt tenant with respect to taxable premises if (1)
7 the tenant's rent for such premises, determined without regard to any
8 deduction from or reduction in rent or base rent allowed by this chap-
9 ter, does not exceed fifteen thousand dollars for the tax year and (2)
10 in the case of a tenant who has more than one taxable premises, the
11 aggregate rents for all such premises, determined without regard to any
12 deduction from or reduction in rent or base rent allowed by this chap-
13 ter, do not exceed fifteen thousand dollars for the tax year. For tax
14 years beginning on June first, nineteen hundred ninety-seven and ending
15 on or before May thirty-first, two thousand one, no such final return
16 shall be required from such exempt tenant with respect to any taxable
17 premises if (1) the tenant's rent for such premises, determined without
18 regard to any deduction from or reduction in rent or base rent allowed
19 by this chapter, does not exceed seventy-five thousand dollars for the
20 tax year and (2) the amount of rent received or due from any subtenant
21 of such exempt tenant with respect to such premises does not exceed
22 seventy-five thousand dollars for the tax year. For tax years beginning
23 on or after June first, two thousand one, no such final return shall be
24 required from such exempt tenant with respect to any taxable premises if
25 (1) the tenant's rent for such premises, determined without regard to
26 any deduction from or reduction in rent or base rent allowed by this
27 chapter, does not exceed two hundred thousand dollars for the tax year
28 and (2) the amount of rent received or due from any subtenant of such
29 exempt tenant with respect to such premises does not exceed two hundred
30 thousand dollars for the tax year. Notwithstanding anything in this
31 subdivision to the contrary, for tax periods beginning on or after
32 September first, nineteen hundred ninety-five, no return shall be
33 required pursuant to this subdivision with respect to any taxable prem-
34 ises located in that part of the city specified in paragraph one of
35 subdivision h of section 11-704 of this chapter, and no such taxable
36 premises shall be taken into account for purposes of clause two of this
37 subparagraph. The commissioner of finance may permit or require returns,
38 including final returns, to be made for other periods and upon such
39 dates as the commissioner may specify and if he or she deems it neces-
40 sary, in order to insure the payment of the tax imposed by this chapter,
41 the commissioner may require such returns to be made for shorter periods
42 than those prescribed by this subdivision of this section, and upon such
43 dates as he or she may specify.

44 b. The commissioner of finance may by regulation require the filing
45 of information returns and supplemental information returns by landlords
46 and by tenants of taxable premises, whether or not they are required to
47 pay the tax imposed by this chapter, upon such dates or at such times as
48 the commissioner may specify if he or she deems the filing of such
49 information returns necessary for proper administration of this chapter.

50 c. The form of returns and information returns shall be prescribed by
51 the commissioner of finance and shall contain such information as the
52 commissioner may deem necessary for the proper administration of this
53 chapter. The commissioner of finance may require amended returns or
54 amended information returns to be filed within twenty days after notice
55 and to contain the information specified in the notice.

1 d. If a return or information return is not filed, or if a return of
2 any kind when filed is incorrect or insufficient on its face, the
3 commissioner of finance shall take the necessary steps to enforce the
4 filing of such a return or of a corrected return.

5 § 11-706 Payment of tax. a. The tax imposed by this chapter shall be
6 due and payable on or before the twentieth day of the calendar month
7 following the end of each tax period and shall be paid to the commis-
8 sioner of finance, as follows: The tax to be paid at such time shall be
9 based on the base rent for such tax period and the rate of tax shall be
10 the one which would be applicable if the base rent for such period were
11 the same for each tax period during the tax year, except that the
12 payment required to be made together with the final return or at the
13 time that the final return should be filed shall be the amount by which
14 the actual tax for the tax year exceeds the amounts previously paid for
15 the tax year.

16 b. Where the final return shows that the amount of tax paid for the
17 tax year exceeds the actual tax for such year, the commissioner of
18 finance shall make the appropriate refund as promptly as possible,
19 provided, however, that where the commissioner of finance has reason to
20 believe that the final return is inaccurate, the commissioner may with-
21 hold the refund in whole or in part. The making of a refund pursuant to
22 this subdivision shall not prevent the commissioner of finance from
23 making a determination that additional tax is due or from pursuing any
24 other method to recover the full amount of the actual tax due for the
25 tax year.

26 c. Where a tenant ceases to do business the tax, as measured by the
27 tenant's base rent for the prior part of the tax year, shall be due
28 immediately, and the tenant shall file a final return, but, should the
29 tenant continue to pay rent for the taxable premises, the tenant shall
30 file the normally required returns and a final return for the tax year,
31 provided, however, that any such tax payment shall be applied in
32 reduction of the tax payments required to be made with such returns or
33 with the final return for such tax year.

34 § 11-707 Records to be kept. Every landlord of taxable premises and
35 every tenant of taxable premises shall keep records of rent paid and
36 received by him or her in such form as the commissioner of finance may
37 by regulation require, all leases or agreements which fix the rents or
38 rights of tenants of taxable premises, and such other records, receipts
39 and other papers relevant to the ascertainment of the tax due under this
40 chapter as the commissioner of finance may by regulation require. Such
41 records shall be offered for inspection and examination at any time upon
42 demand by the commissioner of finance. Such records, unless the commis-
43 sioner of finance consents to a sooner destruction or requires that they
44 be kept for a longer time, shall be preserved for a period of three
45 years except that leases or agreements which fix the rents or rights of
46 a tenant shall be kept for a period of three years after the expiration
47 of the tenancy thereunder.

48 § 11-708 Determination of tax. If a return required by this chapter is
49 not filed, or if a return when filed is incorrect or insufficient, the
50 commissioner of finance shall determine the amount of tax due from such
51 information as may be obtainable and, if necessary, may estimate the tax
52 on the basis of external indices. Notice of such determination shall be
53 given to the person liable for the payment of the tax. Such determi-
54 nation shall finally and irrevocably fix the tax unless the person
55 against whom it is assessed, within ninety days after the giving of
56 notice of such determination or, if the commissioner of finance has

1 established a conciliation procedure pursuant to section 11-124 of this
2 title and the taxpayer has requested a conciliation conference in
3 accordance therewith, within ninety days from the mailing of a concil-
4 iation decision or the date of the commissioner's confirmation of the
5 discontinuance of the conciliation proceeding, both (1) serves a peti-
6 tion upon the commissioner of finance and (2) files a petition with the
7 tax appeals tribunal for a hearing, or unless the commissioner of
8 finance of the commissioner's own motion shall redetermine the same.
9 Such hearing and any appeal to the tax appeals tribunal sitting en banc
10 from the decision rendered in such hearing shall be conducted in the
11 manner and subject to the requirements prescribed by the tax appeals
12 tribunal pursuant to sections one hundred sixty-eight through one
13 hundred seventy-two of the charter of the preceding municipality as it
14 existed January first, nineteen hundred ninety-four. After such hearing
15 the tax appeals tribunal shall give notice of its decision to the person
16 against whom the tax is assessed and to the commissioner of finance. A
17 decision of the tax appeals tribunal sitting en banc shall be reviewable
18 for error, illegality or unconstitutionality or any other reason whatso-
19 ever by a proceeding under article seventy-eight of the civil practice
20 law and rules if application therefor is made to the supreme court by
21 the person against whom the tax was assessed within four months after
22 the giving of the notice of such tax appeals tribunal decision,
23 provided, however, that any such proceeding under article seventy-eight
24 of the civil practice law and rules shall not be instituted by a taxpay-
25 er unless: (a) the amount of any tax sought to be reviewed, with inter-
26 est and penalties thereon, if any, shall be first deposited and there is
27 filed an undertaking with the commissioner of finance, issued by a sure-
28 ty company authorized to transact business in this state and approved by
29 the superintendent of insurance of this state as to solvency and respon-
30 sibility, in such amount as a justice of the supreme court shall approve
31 to the effect that if such proceeding be dismissed or the tax confirmed
32 the taxpayer will pay all costs and charges which may accrue in the
33 prosecution of such proceeding or (b) at the option of the taxpayer such
34 undertaking may be in a sum sufficient to cover the taxes, interest and
35 penalties stated in such decision plus the costs and charges which may
36 accrue against it in the prosecution of the proceeding, in which event
37 the taxpayer shall not be required to pay such taxes, interest or penal-
38 ties as a condition precedent to the application.

39 § 11-709 Refunds. a. In the manner provided in this section the
40 commissioner of finance shall refund or credit, without interest, any
41 tax, penalty or interest erroneously, illegally or unconstitutionally
42 collected or paid, if written application to the commissioner of finance
43 for such refund shall be made within eighteen months from the date fixed
44 by this chapter for filing the return on which such payment was based or
45 within six months of the payment thereof, whichever of such periods
46 expire the later. Whenever a refund or credit is made or denied, the
47 commissioner of finance shall state his or her reason therefor and give
48 notice thereof to the taxpayer in writing. The commissioner of finance
49 may, in lieu of any refund required to be made, allow credit therefor on
50 payments due from the applicant.

51 b. Any determination of the commissioner of finance denying a refund
52 or credit pursuant to subdivision a of this section shall be final and
53 irrevocable unless the applicant for such refund or credit, within nine-
54 ty days from the mailing of notice of such determination, or, if the
55 commissioner of finance has established a conciliation procedure pursu-
56 ant to section 11-124 of this title and the applicant has requested a

1 conciliation conference in accordance therewith, within ninety days from
2 the mailing of a conciliation decision or the date of the commissioner's
3 confirmation of the discontinuance of the conciliation proceeding, both
4 (1) serves a petition upon the commissioner of finance and (2) files a
5 petition with the tax appeals tribunal for a hearing. Such petition for
6 a refund or credit, made as herein provided, shall be deemed an applica-
7 tion for a revision of any tax, penalty or interest complained of. Such
8 hearing of any appeal to the tax appeals tribunal sitting en banc from
9 the decision rendered in such hearing shall be conducted in the manner
10 and subject to the requirements prescribed by the tax appeals tribunal
11 pursuant to section one hundred sixty-eight through one hundred seven-
12 ty-two of the charter of the preceding municipality as it existed Janu-
13 ary first, nineteen hundred ninety-four. After such hearing, the tax
14 appeals tribunal shall give notice of its decision to the applicant and
15 to the commissioner of finance. The applicant shall be entitled to
16 institute a proceeding pursuant to article seventy-eight of the civil
17 practice law and rules to review a decision of the tax appeals tribunal
18 sitting en banc if application to the supreme court be made therefor
19 within four months after the giving of notice of such decision, and
20 provided, in the case of an application by a taxpayer, that a final
21 determination of tax due was not previously made. Such a proceeding
22 shall not be instituted by a taxpayer unless an undertaking shall first
23 be filed with the commissioner of finance, in such amount and with such
24 sureties as a justice of the supreme court shall approve, to the effect
25 that if such proceeding be dismissed or the tax confirmed, the taxpayer
26 will pay all costs and charges which may accrue in the prosecution of
27 the proceeding.

28 c. A person shall not be entitled to a revision, refund or credit
29 under this section of a tax, interest or penalty which had been deter-
30 mined to be due pursuant to the provisions of section 11-708 of this
31 chapter where such person has had a hearing or an opportunity for a
32 hearing, as provided in said section, or has failed to avail himself or
33 herself of the remedies therein provided. No refund or credit shall be
34 made of a tax, interest or penalty paid after a determination by the
35 commissioner of finance made pursuant to section 11-708 of this chapter
36 unless it be found that such determination was erroneous, illegal or
37 unconstitutional, or otherwise improper, by the tax appeals tribunal
38 after a hearing, or, if such tax appeals tribunal affirms in whole or in
39 part the determination of the commissioner of finance, in a proceeding
40 under article seventy-eight of the civil practice law and rules, pursu-
41 ant to the provisions of said section, in which event refund or credit
42 without interest shall be made of the tax, interest or penalty found to
43 have been overpaid.

44 § 11-710 Remedies exclusive. The remedies provided by this chapter
45 shall be the exclusive remedies available to any person for the review
46 of tax liability imposed by this chapter; and no determination or
47 proposed determination of tax or determination on any application for
48 refund by the commissioner of finance, nor any decision by the tax
49 appeals tribunal or any of its administrative law judges, shall be
50 enjoined or reviewed by an action for declaratory judgment, an action
51 for money had and received or by any action or proceeding other than, in
52 the case of a decision by the tax appeals tribunal sitting en banc, a
53 proceeding under article seventy-eight of the civil practice law and
54 rules; provided, however, that a taxpayer may proceed by declaratory
55 judgment if he or she institutes suit within thirty days after a defi-
56 ciency assessment is made and pays the amount of the deficiency assess-

1 ment to the commissioner of finance prior to the institution of such
2 suit and posts a bond for costs as provided in section 11-708 of this
3 chapter.

4 § 11-711 Reserves. In cases where the taxpayer has applied for a
5 refund and has instituted a proceeding under article seventy-eight of
6 the civil practice law and rules to review a determination adverse to
7 the taxpayer on his or her application for refund, the comptroller shall
8 set up appropriate reserves to meet any decision adverse to the city.

9 § 11-712 Proceedings to recover tax. a. Whenever any person shall
10 fail to pay any tax or penalty or interest imposed by this chapter as
11 herein provided, the corporation counsel shall, upon the request of the
12 commissioner of finance, bring or cause to be brought an action to
13 enforce payment of the same against the person liable for the same on
14 behalf of the city of Staten Island in any court of the state of New
15 York or of any other state or of the United States. If, however, the
16 commissioner of finance in his or her discretion believes that a
17 taxpayer subject to the provisions of this chapter is about to cease
18 business, leave the state or remove or dissipate the assets out of which
19 tax or penalties might be satisfied and that any such tax or penalty
20 will not be paid when due, he or she may declare such tax or penalty to
21 be immediately due and payable and may issue a warrant immediately.

22 b. As an additional or alternate remedy, the commissioner of finance
23 may issue a warrant, directed to the city sheriff commanding the sheriff
24 to levy upon and sell the real and personal property of such person
25 which may be found within the city, for the payment of the amount there-
26 of, with any penalties and interest, and the cost of executing the
27 warrant, and to return such warrant to the commissioner of finance and
28 to pay to the commissioner the money collected by virtue thereof within
29 sixty days after the receipt of such warrant. The city sheriff shall,
30 within five days after the receipt of the warrant, file with the county
31 clerk a copy thereof, and thereupon such clerk shall enter in the judg-
32 ment docket the name of the person mentioned in the warrant and the
33 amount of the tax, penalties and interest for which the warrant is
34 issued and the date when such copy is filed. Thereupon the amount of
35 such warrant so docketed shall become a lien upon the title to and
36 interest in real and personal property of the person against whom the
37 warrant is issued. The city sheriff shall then proceed upon the warrant
38 in the same manner and with like effect as that provided by law in
39 respect to executions issued against property upon judgments of a court
40 of record, and for services in executing the warrant the sheriff shall
41 be entitled to the same fees which the sheriff may collect in the same
42 manner. In the discretion of the commissioner of finance a warrant of
43 like terms, force and effect may be issued and directed to any officer
44 or employee of the department of finance, and in the execution thereof
45 such officer or employee shall have all the powers conferred by law upon
46 sheriffs, but he or she shall be entitled to no fee or compensation in
47 excess of the actual expenses paid in the performance of such duty. If
48 a warrant is returned not satisfied in full, the commissioner of finance
49 may from time to time issue new warrants and shall also have the same
50 remedies to enforce the amount due thereunder as if the city had recov-
51 ered judgment therefor and execution thereon had been returned unsatis-
52 fied.

53 c. Whenever there is made a sale, transfer or assignment in bulk of
54 any part or the whole of a stock of merchandise or of fixtures, or
55 merchandise and of fixtures pertaining to the conducting of the business
56 of the seller, transferor or assignor, otherwise than in the ordinary

1 course of trade and in the regular prosecution of said business, the
2 purchaser, transferee or assignee shall at least ten days before taking
3 possession of such merchandise, fixtures, or merchandise and fixtures,
4 or paying therefor, notify the commissioner of finance by registered
5 mail of the proposed sale and of the price, terms and conditions thereof
6 whether or not the seller, transferor or assignor, has represented to,
7 or informed the purchaser, transferee or assignee that it owes any tax
8 pursuant to this chapter and whether or not the purchaser, transferee or
9 assignee has knowledge that such taxes are owing, and whether any such
10 taxes are in fact owing.

11 Whenever the purchaser, transferee or assignee shall fail to give
12 notice to the commissioner of finance as required by the opening para-
13 graph of this subdivision, or whenever the commissioner of finance shall
14 inform the purchaser, transferee or assignee that a possible claim for
15 such tax or taxes exists, any sums of money, property or choses in
16 action, or other consideration, which the purchaser, transferee or
17 assignee is required to transfer over to the seller, transferor or
18 assignor shall be subject to a first priority right and lien for any
19 such taxes theretofore or thereafter determined to be due from the sell-
20 er, transferor or assignor to the city, and the purchaser, transferee or
21 assignee is forbidden to transfer to the seller, transferor or assignor
22 any such sums of money, property or choses in action to the extent of
23 the amount of the city's claim. For failure to comply with the
24 provisions of this subdivision, the purchaser, transferee or assignee,
25 in addition to being subject to the liabilities and remedies imposed
26 under the provisions of former section forty-four of the personal prop-
27 erty law, shall be personally liable for the payment to the city of any
28 such taxes theretofore or thereafter determined to be due to the city
29 from the seller, transferor or assignor, and such liability may be
30 assessed and enforced in the same manner as the liability for tax under
31 this chapter.

32 d. The commissioner of finance, if he or she finds that the interests
33 of the city will not thereby be jeopardized, and upon such conditions as
34 the commissioner of finance may require, may release any property from
35 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
36 tions to tax, penalties and interest filed pursuant to subdivision b of
37 this section, and such release or vacating of the warrant may be
38 recorded in the office of any recording officer in which such warrant
39 has been filed. The clerk shall thereupon cancel and discharge as of the
40 original date of docketing the vacated warrant.

41 § 11-713 General powers of the commissioner of finance. In addition
42 to the powers granted to the commissioner of finance in this chapter,
43 the commissioner is hereby authorized and empowered:

44 1. To make, adopt and amend rules and regulations appropriate to the
45 carrying out of this chapter and the purposes thereof;

46 2. To extend, for cause shown, the time for filing any return for a
47 period not exceeding ninety days; and to compromise disputed claims in
48 connection with the taxes hereby imposed;

49 3. To request information from the tax commission of the state on New
50 York or the treasury department of the United States relative to any
51 person; and to afford information to such tax commission or such treas-
52 ury department relative to any person;

53 4. To delegate the commissioner's functions pursuant to this section
54 to a deputy commissioner of finance or other employee or employees of
55 the commissioner's department;

1 5. To assess, determine, revise and adjust the taxes imposed under
2 this chapter;

3 6. To require any tenant who uses premises for both residential
4 purposes and as taxable premises and who pays an undivided rent for the
5 entire premises so used to provide the commissioner with a signed and
6 notarized request to the United States director of internal revenue for
7 photostatic copies of the tenant's income tax return for any year when
8 the commissioner deems such income tax return necessary to determine the
9 rent ascribable to so much of such premises as is used as taxable prem-
10 ises; and, if the tenant refuses to provide the commissioner with such a
11 signed written request, to treat the rent for the entire premises as the
12 rent for so much as is used as taxable premises;

13 7. To prescribe methods for determining how much of any tenant's base
14 rent is ascribable to a use which results in a reduction of the base
15 rent or for determining any other division of rent or of use of premises
16 necessary for the determination of the base rent or the amount of base
17 rent subject to tax under this chapter;

18 8. To authorize banks or trust companies which are depositories or
19 financial agents of the city to receive and give a receipt for any tax
20 imposed under this chapter in such manner, at such times, and under such
21 conditions as the commissioner of finance may prescribe; and the commis-
22 sioner of finance shall prescribe the manner, times and conditions under
23 which the receipt of such tax by such banks and trust companies is to be
24 treated as payment of such tax to the commissioner of finance.

25 § 11-714 Administration of oaths and compelling testimony. a. The
26 commissioner of finance, the commissioner's employees duly designated
27 and authorized by the commissioner, the tax appeals tribunal and any of
28 its duly designated and authorized employees shall have power to admin-
29 ister oaths and take affidavits in relation to any matter or proceeding
30 in the exercise of their powers and duties under this chapter. The
31 commissioner of finance and the tax appeals tribunal shall have power to
32 subpoena and require the attendance of witnesses and the production of
33 books, papers and documents to secure information pertinent to the
34 performance of the duties of the commissioner or of the tax appeals
35 tribunal hereunder and of the enforcement of this chapter and to examine
36 them in relation thereto, and to issue commissions for the examination
37 of witnesses who are out of the state or unable to attend before the
38 commissioner or the tax appeals tribunal or excused from attendance.

39 b. A justice of the supreme court either in court or at chambers shall
40 have power summarily to enforce by proper proceedings the attendance and
41 testimony of witnesses and the production and examination of books,
42 papers and documents called for by the subpoena of the commissioner of
43 finance or the tax appeals tribunal under this chapter.

44 c. Cross-reference; criminal penalties. For failure to obey subpoenas
45 or for testifying falsely, see section 11-4007 of this title; for
46 supplying false or fraudulent information, see section 11-4002 of this
47 title.

48 d. The officers who serve the summons or subpoena of the commissioner
49 of finance or the tax appeals tribunal hereunder and witnesses attending
50 in response thereto shall be entitled to the same fees as are allowed to
51 officers and witnesses in civil cases in courts of record, except as
52 herein otherwise provided. Such officers shall be the city sheriff, and
53 the sheriff's duly appointed deputies or any officers or employees of
54 the department of finance or the tax appeals tribunal, designated to
55 serve such process.

1 § 11-715 Interest and penalties. (a) Interest on underpayment; quar-
2 terly return. If any amount of tax required to be paid together with a
3 return, other than the final return for a tax year, is not paid on or
4 before the last date prescribed for payment, without regard to any
5 extension of time granted for payment, interest on such amount at the
6 rate set by the commissioner of finance pursuant to subdivision (h) of
7 this section, or, if no rate is set, at the rate of seven and one-half
8 percent per annum, shall be paid for the period from such last date
9 until twenty days after the end of the tax year during which such
10 payments were due or until such prior time as the tax paid for the tax
11 year equals seventy-five percent of the full tax required to be paid for
12 the tax year. Such interest shall be paid with the final return for the
13 tax year to which it relates. In computing the amount of interest to be
14 paid, such interest shall be compounded daily. Interest under this
15 subdivision shall not be paid if the amount thereof is less than one
16 dollar.

17 (b) Interest on underpayment; final return. If any amount of tax
18 required to be paid together with the final return for a tax year is not
19 paid on or before the last date prescribed for payment, without regard
20 to any extension of time granted for payment, interest on such amount at
21 the rate set by the commissioner of finance pursuant to subdivision (h)
22 of this section, or, if no rate is set, at the rate of seven and one-
23 half percent per annum, shall be paid for the period from such last date
24 to the date of payment. In computing the amount of interest to be paid,
25 such interest shall be compounded daily. Interest under this subdivision
26 shall not be paid if the amount thereof is less than one dollar.

27 (c) (1) Failure to file final return. (A) In case of failure to file
28 a final return under this chapter on or before the prescribed date,
29 determined with regard to any extension of time for filing, unless it is
30 shown that such failure is due to reasonable cause and not due to will-
31 ful neglect, there shall be added to the amount required to be shown as
32 tax on such return five percent of the amount of such tax if the failure
33 is for not more than one month, with an additional five percent for each
34 additional month or fraction thereof during which such failure contin-
35 ues, not exceeding twenty-five percent in the aggregate, and, in addi-
36 tion thereto, where a tenant, with respect to any taxable premises, is
37 exempt from tax by reason of paragraph two of subdivision b of section
38 11-704 of this chapter, there shall be imposed a penalty of one hundred
39 dollars.

40 (B) In the case of a failure to file a return of tax within sixty days
41 of the date prescribed for filing of such return, determined with regard
42 to any extension of time for filing, unless it is shown that such fail-
43 ure is due to reasonable cause and not due to willful neglect, the addi-
44 tion to tax under subparagraph (A) of this paragraph shall not be less
45 than the lesser of one hundred dollars or one hundred percent of the
46 amount required to be shown as tax on such return.

47 (C) For purposes of this paragraph, the amount of tax required to be
48 shown on the return shall be reduced by the amount of any part of the
49 tax which is paid on or before the date prescribed for payment of the
50 tax and by the amount of any credit against the tax which may be claimed
51 upon the return.

52 (2) Failure to pay tax shown on final return. In case of failure to
53 pay the amount shown as tax on a final return required to be filed under
54 this chapter on or before the prescribed date, determined with regard to
55 any extension of time for payment, unless it is shown that such failure
56 is due to reasonable cause and not due to willful neglect, there shall

1 be added to the amount shown as tax on such return one-half of one
2 percent of the amount of such tax if the failure is not for more than
3 one month, with an additional one-half of one percent for each addi-
4 tional month or fraction thereof during which such failure continues,
5 not exceeding twenty-five percent in the aggregate. For the purpose of
6 computing the addition for any month the amount of tax shown on the
7 return shall be reduced by the amount of any part of the tax which is
8 paid on or before the beginning of such month and by the amount of any
9 credit against the tax which may be claimed upon the return. If the
10 amount of tax required to be shown on a return is less than the amount
11 shown as tax on such return, this paragraph shall be applied by substi-
12 tuting such lower amount.

13 (3) Failure to pay tax required to be shown on final return. In case
14 of failure to pay any amount in respect of any tax required to be shown
15 on a final return required to be filed under this chapter which is not
16 so shown, including a determination made pursuant to section 11-708 of
17 this chapter, within ten days of the date of a notice and demand there-
18 for, unless it is shown that such failure is due to reasonable cause and
19 not due to willful neglect, there shall be added to the amount of tax
20 stated in such notice and demand one-half of one percent of such tax if
21 the failure is not for more than one month, with an additional one-half
22 of one percent for each additional month or fraction thereof during
23 which such failure continues, not exceeding twenty-five percent in the
24 aggregate. For the purpose of computing the addition for any month, the
25 amount of tax stated in the notice and demand shall be reduced by the
26 amount of any part of the tax which is paid before the beginning of such
27 month.

28 (4) Limitations on additions.

29 (A) With respect to any final return, the amount of the addition under
30 paragraph one of this subdivision shall be reduced by the amount of the
31 addition under paragraph two of this subdivision for any month to which
32 an addition applies under both such paragraphs one and two. In any case
33 described in subparagraph (B) of paragraph one of this subdivision, the
34 amount of the addition under such paragraph one shall not be reduced
35 below the amount provided in such subparagraph.

36 (B) With respect to any final return, the maximum amount of the addi-
37 tion permitted under paragraph three of this subdivision shall be
38 reduced by the amount of the addition under paragraph one of this subdivi-
39 sion, determined without regard to subparagraph (B) of such paragraph
40 one, which is attributable to the tax for which the notice and demand is
41 made and which is not paid within ten days of such notice and demand.

42 (d) Underpayment due to negligence. (1) If any part of an underpayment
43 of tax is due to negligence or intentional disregard of this chapter or
44 any rules or regulations hereunder, but without intent to defraud, there
45 shall be added to the tax a penalty equal to five percent of the under-
46 payment.

47 (2) There shall be added to the tax, in addition to the amount deter-
48 mined under paragraph one of this subdivision, an amount equal to fifty
49 percent of the interest payable under subdivision (b) of this section
50 with respect to the portion of the underpayment described in such para-
51 graph one which is attributable to the negligence or intentional disre-
52 gard referred to in such paragraph one, for the period beginning on the
53 last date prescribed by law for payment of such underpayment, determined
54 without regard to any extension, and ending on the date of the assess-
55 ment of the tax, or, if earlier, the date of the payment of the tax.

1 (e) Underpayment due to fraud. (1) If any part of an underpayment of
2 tax is due to fraud, there shall be added to the tax a penalty equal to
3 fifty percent of the underpayment.

4 (2) There shall be added to the tax, in addition to the penalty deter-
5 mined under paragraph one of this subdivision, an amount equal to fifty
6 percent of the interest payable under subdivision (b) of this section
7 with respect to the portion of the underpayment described in such para-
8 graph one which is attributable to fraud, for the period beginning on
9 the last date prescribed by law for payment of such underpayment, deter-
10 mined without regard to any extension, and ending on the date of the
11 assessment of the tax, or, if earlier, the date of the payment of the
12 tax.

13 (3) The penalty under this subdivision shall be in lieu of any other
14 addition to tax imposed by subdivision (c) or (d) of this section.

15 (f) Additional penalty. Any person who, with fraudulent intent, shall
16 fail to pay any tax imposed by this chapter, or to make, render, sign or
17 certify any return, or to supply any information within the time
18 required by or under this chapter, shall be liable for a penalty of not
19 more than one thousand dollars, in addition to any other amounts
20 required under this chapter to be imposed, assessed and collected by the
21 commissioner of finance. The commissioner of finance shall have the
22 power, in his or her discretion, to waive, reduce or compromise any
23 penalty under this subdivision.

24 (g) The interest and penalties imposed by this section shall be paid
25 and disposed of in the same manner as other revenues from this chapter.
26 Unpaid interest and penalties may be enforced in the same manner as the
27 tax imposed by this chapter.

28 (h) (1) Authority to set interest rates. The commissioner of finance
29 shall set the rate of interest to be paid pursuant to subdivisions (a)
30 and (b) of this section, but if no such rate of interest is set, such
31 rate shall be deemed to be set at seven and one-half percent per annum.
32 Such rate shall be the same for each subdivision and shall be the rate
33 prescribed in paragraph two of this subdivision but shall not be less
34 than seven and one-half percent per annum. Any such rate set by the
35 commissioner of finance shall apply to taxes, or any portion thereof,
36 which remain or become due on or after the date on which such rate
37 becomes effective and shall apply only with respect to interest computed
38 or computable for periods or portions of periods occurring in the period
39 in which such rate is in effect.

40 (2) General rule. The rate of interest set under this subdivision
41 shall be the sum of (i) the federal short-term rate as provided under
42 paragraph three of this subdivision, plus (ii) seven percentage points.

43 (3) Federal short-term rate. For purposes of this subdivision:

44 (A) The federal short-term rate for any month shall be the federal
45 short-term rate determined by the United States secretary of the treas-
46 ury during such month in accordance with subsection (d) of section
47 twelve hundred seventy-four of the internal revenue code for use in
48 connection with section six thousand six hundred twenty-one of the
49 internal revenue code. Any such rate shall be rounded to the nearest
50 full percent, or, if a multiple of one-half of one percent, such rate
51 shall be increased to the next highest full percent.

52 (B) Period during which rate applies.

53 (i) In general. Except as provided in clause (ii) of this subpara-
54 graph, the federal short-term rate for the first month in each calendar
55 quarter shall apply during the first calendar quarter beginning after
56 such month.

1 (ii) Special rule for the month of September, nineteen hundred eight-
2 y-nine. The federal short-term rate for the month of April, nineteen
3 hundred eighty-nine shall apply with respect to setting the rate of
4 interest for the month of September, nineteen hundred eighty-nine.

5 (4) Publication of interest rate. The commissioner of finance shall
6 cause to be published in the City Record, and give other appropriate
7 general notice of, the interest rate to be set under this subdivision
8 later than twenty days preceding the first day of the calendar quarter
9 during which such interest rate applies. The setting and publication of
10 such interest rate shall not be included within paragraph (a) of subdi-
11 vision five of section one thousand forty-one of the city charter of the
12 preceding municipality as it existed January first, nineteen hundred
13 ninety-four relating to the definition of a rule.

14 (i) Miscellaneous. (1) The certificate of the commissioner of finance
15 to the effect that a tax has not been paid, that a return has not been
16 filed, or that information has not been supplied pursuant to the
17 provisions of this chapter shall be prima facie evidence thereof.

18 (2) Cross-reference: For criminal penalties, see chapter forty of
19 this title.

20 (j) Substantial understatement of liability. If there is a substan-
21 tial understatement of tax for any tax year, there shall be added to the
22 tax an amount equal to ten percent of the amount of any underpayment
23 attributable to such understatement. For purposes of this subdivision,
24 there is a substantial understatement of tax for any tax year if the
25 amount of the understatement for the tax year exceeds the greater of ten
26 percent of the tax required to be shown on the final return for the tax
27 year or five thousand dollars. For purposes of this subdivision, the
28 term "understatement" means the excess of the amount of the tax required
29 to be shown on the final return for the tax year, over the amount of the
30 tax imposed which is shown on the return, reduced by any rebate. The
31 amount of such understatement shall be reduced by that portion of the
32 understatement which is attributable to the tax treatment of any item by
33 the taxpayer if there is or was substantial authority for such treat-
34 ment, or any item with respect to which the relevant facts affecting the
35 item's tax treatment are adequately disclosed in the return or in a
36 statement attached to the return. The commissioner of finance may waive
37 all or any part of the addition to tax provided by this subdivision on a
38 showing by the taxpayer that there was reasonable cause for the under-
39 statement, or part thereof, and that the taxpayer acted in good faith.

40 (k) Aiding or assisting in the giving of fraudulent returns, reports,
41 statements or other documents. (1) Any person who, with the intent that
42 tax be evaded, shall, for a fee or other compensation or as an incident
43 to the performance of other services for which such person receives
44 compensation, aid or assist in, or procure, counsel, or advise the prep-
45 aration or presentation under, or in connection with any matter arising
46 under this chapter of any return, report, statement or other document
47 which is fraudulent or false as to any material matter, or supply any
48 false or fraudulent information, whether or not such falsity or fraud is
49 with the knowledge or consent of the person authorized or required to
50 present such return, report, statement or other document shall pay a
51 penalty not exceeding ten thousand dollars.

52 (2) For purposes of paragraph one of this subdivision, the term
53 "procures" includes ordering, or otherwise causing, a subordinate to do
54 an act, and knowing of, and not attempting to prevent, participation by
55 a subordinate in an act. The term "subordinate" means any other person,
56 whether or not a director, officer, employee, or agent of the taxpayer

1 involved, over whose activities the person has direction, supervision,
2 or control.

3 (3) For purposes of paragraph one of this subdivision, a person
4 furnishing typing, reproducing, or other mechanical assistance with
5 respect to a document shall not be treated as having aided or assisted
6 in the preparation of such document by reason of such assistance.

7 (4) The penalty imposed by this subdivision shall be in addition to
8 any other penalty provided by law.

9 § 11-716 Returns to be secret. a. Except in accordance with proper
10 judicial order or as otherwise provided by law, it shall be unlawful for
11 the commissioner of finance, the department of finance of the city, any
12 officer or employee of the department of finance of the city, any person
13 engaged or retained by such department on an independent contract basis,
14 the tax appeals tribunal, any commissioner or employee of such tribunal,
15 or any person who, pursuant to this section, is permitted to inspect any
16 return or to whom a copy, an abstract or a portion of any return is
17 furnished, or to whom any information contained in any return is
18 furnished, to divulge or make known in any manner any information relat-
19 ing to the business of a taxpayer contained in any return required under
20 this chapter. The officers charged with the custody of such returns
21 shall not be required to produce any of them or evidence of anything
22 contained in them in any action or proceeding in any court, except on
23 behalf of the commissioner of finance in an action or proceeding under
24 the provisions of this chapter, or on behalf of any party to any action
25 or proceeding under the provisions of this chapter when the returns or
26 facts shown thereby are directly involved in such action or proceeding,
27 in either of which events the courts may require the production of, and
28 may admit in evidence so much of said returns or of the facts shown
29 thereby, as are pertinent to the action or proceeding and no more.
30 Nothing in this subdivision shall be construed to prohibit the delivery
31 to a taxpayer or the taxpayer's duly authorized representative of a
32 certified copy of any return filed in connection with his or her tax;
33 nor to prohibit the delivery of such a certified copy of such return or
34 of any information contained in or relating thereto, to the United
35 States of America or any department thereof, the state of New York or
36 any department thereof, any agency or any department of the city of
37 Staten Island provided the same is requested for official business; nor
38 to prohibit the inspection for official business of such returns by the
39 corporation counsel or other legal representatives of the city or by the
40 district attorney of the county of Richmond; nor to prohibit the publi-
41 cation of statistics so classified as to prevent the identification of
42 particular returns or items thereof.

43 b. (1) Any officer or employee of the city who willfully violates the
44 provisions of subdivision a of this section shall be dismissed from
45 office and be incapable of holding any public office in this city for a
46 period of five years thereafter.

47 (2) Cross-reference: For criminal penalties, see chapter forty of this
48 title.

49 c. This section shall be deemed a state statute for purposes of para-
50 graph (a) of subdivision two of section eighty-seven of the public offi-
51 cers law.

52 d. Notwithstanding anything in subdivision a of this section to the
53 contrary, if a taxpayer has petitioned the tax appeals tribunal for
54 administrative review as provided in section one hundred seventy of the
55 charter of the preceding municipality as it existed January first, nine-
56 teen hundred ninety-four, the commissioner of finance shall be author-

1 ized to present to the tribunal any report or return of such taxpayer,
2 or any information contained therein or relating thereto, which may be
3 material or relevant to the proceeding before the tribunal. The tax
4 appeals tribunal shall be authorized to publish a copy or a summary of
5 any decision rendered pursuant to section one hundred seventy-one of the
6 charter of the preceding municipality as it existed January first, nine-
7 teen hundred ninety-four.

8 § 11-717 Notices and limitation of time. a. Any notice authorized or
9 required under the provisions of this chapter may be given to the person
10 for whom it is intended by mailing it in a postpaid envelope addressed
11 to such person at the address given in the last return filed by such
12 person pursuant to the provisions of this chapter or in any application
13 made by such person or if no return has been filed or application made,
14 then to such address as may be obtainable. The mailing of a notice as in
15 this paragraph provided for shall be presumptive evidence of the receipt
16 of the same by the person to whom addressed. Any period of time which is
17 determined according to the provisions of this chapter by the giving of
18 notice shall commence to run from the date of mailing of such notice as
19 in this subdivision provided.

20 b. The provisions of the civil practice law and rules or any other law
21 relative to limitations of time for the enforcement of a civil remedy
22 shall not apply to any proceeding or action taken by the city to levy,
23 appraise, assess, determine or enforce the collection of any tax or
24 penalty provided by this chapter. However, except in the case of a
25 wilfully false or fraudulent return with intent to evade the tax, no
26 assessment of additional tax shall be made after the expiration of more
27 than three years from the date of the final return for the tax year to
28 which the assessment relates; provided, however, that where no return
29 has been made as provided by law, the tax may be assessed at any time.

30 c. Where before the expiration of the period prescribed herein for the
31 assessment of an additional tax, a person has consented in writing that
32 such period be extended, the amount of such additional tax due may be
33 determined at any time within such extended period. The period so
34 extended may be further extended by subsequent consents in writing made
35 before the expiration of the extended period.

36 d. If any return, claim, statement, notice, application, or other
37 document required to be filed, or any payment required to be made, with-
38 in a prescribed period or on or before a prescribed date under authority
39 of any provision of this chapter is, after such period or such date,
40 delivered by United States mail to the commissioner of finance, the tax
41 appeals tribunal, bureau, office, officer or person with which or with
42 whom such document is required to be filed, or to which or to whom such
43 payment is required to be made, the date of the United States postmark
44 stamped on the envelope shall be deemed to be the date of delivery. This
45 subdivision shall apply only if the postmark date falls within the
46 prescribed period or on or before the prescribed date for the filing of
47 such document, or for making the payment, including any extension grant-
48 ed for such filing or payment, and only if such document or payment was
49 deposited in the mail, postage prepaid, properly addressed to the
50 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
51 cer or person with which or with whom the document is required to be
52 filed or to which or to whom such payment is required to be made. If any
53 document is sent by United States registered mail, such registration
54 shall be prima facie evidence that such document was delivered to the
55 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
56 cer or person to which or to whom addressed, and the date of registra-

1 tion shall be deemed the postmark date. The commissioner of finance or,
2 where relevant, the tax appeals tribunal is authorized to provide by
3 regulation the extent to which the provisions of this subdivision with
4 respect to prima facie evidence of delivery and the postmark date shall
5 apply to certified mail. Except as provided in subdivision f of this
6 section, this subdivision shall apply in the case of postmarks not made
7 by the United States postal service only if and to the extent provided
8 by regulation of the commissioner of finance or, where relevant, the tax
9 appeals tribunal.

10 e. When the last day prescribed under authority of this chapter,
11 including any extension of time, for performing any act falls on a
12 Saturday, Sunday or legal holiday in the state, the performance of such
13 act shall be considered timely if it is performed on the next succeeding
14 day which is not a Saturday, Sunday or legal holiday.

15 f. (1) Any reference in subdivision d of this section to the United
16 States mail shall be treated as including a reference to any delivery
17 service designated by the secretary of the treasury of the United States
18 pursuant to section seventy-five hundred two of the internal revenue
19 code and any reference in subdivision d of this section to a United
20 States postmark shall be treated as including a reference to any date
21 recorded or marked in the manner described in section seventy-five
22 hundred two of the internal revenue code by a designated delivery
23 service. If the commissioner of finance finds that any delivery service
24 designated by such secretary is inadequate for the needs of the city,
25 the commissioner of finance may withdraw such designation for purposes
26 of this title. The commissioner of finance may also designate additional
27 delivery services meeting the criteria of section seventy-five hundred
28 two of the internal revenue code for purposes of this title, or may
29 withdraw any such designation if the commissioner of finance finds that
30 a delivery service so designated is inadequate for the needs of the
31 city. Any reference in subdivision d of this section to the United
32 States mail shall be treated as including a reference to any delivery
33 service designated by the commissioner of finance and any reference in
34 subdivision d of this section to a United States postmark shall be
35 treated as including a reference to any date recorded or marked in the
36 manner described in section seventy-five hundred two of the internal
37 revenue code by a delivery service designated by the commissioner of
38 finance. Notwithstanding the foregoing, any withdrawal of designation or
39 additional designation by the commissioner of finance shall not be
40 effective for purposes of service upon the tax appeals tribunal, unless
41 and until such withdrawal of designation or additional designation is
42 ratified by the president of the tax appeals tribunal.

43 (2) Any equivalent of registered or certified mail designated by the
44 United States secretary of the treasury, or as may be designated by the
45 commissioner of finance pursuant to the same criteria used by such
46 secretary for such designations pursuant to section seventy-five hundred
47 two of the internal revenue code, shall be included within the meaning
48 of registered or certified mail as used in subdivision d of this
49 section. If the commissioner of finance finds that any equivalent of
50 registered or certified mail designated by such secretary or the commis-
51 sioner of finance is inadequate for the needs of the city, the commis-
52 sioner of finance may withdraw such designation for purposes of this
53 title. Notwithstanding the provisions of this paragraph, any withdrawal
54 of designation or additional designation by the commissioner of finance
55 shall not be effective for purposes of service upon the tax appeals

1 tribunal, unless and until such withdrawal of designation or additional
2 designation is ratified by the president of the tax appeals tribunal.

3 § 11-718 Construction and enforcement. This chapter shall be construed
4 in conformity with chapter two hundred fifty-seven of the laws of nine-
5 teen hundred sixty-three, pursuant to which it is enacted.

6 § 11-719 Annual report. a. No later than September first, two thousand
7 twenty-five, and every September first thereafter, the department of
8 finance shall submit to the mayor and speaker of the council, and make
9 publicly available online, a report on the commercial rent tax. Such
10 report shall include the following information for the prior commercial
11 rent tax period, on the condition that any category that only includes
12 one taxpayer shall not be reported for any tax period:

13 1. the distribution of taxable premises and taxpayers by base rent
14 range, including the number and zip codes of the taxable premises for
15 which the commercial rent tax was collected, the number of taxpayers who
16 paid the tax, the number of taxpayers who paid the tax on more than one
17 property and the total amount of commercial rent tax paid for the set of
18 taxable premises and taxpayers within each range;

19 2. the distribution of taxable premises and taxpayers by industry,
20 including the number and zip codes of the taxable premises for which the
21 commercial rent tax was collected, the number of taxpayers who paid the
22 tax, the number of taxpayers who paid the tax on more than one property
23 and the total amount of commercial rent tax paid for the set of taxable
24 premises and taxpayers within each industry;

25 3. the total amount of tax collected and the average tax liability per
26 premises for each of the prior ten tax years;

27 4. the total amount of tax collected and the average tax liability per
28 taxpayer for each of the prior ten tax years;

29 5. a comparison of the total commercial rent tax collected to the
30 average market value of commercial properties in the city of Staten
31 Island as determined by the department for each of the prior ten tax
32 years;

33 6. the number of taxable premises and the number of taxpayers by base
34 rent range and industry who received the credit set forth in section
35 11-704.4 of this chapter; and

36 7. any other information deemed relevant for inclusion by the depart-
37 ment.

38 b. For purposes of the report required by subdivision a of this
39 section, the base rent ranges shall be:

40 1. between \$250,000 and \$274,999;

41 2. between \$275,000 and \$299,999;

42 3. between \$300,000 and \$349,999;

43 4. between \$350,000 and \$399,999;

44 5. between \$400,000 and \$449,999;

45 6. between \$450,000 and \$499,999;

46 7. between \$500,000 and \$549,999;

47 8. between \$550,000 and \$599,999;

48 9. between \$600,000 and \$699,999;

49 10. between \$700,000 and \$799,999;

50 11. between \$800,000 and \$899,999;

51 12. between \$900,000 and \$999,999;

52 13. between \$1,000,000 and \$1,999,999;

53 14. between \$2,000,000 and \$2,999,999;

54 15. between \$3,000,000 and \$3,999,999;

55 16. between \$4,000,000 and \$4,999,999;

56 17. between \$5,000,000 and \$9,999,999; and

1 18. more than \$10,000,000.

2 CHAPTER 8

3 TAX ON COMMERCIAL MOTOR VEHICLES AND MOTOR VEHICLES
4 FOR TRANSPORTATION OF PASSENGERS

5 § 11-801 Definitions. When used in this chapter, the following terms
6 shall mean or include:

7 1. "Person." An individual, partnership, corporation, joint-stock
8 company, society, association, receiver, lessee, trustee, estate, refer-
9 ee, assignee, or any other person acting in a fiduciary or represen-
10 tative capacity, whether appointed by a court or otherwise, and any
11 combination of individuals.

12 2. "Motor vehicle." Any vehicle operated upon a public highway or
13 public street propelled by any power other than muscular power.

14 3. "Commercial motor vehicle." (a) Each truck, tractor, trailer or
15 semi-trailer, and any other motor vehicle constructed or specially
16 equipped for the transportation of goods, wares and merchandise which is
17 commonly known as an auto truck or light delivery car;

18 (b) Any traction engine, road roller, tractor crane, truck crane,
19 power shovel, road building machine, snow plow, road sweeper, sand
20 spreader, well driller, or well servicing rig; and

21 (c) Any earth moving equipment as defined in the vehicle and traffic
22 law; provided that such motor vehicles are used principally in the city
23 or used principally in connection with a business carried on within the
24 city.

25 4. "Motor vehicle for transportation of passengers." (a) Any motor
26 vehicle licensed as a taxicab or as a coach, or any motor vehicle, not
27 so licensed, which carries passengers for compensation, including limou-
28 sine service, whether the compensation paid by or on behalf of the
29 passenger is based on mileage, trip, time consumed or any other basis;
30 and

31 (b) Any omnibus, except one operated pursuant to a franchise when,
32 under such franchise or under a contract, relating to transportation to
33 or from airports, with the port of New York authority, the holder of the
34 franchise pays to the city or to the port of New York authority a
35 percentage of its gross earnings or gross receipts or one used exclu-
36 sively in interstate commerce; provided such motor vehicles, as defined
37 in paragraph (a) or (b) of this subdivision, are used regularly, even
38 though not principally, in the city; and further provided that this
39 definition shall not be deemed to include any motor vehicle used princi-
40 pally for the transportation of children to and from schools and day
41 camps operated by non-profit agencies as defined in subdivision four of
42 section 11-803 of this chapter, any motor vehicle used exclusively for
43 transportation of persons in connection with funerals or any motor vehi-
44 cle for transportation of passengers where neither the owner of such
45 motor vehicle nor any person or business engaged in transporting passen-
46 gers by motor vehicle for-hire that is affiliated with such owner has a
47 place of business in such city, a telephone number in such city, or
48 solicits business or specifically advertises in such city.

49 5. "Owner." Any person owning a commercial motor vehicle or a motor
50 vehicle for the transportation of passengers and shall include a
51 purchaser under a reserve title contract, conditional sales agreement or
52 vendor's lien agreement. In addition, an owner shall be deemed to
53 include any lessee, licensee or bailee having the exclusive use of a
54 commercial motor vehicle or a vehicle for the transportation of passen-
55 gers, under a lease or otherwise, for a period of thirty days or more.

1 6. "Omnibus." Any motor vehicle for transportation of passengers for
2 hire having a seating capacity of more than seven persons.

3 7. "Use." Any use of a motor vehicle upon the public highways or
4 streets of the city.

5 8. "Maximum gross weight." The weight of the motor vehicle plus the
6 weight of the maximum load to be carried, if any, by such vehicle.

7 9. "Registered owner." The person who registers a motor vehicle as
8 owner thereof pursuant to the registration requirements of the vehicle
9 and traffic law of the state of New York.

10 10. "Registration fee." The full annual fee or charge prescribed in
11 the vehicle and traffic law of the state of New York for the registra-
12 tion of a motor vehicle.

13 11. "City." The city of Staten Island.

14 12. "Comptroller." The comptroller of the city.

15 13. "Commissioner of finance." The commissioner of finance of the
16 city.

17 14. "Tax year." June first of any calendar year through May thirty-
18 first of the following calendar year.

19 15. "Medallion taxicab." A motor vehicle for transportation of passen-
20 gers which is duly licensed as a taxicab by the taxi and limousine
21 commission and permitted to accept hails from passengers in the street.

22 16. "Tax appeals tribunal." The tax appeals tribunal established by
23 section one hundred sixty-eight of the charter of the preceding munici-
24 pality as it existed January first, nineteen hundred ninety-four.

25 17. "Commissioner of motor vehicles." The commissioner of motor vehi-
26 cles of the state of New York.

27 18. "Taxi and limousine commission." The New York city taxi and limou-
28 sine commission.

29 § 11-802 Imposition of tax. a. In addition to any and all other taxes,
30 including the compensating use tax, there is hereby imposed and there
31 shall be paid annually for each tax year beginning June first, nineteen
32 hundred sixty, a tax on the use in the city of motor vehicles to be paid
33 by the owners of such vehicles as follows:

34 1. (A) For tax years ending on or before May thirty-first, nineteen
35 hundred seventy-two, on commercial vehicles, twenty dollars for each
36 such vehicle having a maximum gross weight of five tons or less, and
37 thirty dollars for each such vehicle having a maximum gross weight of
38 more than five tons, provided, however, that for each such vehicle
39 having a registration fee prescribed in the vehicle and traffic law of
40 the state of New York which is less than twenty dollars, the tax shall
41 be an amount equal to such registration fee;

42 (B) For tax years beginning on and after June first, nineteen hundred
43 seventy-two but before June first, nineteen hundred ninety, on commer-
44 cial vehicles, forty dollars for each such vehicle having a maximum
45 gross weight of five tons or less, and sixty dollars for each such vehi-
46 cle having a maximum gross weight of more than five tons, provided,
47 however, that for each such vehicle having a registration fee prescribed
48 in the vehicle and traffic law of the state of New York which is less
49 than forty dollars, the tax shall be an amount equal to such registra-
50 tion fee.

51 (C) For tax years beginning on and after June first, nineteen hundred
52 ninety, on commercial vehicles, forty dollars for each such vehicle
53 having a maximum gross weight of ten thousand pounds or less, two
54 hundred dollars for each such vehicle having a maximum gross weight of
55 more than ten thousand pounds but not more than twelve thousand five
56 hundred pounds, two hundred seventy-five dollars for each such vehicle

1 having a maximum gross weight of more than twelve thousand five hundred
2 pounds but not more than fifteen thousand pounds and three hundred
3 dollars for each such vehicle having a maximum gross weight of more than
4 fifteen thousand pounds, provided, however, that for each such vehicle
5 having a registration fee prescribed in the vehicle and traffic law of
6 the state of New York which is less than forty dollars, the tax shall be
7 an amount equal to such registration fee.

8 2. (A) For tax years ending on or before May thirty-first, nineteen
9 hundred ninety, on motor vehicles for the transportation of passengers
10 other than medallion taxicabs, and for tax years ending on or before May
11 thirty-first, nineteen hundred eighty-nine, on medallion taxicabs, one
12 hundred dollars for each such vehicle.

13 (B) For the tax year beginning June first, nineteen hundred eighty-
14 nine and ending May thirty-first, nineteen hundred ninety, on medallion
15 taxicabs, five hundred dollars for each such vehicle.

16 (C) For tax years beginning on and after June first, nineteen hundred
17 ninety but before May thirty-first, two thousand nineteen, on medallion
18 taxicabs, one thousand dollars for each such vehicle, and on all other
19 motor vehicles for transportation of passengers, four hundred dollars
20 for each such vehicle.

21 (D) For tax years beginning on or after June first, two thousand nine-
22 teen, on all motor vehicles for transportation of passengers, including
23 medallion taxicabs, four hundred dollars for each such vehicle.

24 b. To the extent that the tax as imposed by subdivision a of this
25 section may be invalid solely because it is based on the use in the city
26 of the motor vehicles, the tax shall also be deemed to be based on the
27 privilege of using the public highways or streets of the city by such
28 motor vehicle. Under such circumstances the rate of tax shall be the
29 same and all other provisions of this chapter shall be equally applica-
30 ble.

31 c. If the first use of any motor vehicle subject to the tax imposed
32 under this chapter occurs on or after December first and before March
33 first in any tax year, the tax for that year shall be one-half of the
34 tax hereinabove provided; and, if the first such use occurs on or after
35 March first in any tax year, the tax for that tax year shall be one-
36 fourth of such tax.

37 d. In applying the tax on commercial motor vehicles with respect to
38 tractors, trailers and semi-trailers, the tax shall be measured by the
39 weight of the tractor plus the maximum gross weight of the trailer or
40 semi-trailer with the greatest such maximum gross weight to be drawn by
41 such tractor. No trailer or semi-trailer shall be subject to any sepa-
42 rate or additional tax under this chapter.

43 § 11-803 Exemptions. The provisions of this chapter shall not apply
44 to motor vehicles owned and operated, or leased for their exclusive use
45 by:

46 1. The state of New York, or any public corporation, including a
47 corporation created pursuant to agreement or compact with another state
48 or the Dominion of Canada, improvement district or other political
49 subdivision of the state;

50 2. The United States of America;

51 3. The United Nations or other world-wide international organizations
52 of which the United States of America is a member;

53 4. Any corporation, or association, or trust, or community chest, fund
54 or foundation, organized and operated exclusively for religious, chari-
55 table or educational purposes, or for the prevention of cruelty to chil-
56 dren or animals, and no part of the net earnings of which inures to the

1 benefit of any private shareholder or individual and no substantial part
2 of the activities of which is carrying on propaganda, or otherwise
3 attempting to influence legislation; provided, however, that nothing in
4 this subdivision shall include an organization operated for the primary
5 purpose of carrying on a trade or business for profit, whether or not
6 all of its profits are payable to one or more organizations described in
7 this subdivision;

8 5. Any foreign nation or representative of a foreign nation with
9 respect to motor vehicles for which they need not pay a registration fee
10 under the provisions of the vehicle and traffic law;

11 6. Dealers in new and used motor vehicles where the use of the motor
12 vehicle is confined solely to demonstrations to prospective customers or
13 to delivery by or to the dealer and the vehicle bears dealer's license
14 plates.

15 § 11-804 Presumption and burden of proof. For the purpose of the
16 proper administration of this chapter and to prevent evasion of the tax
17 hereby imposed, it shall be presumed that all motor vehicles used in the
18 city of the types described in paragraphs (a), (b) and (c) of subdivi-
19 sion three of section 11-801 of this chapter are used principally in the
20 city or used principally in connection with a business carried on within
21 the city and are subject to the tax until the contrary is established;
22 and it shall be presumed that all motor vehicles used in the city of the
23 types described in paragraphs (a) and (b) of subdivision four of section
24 11-801 of this chapter are used regularly, even though not principally
25 in the city and are subject to the tax until the contrary is estab-
26 lished. The burden of proving that a motor vehicle is not taxable under
27 this chapter shall be on the owner of the motor vehicle.

28 § 11-805 Records to be kept. Every owner of a motor vehicle subject
29 to tax under this chapter shall keep such records of his or her vehicles
30 and of their use in the city in such form as the commissioner of finance
31 may by regulation require. Such records shall be offered for inspection
32 and examination at any time upon demand by the commissioner of finance
33 or the commissioner's duly authorized agent or employee and shall be
34 preserved for a period of three years except that the commissioner of
35 finance may consent to their destruction within that period or may
36 require that they be kept longer.

37 § 11-806 Registration. a. By July thirteenth, nineteen hundred sixty
38 or, upon acquiring any motor vehicle subject to tax hereunder after such
39 date, within two days of such acquisition, every owner shall file with
40 the commissioner of finance a certificate of registration in such form
41 as prescribed by the commissioner of finance.

42 b. In order to determine whether motor vehicles are subject to the tax
43 under this chapter and to facilitate administration thereof an informa-
44 tion registration certificate in such form as is prescribed by the
45 commissioner of finance shall be filed with the commissioner of finance
46 by any person who owns or acquires:

47 1. A motor vehicle of a type described in paragraph (a), (b) or (c) of
48 subdivision three of section 11-801 of this chapter which is registered
49 in the city under the vehicle and traffic law or is used in the city in
50 connection with a business carried on within the city; or

51 2. A motor vehicle of the type described in paragraphs (a) and (b) of
52 subdivision four of section 11-801 of this chapter which is registered
53 in the city under the vehicle and traffic law or is used in the city.

54 Such an information registration certificate shall be filed by July
55 thirteenth, nineteen hundred sixty or, if a motor vehicle is acquired
56 after such date, within two days after such acquisition. An information

1 registration certificate, however, need not be filed with respect to any
2 motor vehicle for which a registration certificate has been filed pursu-
3 ant to subdivision a of this section. The commissioner of finance may,
4 by regulation, provide that information registration certificates need
5 not be filed with respect to a type of motor vehicle or with respect to
6 any general group within a type of motor vehicle.

7 § 11-807 Returns. a. On or before the twentieth day of June in each
8 year commencing with the year nineteen hundred sixty, every owner of a
9 motor vehicle subject to tax under this chapter shall file a return with
10 the commissioner of finance. A supplemental return shall also be filed
11 by every owner with regard to each motor vehicle subject to tax acquired
12 during any tax year at a time subsequent to the filing of the owner's
13 regular return. Such supplemental return shall be filed with the
14 commissioner of finance within a stated time, as fixed by regulation of
15 the commissioner of finance, after the acquisition of the motor vehicle.
16 An owner who acquires a motor vehicle subject to the tax after the
17 commencement of a tax year and who has not filed a return or supple-
18 mental return with respect to such motor vehicle shall file a return
19 with respect to it within two days after its acquisition by the owner.

20 b. The commissioner of finance, by regulation, may require that each
21 person required under this chapter to file an information registration
22 certificate file an information return with the commissioner of finance
23 annually or at such other times as the commissioner deems appropriate
24 for proper administration of this chapter. The commissioner of finance
25 may, by regulation, provide that information returns need not be filed
26 or that they be filed at different times with respect to a type of motor
27 vehicle or with respect to any general group within a type of motor
28 vehicle or with respect to any particular circumstances.

29 c. The commissioner of finance may permit or require returns, supple-
30 mental returns or information returns to be filed at times other than
31 those specified in the commissioner's regulations. If the commissioner
32 deems it necessary in order to insure payment of the tax imposed by this
33 chapter, the commissioner of finance may require any return, supple-
34 mental return or information return to be filed with him or her at a
35 time other than that fixed by such commissioner.

36 d. The form of returns, supplemental returns and information returns
37 shall be prescribed by the commissioner of finance and shall contain
38 such information as the commissioner may deem necessary for the proper
39 administration of this chapter. The commissioner of finance may require
40 amended returns, amended supplemental returns or amended information
41 returns to be filed within twenty days after notice and to contain the
42 information specified in the notice.

43 e. If a return, supplemental return or information return is not
44 filed, or if a return of any kind when filed is incorrect or insuffi-
45 cient on its face, the commissioner of finance shall take the necessary
46 steps to enforce the filing of such a return or of a corrected return.

47 § 11-808 Payment of tax. a. At the time of filing a return or supple-
48 mental return the owner shall pay to the commissioner of finance the tax
49 imposed by this chapter. Such tax shall be due and payable on the last
50 day on which such return or supplemental return is required to be filed,
51 regardless of whether such a return is filed or whether the return which
52 is filed correctly indicates the amount of tax due.

53 b. Where an owner of a motor vehicle subject to tax under this chapter
54 replaces it with another motor vehicle during a tax year, the owner
55 shall be entitled, upon approval by the commissioner of finance, to have
56 any tax paid with respect to the replaced vehicle credited toward the

1 tax payable with respect to the replacement vehicle for the balance of
2 such tax year, and the owner shall pay no additional tax for such tax
3 year with respect to it unless its nature or its maximum gross weight
4 requires the payment of a higher amount of tax than that paid with
5 respect to the replaced vehicle. A supplemental return, where required,
6 shall be filed with respect to a replacement vehicle irrespective of
7 whether additional tax is payable. Upon the grant of a waiver of tax by
8 the commissioner of finance a purchaser of a motor vehicle subject to
9 tax under this chapter who purchases it during a tax year from an owner
10 who has paid the tax shall not be required to pay the tax with respect
11 to such motor vehicle for the balance of such tax year if, and only if,
12 the owner obtains, and submits to the commissioner of finance together
13 with his or her return or supplemental return, a certificate or its
14 equivalent, as prescribed by the commissioner of finance, signed by the
15 prior owner to the effect that the prior owner has not had the tax paid
16 credited toward any replacement vehicle and will not seek to obtain such
17 a credit for any replacement vehicle purchased in the future. Nothing
18 contained in this subdivision shall be deemed to authorize a refund
19 merely because a motor vehicle with respect to which the tax has been
20 paid is sold or otherwise disposed of during the course of the tax year.

21 c. Notwithstanding any other provision of law to the contrary, the tax
22 imposed on medallion taxicabs pursuant to subparagraph (C) of paragraph
23 two of subdivision a of section 11-802 of this chapter shall be due and
24 payable in two equal installments, the first of which shall be due and
25 payable on or before the last day on which the return or supplemental
26 return for the tax year is required to be filed, and the second of which
27 shall be due and payable on or before the first day of December in such
28 tax year; provided, however, that if a medallion taxicab is acquired
29 subsequent to the first day of November in such tax year, the full
30 amount of the tax imposed for the tax year shall be due and payable on
31 or before the last day on which the supplemental return with respect to
32 such medallion taxicab is required to be filed.

33 d. Notwithstanding any other provision of law to the contrary, the tax
34 imposed on medallion taxicabs pursuant to subparagraph (B) of paragraph
35 two of subdivision a of section 11-802 of this chapter shall, to the
36 extent not previously paid, be due and payable on or before December
37 first, nineteen hundred eighty-nine; provided, however, that if the tax
38 imposed on a medallion taxicab would, but for the provisions of this
39 subdivision, be due and payable subsequent to December first, nineteen
40 hundred eighty-nine, the due date of such tax shall be determined with-
41 out regard to this subdivision; and provided, further, that nothing in
42 this subdivision shall be deemed to extend the date for payment of any
43 tax imposed by paragraph two of subdivision a of section 11-802 of this
44 chapter.

45 e. Notwithstanding any provision of this chapter or of chapter five of
46 title nineteen of the code of the preceding municipality to the contra-
47 ry, the taxi and limousine commission may require by rule the payment of
48 the tax imposed on medallion taxicabs pursuant to this chapter as a
49 condition precedent of the licensing or license renewal of such medal-
50 lion taxicabs, and the taxi and limousine commission shall have the
51 authority to deny the license or the renewal thereof for any medallion
52 taxicab that fails to pay such tax.

53 § 11-809 Stamps and other indicia of payment. a. The commissioner of
54 finance may, by regulation, provide that the payment of the tax imposed
55 by this chapter shall be evidenced by suitable stamps or other indicia
56 of payment in a form prescribed by the commissioner of finance and that

1 every owner shall affix such stamps or other indicia of payment in the
2 manner prescribed by regulation to each motor vehicle for which a tax
3 had been paid, or shall otherwise keep the indicia of payment with the
4 vehicle, readily available for inspection, in the manner prescribed by
5 regulation. The owner or driver of the vehicle, upon demand, shall
6 exhibit the indicia of payment to the commissioner of finance or the
7 commissioner's duly authorized agent or employee or to any police offi-
8 cer of this city or state. The commissioner of finance may, by regu-
9 lation, make similar provision for the use of stamps or other indicia
10 that no tax is payable with respect to particular motor vehicles.

11 b. An owner who sells a motor vehicle shall not transfer any stamp or
12 other indicia of payment to the purchaser except on a sale to a purchas-
13 er to whom the owner has properly given the certificate provided for in
14 section 11-808 of this chapter with regard to not obtaining a credit
15 toward any tax payable with respect to a replacement vehicle. The
16 commissioner of finance shall, by regulation, provide for the
17 destruction of the stamp or other indicia of payment or its return to
18 the commissioner of finance upon all sales except where transfer to the
19 purchaser is permitted and, where the motor vehicle sold has been
20 replaced, for the issuance of replacement stamps or indicia of payment.

21 § 11-809.1 Collection of tax by commissioner of motor vehicles. a.
22 Notwithstanding any provision of this chapter to the contrary, the tax
23 imposed by this chapter on any commercial motor vehicle with a maximum
24 gross weight of ten thousand pounds or less and on any motor vehicle for
25 transportation of passengers, other than a medallion taxicab, shall be
26 collected by the commissioner of motor vehicles, provided that any such
27 motor vehicle is registered or required to be registered pursuant to any
28 provision of section four hundred one of the vehicle and traffic law.

29 The owner of each such motor vehicle shall pay the tax due thereon to
30 the commissioner of motor vehicles on or before the date upon which such
31 owner registers or renews the registration of such motor vehicle or is
32 required to register or renew the registration thereof pursuant to
33 section four hundred one of the vehicle and traffic law.

34 b. Notwithstanding any provision of section four hundred of the vehi-
35 cle and traffic law to the contrary, payment of the tax with respect to
36 a motor vehicle described in subdivision a of this section shall be a
37 condition precedent to the registration or renewal thereof of such motor
38 vehicle and to the issuance of any certificate of registration and
39 plates or removable date tag in accordance with the vehicle and traffic
40 law and the rules and regulations promulgated thereunder, and no such
41 certificate of registration, plates or tag shall be issued unless such
42 tax has been paid. If the registration period applicable to any such
43 vehicle is a period of not less than two years, as a result of the
44 application of the provisions of paragraph c of subdivision five of
45 section four hundred one of the vehicle and traffic law, the tax
46 required to be paid pursuant to this section shall be the annual tax
47 specified in section 11-802 of this chapter multiplied by the number of
48 years in the registration period. The commissioner of motor vehicles,
49 upon payment of the tax pursuant to this section or upon the application
50 of any person exempt therefrom, shall furnish to each taxpayer paying
51 the tax a receipt for such tax and to each other taxpayer or exempt
52 person a statement, document or other form prescribed by the commission-
53 er of motor vehicles, showing that such tax has been paid or is not due
54 with respect to such motor vehicle.

55 c. Notwithstanding the definition of the term "tax year" contained in
56 subdivision fourteen of section 11-801 of this chapter, for purposes of

1 the taxes payable to the commissioner of motor vehicles pursuant to this
2 section, "tax year" shall mean the twelve-month registration period
3 applicable to the subject motor vehicle under the vehicle and traffic
4 law and, in the case of a registration period of at least two years,
5 shall mean each succeeding twelve-month period falling within such
6 registration period.

7 d. Where the tax imposed by this chapter has been paid to the commis-
8 sioner of finance with respect to a motor vehicle for a tax year
9 described in subdivision fourteen of section 11-801 of this chapter, and
10 subsequent thereto but within such tax year the same taxpayer pays a tax
11 to the commissioner of the motor vehicles with respect to such motor
12 vehicle pursuant to this section, such taxpayer shall be entitled to a
13 refund or credit from the commissioner of finance for the portion of the
14 tax paid to the commissioner of finance which is attributable to the
15 period beginning on the first day of the first tax year, as the term
16 "tax year" is defined in subdivision c of this section, for which the
17 tax is paid to the commissioner of motor vehicles and ending on the
18 following May thirty-first, provided, however, that no such refund or
19 credit shall be allowed if the amount thereof is less than five dollars.

20 Any refund or credit to which a taxpayer is entitled pursuant to this
21 subdivision shall be promptly refunded or credited, without interest, by
22 the commissioner of finance, and the commissioner of finance may promul-
23 gate such rules as he or she deems necessary to carry out the provisions
24 of this subdivision. Any amount for which the taxpayer is entitled to a
25 refund or credit pursuant to this subdivision may be allowed as a credit
26 against the tax payable to the commissioner of motor vehicles pursuant
27 to this section to the extent and in the manner provided for in the
28 agreement authorized by subdivision k of this section.

29 e. Whenever any fee or portion of a fee paid for the registration of a
30 motor vehicle under the provisions of the vehicle and traffic law is
31 refunded pursuant to the provisions of subdivision one or one-a of
32 section four hundred twenty-eight thereof, the amount of any tax paid to
33 the commissioner of motor vehicles pursuant to this section upon such
34 registration shall also be refunded by the commissioner of motor vehi-
35 cles, provided that where a fee is refunded pursuant to subdivision
36 one-a of such section four hundred twenty-eight, the amount of tax to be
37 refunded shall be limited to the tax paid for a tax year commencing
38 subsequent to the end of the first twelve-month period of such registra-
39 tion.

40 f. Where the annual registration period applicable to a particular
41 class of motor vehicle begins and ends on the same dates for all motor
42 vehicles within such class, the tax payable to the commissioner of motor
43 vehicles pursuant to this section with respect to a motor vehicle within
44 such class which is registered or required to be registered after the
45 commencement of such annual registration period shall be determined for
46 such period as follows:

47 1. If such motor vehicle is registered or required to be registered
48 before the first day of the seventh month of such period, the tax shall
49 be the amount specified in subdivision a of section 11-802 of this chap-
50 ter.

51 2. If such motor vehicle is registered or required to be registered on
52 or after the first day of the seventh month of such period but before
53 the first day of the tenth month of such period, the tax shall be one-
54 half of the amount specified in subdivision a of section 11-802 of this
55 chapter.

1 3. If such motor vehicle is registered or required to be registered on
2 or after the first day of the tenth month of such period, the tax shall
3 be one-fourth of the amount specified in subdivision a of section 11-802
4 of this chapter.

5 g. The provisions of subdivision b of section 11-808 of this chapter
6 shall apply to this section with such modifications or adaptations as
7 are necessary to carry out the purposes of this section and to ensure
8 collection of the appropriate annual tax specified in subdivision a of
9 section 11-802 of this chapter, and with due regard to the respective
10 responsibilities of the commissioner of finance and the commissioner of
11 motor vehicles under this section and to the definitions of "tax year"
12 contained in subdivision c of this section and subdivision fourteen of
13 section 11-801 of this chapter. The agreement between the commissioner
14 of finance and the commissioner of motor vehicles authorized by subdivi-
15 sion k of this section may contain such provisions concerning the divi-
16 sion of responsibility for collection of the taxes imposed by this chap-
17 ter and the granting of refunds or credits as are consistent with this
18 section and subdivision b of section 11-808 of this chapter, and the
19 commissioner of finance and the commissioner of motor vehicles may also
20 adopt such rules as they deem necessary for such purposes.

21 h. Notwithstanding any provision of section 11-807 of this chapter to
22 the contrary, at the time a tax is required to be paid to the commis-
23 sioner of motor vehicles pursuant to this section, the person required
24 to pay such tax shall file a return with the commissioner of motor vehi-
25 cles in such form and containing such information as he or she may
26 prescribe. The taxpayer's application for registration or the renewal
27 thereof shall constitute the return required under this subdivision
28 unless the commissioner of motor vehicles shall otherwise provide by
29 rule. A return filed pursuant to this subdivision with respect to a
30 motor vehicle for a tax year or years shall be in lieu of any return
31 otherwise required to be filed with respect thereto pursuant to section
32 11-807 of this chapter.

33 i. In any case in which the tax imposed by this chapter is required to
34 be paid to the commissioner of motor vehicles but is not so paid, the
35 commissioner of finance shall collect such tax and all of the provisions
36 of this chapter relating to collection of taxes by the commissioner of
37 finance shall apply with respect thereto.

38 j. Notwithstanding any provision of section four hundred of the vehi-
39 cle and traffic law to the contrary, in those cases in which the commis-
40 sioner of finance is responsible for collecting the tax imposed by this
41 chapter, the commissioner of motor vehicles shall not issue a certif-
42 icate of registration, plates or removable date tag for any motor vehi-
43 cle subject to such tax with respect to which the commissioner of
44 finance has notified the commissioner of motor vehicles that such tax
45 has not been paid, unless the registrant submits proof, in a form
46 approved by the commissioner of motor vehicles, that such tax has been
47 paid, or is not due, with respect to such motor vehicle.

48 k. The commissioner of finance is hereby authorized and empowered to
49 enter into an agreement with the commissioner of motor vehicles to
50 govern the collection of the taxes imposed by this chapter which are
51 required to be paid to the commissioner of motor vehicles pursuant to
52 this section. Such agreement shall provide for the exclusive method of
53 collection, custody and remittal to the commissioner of finance of the
54 proceeds of any such tax; for the payment by the city of the reasonable
55 expenses incurred by the department of motor vehicles in connection with
56 the collection of any such tax; for the commissioner of finance, or a

1 duly designated representative, upon his or her request, not more
2 frequently than once in each calendar year at a time agreed upon by the
3 state comptroller, to audit the accuracy of the payments, distributions
4 and remittances to the city; and for such other matters as may be neces-
5 sary and proper to effectuate the purposes of such agreement. Such
6 agreement shall have the force and effect of a rule or regulation of the
7 commissioner of motor vehicles and shall be filed and published in
8 accordance with any statutory requirements relating thereto.

9 1. The commissioner of motor vehicles shall promptly notify the corpo-
10 ration counsel of the city of any litigation instituted against such
11 commissioner which challenges the constitutionality or validity of any
12 provision of this chapter, or of the enabling act pursuant to which it
13 was adopted, or which attempts to limit or question the application of
14 either such law, and such notification shall include copies of the
15 papers served upon such commissioner.

16 m. The commissioner of motor vehicles shall begin to collect taxes in
17 accordance with the provisions of this section at such time as is speci-
18 fied in the agreement between the commissioner of motor vehicles and the
19 commissioner of finance provided for in subdivision k of this section.

20 n. In addition to any other powers granted to the commissioner of
21 motor vehicles in this chapter or any other law, he or she is hereby
22 authorized and empowered: 1. to adopt and amend rules appropriate to
23 the carrying out of his or her responsibilities under this chapter; 2.
24 to request information concerning motor vehicles and persons subject to
25 the provisions of this chapter from the department of motor vehicles of
26 any other state, the treasury department of the United States or the
27 appropriate officials of any city or county of the state of New York;
28 and to afford such information to such department of motor vehicles,
29 treasury department or officials of such city or county, any provision
30 of this chapter to the contrary notwithstanding; 3. to delegate his or
31 her functions under this section to a deputy commissioner in the depart-
32 ment of motor vehicles or any employee of such department or to any
33 county clerk or other officer who acts as the agent of such commissioner
34 in the registration of motor vehicles; 4. to require all persons owning
35 motor vehicles with respect to which the tax imposed by this chapter is
36 payable to the commissioner of motor vehicles to keep such records as he
37 or she may prescribe and to furnish such information upon his or her
38 request; and 5. to extend, for cause shown, the time for filing any
39 return required to be filed with the commissioner of motor vehicles for
40 a period not exceeding sixty days.

41 o. To the extent that any provision of this section is in conflict
42 with any other provision of this chapter, the provisions of this section
43 shall be controlling, but in all other respects such other provisions of
44 this chapter shall remain fully applicable with respect to the imposi-
45 tion, administration and collection of the taxes imposed by this chap-
46 ter.

47 § 11-809.2 Collection of tax by the taxi and limousine commission on
48 behalf of the commissioner of finance. a. Notwithstanding any provision
49 of this chapter to the contrary, the tax imposed by this chapter on any
50 designated licensed vehicle, as defined in this subdivision, shall be
51 collected by the taxi and limousine commission on behalf of the commis-
52 sioner of finance. Except as otherwise provided by subdivision m of this
53 section, the owner of each such designated licensed vehicle shall pay
54 the tax due thereon to the taxi and limousine commission on or before
55 the date upon which such owner licenses or renews the license of such
56 designated licensed vehicle or is required to license or renew the

1 license thereof pursuant to chapter five of title nineteen of the code
2 of the preceding municipality. For purposes of this section, the term
3 "designated licensed vehicle" shall mean a motor vehicle for the trans-
4 portation of passengers, other than a medallion taxicab, the tax on
5 which is not collected by the commissioner of motor vehicles pursuant to
6 section 11-809.1 of this chapter and which is licensed or required to be
7 licensed by the taxi and limousine commission pursuant to any provision
8 of chapter five of title nineteen of the code of the preceding munici-
9 pality.

10 b. Notwithstanding any provision of chapter five of title nineteen of
11 the code of the preceding municipality to the contrary, payment of the
12 tax with respect to a designated licensed vehicle shall be a condition
13 precedent to the licensing or license renewal of such designated
14 licensed vehicle with the taxi and limousine commission, and no such
15 license or renewal thereof shall be issued unless such tax has been
16 paid. Except as provided in subdivisions f and m of this section, if the
17 license period applicable to any such designated licensed vehicle is a
18 period of more than one year, the tax required to be paid pursuant to
19 this section shall be the annual tax specified in section 11-802 of this
20 chapter multiplied by the number of years in the license period. The
21 taxi and limousine commission, upon payment of the tax pursuant to this
22 section or upon the application of any person exempt therefrom, shall
23 furnish to each taxpayer paying the tax a receipt for such tax and to
24 each other taxpayer or exempt person a statement, document or other form
25 prescribed by the taxi and limousine commission, showing that such tax
26 has been paid or is not due with respect to such designated licensed
27 vehicle.

28 c. For purposes of this section, the term "tax period" shall mean the
29 license period applicable to the designated licensed vehicle under chap-
30 ter five of title nineteen of the code of the preceding municipality
31 and, in the case of a license period of other than one year, shall mean
32 the number of twelve-month periods and any period of less than twelve
33 months within such license period. The term "tax period" shall also
34 include any periods described in subparagraph (A) of paragraph one of
35 subdivision m of this section.

36 d. Except as provided in subdivision m of this section, where the tax
37 imposed by this chapter has been paid to the commissioner of finance
38 with respect to a motor vehicle for a tax year described in subdivision
39 fourteen of section 11-801 of this chapter, and subsequent thereto but
40 within such tax year the same taxpayer pays a tax to the taxi and limou-
41 sine commission with respect to such motor vehicle pursuant to this
42 section, such taxpayer shall be entitled to a refund or credit from the
43 commissioner of finance for the portion of the tax paid to the commis-
44 sioner of finance that is attributable to the period beginning on the
45 first day of the first tax period for which the tax is paid to the taxi
46 and limousine commission and ending on the following May thirty-first,
47 provided, however, that no such refund or credit shall be allowed if the
48 amount thereof is less than five dollars. Any refund or credit to which
49 a taxpayer is entitled pursuant to this subdivision shall be promptly
50 refunded or credited, without interest, by the commissioner of finance,
51 and the commissioner of finance may promulgate such rules as he or she
52 deems necessary to carry out the provisions of this subdivision.

53 e. If the license for the designated licensed vehicle is transferred,
54 surrendered or terminated for reasons other than revocation, and the
55 applicable license period under chapter five of title nineteen of the
56 code of the preceding municipality is for more than one year, and the

1 tax paid to the taxi and limousine commission was for a tax period of
2 more than twelve months, except as otherwise provided in the agreement
3 between the taxi and limousine commission and the commissioner of
4 finance authorized pursuant to subdivision k of this section, the
5 commissioner of finance shall refund the tax paid for any twelve-month
6 period commencing subsequent to the transfer, surrender or other termi-
7 nation of the license described in this subdivision.

8 f. Except as provided in subdivision m of this section, for designated
9 licensed vehicles whose license period is a two year period that begins
10 and ends on the same dates, the tax payable to the taxi and limousine
11 commission pursuant to this section with respect to a designated
12 licensed vehicle that is licensed or required to be licensed after the
13 commencement of such license period shall be determined as follows:

14 1. If such designated licensed vehicle is licensed or required to be
15 licensed before the first day of the seventh month of such period, the
16 tax shall be the amount determined pursuant to subdivision b of this
17 section.

18 2. If such designated licensed vehicle is licensed or required to be
19 licensed on or after the first day of the seventh month of such period
20 but before the first day of the thirteenth month of such period, the tax
21 shall be three-fourths of the amount determined pursuant to subdivision
22 b of this section.

23 3. If such designated licensed vehicle is licensed or required to be
24 licensed on or after the first day of the thirteenth month but before
25 the first day of the nineteenth month of such period, the tax shall be
26 one-half of the amount determined pursuant to subdivision b of this
27 section.

28 4. If such designated licensed vehicle is licensed or required to be
29 licensed on or after the first day of the nineteenth month of such peri-
30 od, the tax shall be one-fourth of the amount determined pursuant to
31 subdivision b of this section.

32 5. When the license period described in this section is for a period
33 of less than two years, the commissioner of finance shall have the
34 authority to provide by rule the amount to be payable under this subdi-
35 vision.

36 g. The provisions of subdivision b of section 11-808 of this chapter
37 shall apply to this section with such modifications or adaptations as
38 are necessary to carry out the purposes of this section and to ensure
39 collection of the appropriate annual tax specified in subdivision a of
40 section 11-802 of this chapter, and with due regard to the respective
41 responsibilities of the commissioner of finance and the taxi and limou-
42 sine commission under this section and to the definition of "tax year"
43 contained in subdivision fourteen of section 11-801 of this chapter and
44 to the definition of "tax period" contained in subdivision c of this
45 section. The agreement between the commissioner of finance and the taxi
46 and limousine commission authorized by subdivision k of this section may
47 contain such provisions concerning the division of responsibility for
48 collection of the taxes imposed by this chapter and the granting of
49 refunds or credits as are consistent with this section and subdivision b
50 of section 11-808 of this chapter, and the commissioner of finance and
51 the taxi and limousine commission may also adopt such rules as they deem
52 necessary for such purposes.

53 h. Notwithstanding any provision of section 11-807 of this chapter to
54 the contrary, at the time a tax is required to be paid to the taxi and
55 limousine commission pursuant to this section, the person required to
56 pay such tax shall file a return with the taxi and limousine commission

1 in such form and containing such information as the taxi and limousine
2 commission may prescribe. The taxpayer's application for a license or
3 the renewal thereof shall constitute the return required under this
4 subdivision unless the taxi and limousine commission shall otherwise
5 provide by rule. A return filed pursuant to this subdivision with
6 respect to a designated licensed vehicle for a tax period or periods
7 shall be in lieu of any return otherwise required to be filed with
8 respect thereto pursuant to section 11-807 of this chapter. Unless the
9 taxi and limousine commission otherwise requires, the filing of a return
10 shall not be required for the tax periods described in subparagraph (A)
11 of paragraph one of subdivision m of this section.

12 i. In any case in which the tax imposed by this chapter is required to
13 be paid to the taxi and limousine commission but is not so paid, the
14 commissioner of finance shall collect such tax and all of the provisions
15 of this chapter relating to collection of taxes by the commissioner of
16 finance shall apply with respect thereto.

17 j. Notwithstanding any provision of chapter five of title nineteen of
18 the code of the preceding municipality to the contrary, in those cases
19 in which the commissioner of finance is responsible for collecting the
20 tax imposed by this chapter, the taxi and limousine commission shall not
21 issue or renew a license for any designated licensed vehicle subject to
22 such tax with respect to which the commissioner of finance has notified
23 the taxi and limousine commission that such tax has not been paid,
24 unless the applicant for such license or renewal submits proof, in a
25 form approved by the taxi and limousine commission, that such tax has
26 been paid, or is not due, with respect to such designated licensed vehi-
27 cle.

28 k. The commissioner of finance is hereby authorized and empowered to
29 enter into an agreement with the taxi and limousine commission to govern
30 the collection of the taxes imposed by this chapter which are required
31 to be paid to the taxi and limousine commission pursuant to this
32 section. Such agreement may provide for the exclusive method of
33 collection, custody and remittal to the commissioner of finance of the
34 proceeds of any such tax; for the payment by the commissioner of finance
35 of reasonable expenses incurred by the taxi and limousine commission in
36 connection with the collection of any such tax; for the commissioner of
37 finance, or a duly designated representative, upon his or her request,
38 not more frequently than once in each calendar year at a time agreed
39 upon by the city comptroller, to audit the accuracy of the payments,
40 distributions and remittances to the commissioner of finance; and for
41 such other matters as may be necessary and proper to effectuate the
42 purposes of such agreement.

43 l. The taxi and limousine commission shall promptly notify the corpo-
44 ration counsel of the city and the commissioner of finance of any liti-
45 gation instituted against such commission which challenges the constitu-
46 tionality or validity of any provision of this chapter, or which
47 attempts to limit or question the application of this chapter, and such
48 notification shall include copies of the papers served upon such commis-
49 sion.

50 m. Except as otherwise provided in the agreement between the taxi and
51 limousine commission and the commissioner of finance authorized by
52 subdivision k of this section, or with respect to the periods described
53 in paragraph two of this subdivision, the taxi and limousine commission
54 shall begin to collect taxes in accordance with the provisions of this
55 section on the first day of April in the year two thousand twelve as
56 follows:

1 1. The tax due on a designated licensed vehicle, the license for which
2 expires on or after the first day of June in the year two thousand
3 twelve and before the first day of June in the year two thousand four-
4 teen, shall be determined as follows:

5 (A) For a designated licensed vehicle whose license expires on or
6 after the first day of June in the year two thousand twelve and before
7 the first day of June in the year two thousand fourteen, the amount of
8 tax for the tax period between the first day of June in the year two
9 thousand twelve and the date the license shall expire for such desig-
10 nated licensed vehicle pursuant to chapter five of title nineteen of the
11 code of the preceding municipality shall be the sum of (i) the annual
12 tax specified in subparagraph (C) of paragraph two of subdivision a of
13 section 11-802 of this chapter for any twelve-month period within such
14 tax period, and (ii) the amount determined under subparagraph (B) of
15 this paragraph for any period of less than twelve months within such tax
16 period. The amount of tax so determined shall be payable on or before
17 the first day of June in the year two thousand twelve. In the event the
18 amount of tax due and payable under this subparagraph shall not have
19 been paid within thirty days of the first day of June in the year two
20 thousand twelve, the taxi and limousine commission shall suspend the
21 license for such designated licensed vehicle, and the license for any
22 such designated licensed vehicle which has expired shall not be renewed
23 until such time as such tax is paid.

24 (B) For purposes of subparagraph (A) of this paragraph, the amount of
25 tax for a period of less than twelve months shall be determined as
26 follows: (i) if such period is nine months or more, the amount for such
27 period shall be the full amount of annual tax provided in subparagraph
28 (C) of paragraph two of subdivision a of section 11-802 of this chapter;
29 (ii) if such period is more than six months but less than nine months,
30 the amount for such period shall be three-fourths of the amount of annu-
31 al tax provided in subparagraph (C) of paragraph two of subdivision a of
32 section 11-802 of this chapter; (iii) if such period is more than three
33 months but less than six months, the amount for such period shall be
34 one-half of the amount of annual tax provided in subparagraph (C) of
35 paragraph two of subdivision a of section 11-802 of this chapter; and
36 (iv) if such period is less than three months, the amount for such peri-
37 od shall be one-fourth of the amount of annual tax provided in subpara-
38 graph (C) of paragraph two of subdivision a of section 11-802 of this
39 chapter.

40 2. Upon the date for payment set forth in subparagraph (A) of para-
41 graph one of this subdivision, the taxi and limousine commission shall
42 require the taxpayer to provide a proof of payment of the tax to the
43 commissioner of finance for the period beginning on the first day of
44 June in the year two thousand eleven and ending on the thirty-first day
45 of May in the year two thousand twelve or any part of such period for
46 which the taxpayer was subject to the tax. In the event the taxpayer has
47 not paid such tax to the commissioner of finance: (i) the license for
48 any designated licensed vehicle described in subparagraph (A) of this
49 paragraph shall not be renewed until such time as such tax, together
50 with any applicable interest or penalties, has been paid to the commis-
51 sioner of finance and (ii) if such tax remains unpaid as of the end of
52 the thirty-day period set forth in subparagraph (A) of paragraph one of
53 this subdivision, the license for any designated licensed vehicle
54 described in subparagraph (A) of paragraph one of this subdivision shall
55 be suspended until such time as such tax, together with any applicable
56 interest or penalties, is paid to the commissioner of finance.

1 n. In addition to any other powers granted to the taxi and limousine
2 commission in this chapter or any other law, the taxi and limousine
3 commission is hereby authorized and empowered:

4 1. to adopt and amend rules appropriate to the carrying out of its
5 responsibilities under this chapter;

6 2. to request information concerning motor vehicles and persons
7 subject to the provisions of this chapter from the commissioner of motor
8 vehicles, the department of motor vehicles of any other state, the trea-
9 sury department of the United States or the appropriate officials of any
10 city or county of the state of New York; and to afford such information
11 to such department of motor vehicles, treasury department or officials
12 of such city or county, any provision of this chapter to the contrary
13 notwithstanding;

14 3. to delegate its functions under this section to any commissioner or
15 employee of such commission;

16 4. to require any person who is an owner, as defined in chapter five
17 of title nineteen of the code of the preceding municipality, of a desig-
18 nated licensed vehicle to keep such records as it prescribes and to
19 furnish such information upon its request; and

20 5. to extend, for cause shown, the time for filing any return required
21 to be filed with the taxi and limousine commission for a period not
22 exceeding sixty days.

23 o. To the extent that any provision of this section is in conflict
24 with any other provision of this chapter, the provisions of this section
25 shall be controlling, but in all other respects such other provisions of
26 this chapter shall remain fully applicable with respect to the imposi-
27 tion, administration and collection of the taxes imposed by this chap-
28 ter.

29 § 11-810 Determination of tax. If a return required by this chapter is
30 not filed, or if a return when filed is incorrect or insufficient, the
31 commissioner of finance shall determine the amount of tax due from such
32 information as may be obtainable and, if necessary, may estimate the tax
33 on the basis of external indices such as motor vehicle registration with
34 the department of motor vehicles and/or any other factors. Notice of
35 such determination shall be given to the person liable for the payment
36 of the tax. Such determination shall finally and irrevocably fix the tax
37 unless the person against whom it is assessed, within ninety days after
38 the giving of notice of such determination or, if the commissioner of
39 finance has established a conciliation procedure pursuant to section
40 11-124 of this title and the taxpayer has requested a conciliation
41 conference in accordance therewith, within ninety days from the mailing
42 of a conciliation decision or the date of the commissioner's confirma-
43 tion of the discontinuance of the conciliation proceeding, both (1)
44 serves a petition upon the commissioner of finance and (2) files a peti-
45 tion with the tax appeals tribunal for a hearing, or unless the commis-
46 sioner of finance of his or her own motion shall redetermine the same.
47 Such hearing and any appeal to the tax appeals tribunal sitting en banc
48 from the decision rendered in such hearing shall be conducted in the
49 manner and subject to the requirements prescribed by the tax appeals
50 tribunal pursuant to sections one hundred sixty-eight through one
51 hundred seventy-two of the charter of the preceding municipality as it
52 existed January first, nineteen hundred ninety-four. After such hearing
53 the tax appeals tribunal shall give notice of its decision to the person
54 against whom the tax is assessed and to the commissioner of finance. A
55 decision of the tax appeals tribunal sitting en banc shall be reviewable
56 for error, illegality or unconstitutionality or any other reason whatso-

1 ever by a proceeding under article seventy-eight of the civil practice
2 law and rules if application therefor is made to the supreme court by
3 the person against whom the tax was assessed within four months after
4 the giving of the notice of such tax appeals tribunal decision. A
5 proceeding under article seventy-eight of the civil practice law and
6 rules shall not be instituted by a taxpayer unless: (a) the amount of
7 any tax sought to be reviewed, with penalties and interest thereon, if
8 any, shall be first deposited with the commissioner of finance and there
9 shall be filed with the commissioner of finance an undertaking, issued
10 by a surety company authorized to transact business in this state and
11 approved by the superintendent of insurance of this state as to solvency
12 and responsibility, in such amount and with such sureties as a justice
13 of the supreme court shall approve, to the effect that if such proceed-
14 ing be dismissed or the tax confirmed, the taxpayer will pay all costs
15 and charges which may accrue in the prosecution of the proceeding, or
16 (b) at the option of the taxpayer such undertaking filed with the
17 commissioner of finance may be in a sum sufficient to cover the taxes,
18 penalties and interest thereon stated in such decision plus the costs
19 and charges which may accrue against it in the prosecution of the
20 proceeding, in which event the taxpayer shall not be required to deposit
21 such taxes, penalties and interest as a condition precedent to the
22 application.

23 § 11-811 Refunds. a. In the manner provided in this section the
24 commissioner of finance shall refund or credit, without interest, any
25 tax, penalty or interest erroneously, illegally or unconstitutionally
26 collected or paid, if written application to the commissioner of finance
27 for such refund shall be made within one year from the payment thereof.
28 Whenever a refund or credit is made or denied, the commissioner of
29 finance shall state his or her reason therefor and give notice thereof
30 to the taxpayer in writing. The commissioner of finance may, in lieu of
31 any refund required to be made, allow credit therefor on payments due
32 from the applicant.

33 b. Any determination of the commissioner of finance denying a refund
34 or credit pursuant to subdivision a of this section shall be final and
35 irrevocable unless the applicant for such refund or credit, within nine-
36 ty days from the mailing or notice of such determination, or, if the
37 commissioner of finance has established a conciliation procedure pursu-
38 ant to section 11-124 of this title and the applicant has requested a
39 conciliation conference in accordance therewith, within ninety days from
40 the mailing of a conciliation decision or the date of the commissioner's
41 confirmation of the discontinuance of the conciliation proceeding, both
42 (1) serves a petition upon the commissioner of finance and (2) files a
43 petition with the tax appeals tribunal for a hearing. Such petition for
44 a refund or credit, made as herein provided, shall be deemed an applica-
45 tion for a revision of any tax, penalty or interest complained of. Such
46 hearing and any appeal to the tax appeals tribunal sitting en banc from
47 the decision rendered in such hearing shall be conducted in the manner
48 and subject to the requirements prescribed by the tax appeals tribunal
49 pursuant to sections one hundred sixty-eight through one hundred seven-
50 ty-two of the charter of the preceding municipality as it existed Janu-
51 ary first, nineteen hundred ninety-four. After such hearing, the tax
52 appeals tribunal shall give notice of its decision to the applicant and
53 to the commissioner of finance. The applicant shall be entitled to
54 institute a proceeding pursuant to article seventy-eight of the civil
55 practice law and rules to review a decision of the tax appeals tribunal
56 sitting en banc if application to the supreme court be made therefor

1 within four months after the giving of notice of such decision, and
2 provided, in the case of an application by a taxpayer, that a final
3 determination of tax due was not previously made. Such a proceeding
4 shall not be instituted by a taxpayer, unless an undertaking shall first
5 be filed with the commissioner of finance in such amount and with such
6 sureties as a justice of the supreme court shall approve, to the effect
7 that if such proceeding be dismissed or the tax confirmed, the taxpayer
8 will pay all costs and charges which may accrue in the prosecution of
9 the proceeding.

10 c. A person shall not be entitled to a revision, refund or credit
11 under this section of a tax, interest or penalty which had been deter-
12 mined to be due pursuant to the provisions of section 11-810 of this
13 chapter where such person has had a hearing or an opportunity for a
14 hearing, as provided in said section, or has failed to avail himself or
15 herself of the remedies therein provided. No refund or credit shall be
16 made of a tax, interest or penalty paid after a determination by the
17 commissioner of finance made pursuant to section 11-810 of this chapter
18 unless it be found that such determination was erroneous, illegal or
19 unconstitutional or otherwise improper, by the tax appeals tribunal
20 after a hearing or on the commissioner's own motion, or, if such tax
21 appeals tribunal affirms in whole or in part the determination of the
22 commissioner of finance, in a proceeding under article seventy-eight of
23 the civil practice law and rules, pursuant to the provisions of said
24 section, in which event refund or credit without interest shall be made
25 of the tax, interest or penalty found to have been overpaid.

26 § 11-812 Remedies exclusive. The remedies provided by this chapter
27 shall be the exclusive remedies available to any person for the review
28 of tax liability imposed by this chapter; and no determination or
29 proposed determination of tax or determination on any application for
30 refund by the commissioner of finance, nor any decision by the tax
31 appeals tribunal or any of its administrative law judges, shall be
32 enjoined or reviewed by an action for declaratory judgment, an action
33 for money had and received or by any action or proceeding other than, in
34 the case of a decision by the tax appeals tribunal sitting en banc, a
35 proceeding under article seventy-eight of the civil practice law and
36 rules; provided, however, that a taxpayer may proceed by declaratory
37 judgment if the taxpayer institutes suit within thirty days after a
38 deficiency assessment is made and pays the amount of the deficiency
39 assessment to the commissioner of finance prior to the institution of
40 such suit and posts a bond for costs as provided in section 11-810 of
41 this chapter.

42 § 11-813 Reserves. In cases where the taxpayer has applied for a
43 refund and has instituted a proceeding under article seventy-eight of
44 the civil practice law and rules to review a determination adverse to
45 the taxpayer on his or her application for refund, the comptroller shall
46 set up appropriate reserves to meet any decision adverse to the city.

47 § 11-814 Proceedings to recover tax. a. Whenever any person shall
48 fail to pay any tax or penalty or interest imposed by this chapter as
49 herein provided, the corporation counsel shall, upon the request of the
50 commissioner of finance, bring or cause to be brought an action to
51 enforce payment of the same against the person liable for the same on
52 behalf of the city of Staten Island in any court of the state of New
53 York or of any other state or of the United States. If, however, the
54 commissioner of finance in his or her discretion believes that a taxpay-
55 er subject to the provisions of this chapter is about to cease business,
56 leave the state or remove or dissipate the assets out of which tax or

1 penalties might be satisfied and that any such tax or penalty will not
2 be paid when due, the commissioner may declare such tax or penalty to be
3 immediately due and payable and may issue a warrant immediately.

4 b. As an additional or alternate remedy, the commissioner of finance
5 may issue a warrant, directed to the city sheriff commanding the sheriff
6 to levy upon and sell the real and personal property of such person
7 which may be found within the city, for the payment of the amount there-
8 of, with any penalties and interest, and the cost of executing the
9 warrant, and to return such warrant to the commissioner of finance and
10 to pay to the commissioner the money collected by virtue thereof within
11 sixty days after the receipt of such warrant. The city sheriff shall,
12 within five days after the receipt of the warrant, file with the county
13 clerk a copy thereof, and thereupon such clerk shall enter in the judge-
14 ment docket the name of the person mentioned in the warrant and the
15 amount of the tax, penalties and interest for which the warrant is
16 issued and the date when such copy is filed. Thereupon the amount of
17 such warrant so docketed shall become a lien upon the title to and
18 interest in real and personal property of the person against whom the
19 warrant is issued. The city sheriff shall then proceed upon the warrant
20 in the same manner and with like effect as that provided by law in
21 respect to executions issued against property upon judgments of a court
22 of record, and for services in executing the warrant the sheriff shall
23 be entitled to the same fees which he or she may collect in the same
24 manner. In the discretion of the commissioner of finance a warrant of
25 like terms, force and effect may be issued and directed to any officer
26 or employee of the department of finance, and in the execution thereof
27 such officer or employee shall have all the powers conferred by law upon
28 sheriffs, but such officer or employee shall be entitled to no fee or
29 compensation in excess of the actual expenses paid in the performance of
30 such duty. If a warrant is returned not satisfied in full, the commis-
31 sioner of finance may from time to time issue new warrants and shall
32 also have the same remedies to enforce the amount due thereunder as if
33 the city had recovered judgment therefor and execution thereon had been
34 returned unsatisfied.

35 c. Whenever there is made a sale, transfer or assignment in bulk of
36 any part or the whole of a stock of merchandise or of fixtures, or
37 merchandise and of fixtures pertaining to the conducting of the business
38 of the seller, transferor or assignor, otherwise than in the ordinary
39 course of trade and in the regular prosecution of said business, the
40 purchaser, transferee or assignee shall at least ten days before taking
41 possession of such merchandise, fixtures, or merchandise and fixtures,
42 or paying therefor, notify the commissioner of finance by registered
43 mail of the proposed sale and of the price, terms and conditions thereof
44 whether or not the seller, transferor or assignor, has represented to,
45 or informed the purchaser, transferee or assignee that it owes any tax
46 pursuant to this chapter and whether or not the purchaser, transferee or
47 assignee has knowledge that such taxes are owing, and whether any such
48 taxes are in fact owing.

49 Whenever the purchaser, transferee or assignee shall fail to give
50 notice to the commissioner of finance as required by the opening para-
51 graph of this subdivision, or whenever the commissioner of finance shall
52 inform the purchaser, transferee or assignee that a possible claim for
53 such tax or taxes exists, any sums of money, property or choses in
54 action, or other consideration, which the purchaser, transferee or
55 assignee is required to transfer over to the seller, transferor or
56 assignor shall be subject to a first priority right and lien for any

1 such taxes theretofore or thereafter determined to be due from the sell-
2 er, transferor or assignor to the city, and the purchaser, transferee or
3 assignee is forbidden to transfer to the seller, transferor or assignor
4 any such sums of money, property or choses in action to the extent of
5 the amount of the city's claim. For failure to comply with the
6 provisions of this subdivision, the purchaser, transferee or assignee,
7 in addition to being subject to the liabilities and remedies imposed
8 under the provisions of former section forty-four of the personal prop-
9 erty law, shall be personally liable for the payment to the city of any
10 such taxes theretofore or thereafter determined to be due to the city
11 from the seller, transferor or assignor, and such liability may be
12 assessed and enforced in the same manner as the liability for tax under
13 this chapter.

14 d. The commissioner of finance, if he or she finds that the interests
15 of the city will not thereby be jeopardized, and upon such conditions as
16 the commissioner of finance may require, may release any property from
17 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
18 tions to tax, penalties and interest filed pursuant to subdivision b of
19 this section, and such release or vacating of the warrant may be
20 recorded in the office of any recording officer in which such warrant
21 has been filed. The clerk shall thereupon cancel and discharge as of the
22 original date of docketing the vacated warrant.

23 § 11-815 General powers of the commissioner of finance. In addition
24 to all other powers granted to the commissioner of finance in this chap-
25 ter, the commissioner is hereby authorized and empowered:

26 1. To make, adopt and amend rules and regulations appropriate to the
27 carrying out of this chapter and the purposes thereof;

28 2. To extend, for cause shown, the time for filing any kind of return
29 for a period not exceeding sixty days; and to compromise disputed claims
30 in connection with the taxes hereby imposed;

31 3. To request information concerning motor vehicles and persons
32 subject to the provisions of this chapter from the department of motor
33 vehicles and from the department of taxation and finance of the state of
34 New York or any successor to their duties, or the treasury department of
35 the United States relative to any person; and to afford information to
36 such department of motor vehicles, department of taxation and finance or
37 any successor to their duties, or to such treasury department relative
38 to any person, any other provision of this chapter to the contrary
39 notwithstanding;

40 4. To delegate the commissioner's functions hereunder to a deputy
41 commissioner of finance or any employee or employees of the department
42 of finance;

43 5. To assess, reassess, determine, revise and readjust the taxes
44 imposed under this chapter;

45 6. To provide methods for identifying motor vehicles not subject to or
46 exempt from the tax imposed under this chapter;

47 7. To provide that a certificate of registration need not be filed
48 with respect to any or all types of motor vehicles, or to provide that
49 such certificate of registration with respect to any or all types of
50 motor vehicles shall be contained on or combined with any return or
51 supplemental return required to be filed under this chapter.

52 § 11-816 Administration of oaths and compelling testimony. a. The
53 commissioner of finance, the commissioner's employees duly designated
54 and authorized by the commissioner, the tax appeals tribunal and any of
55 its duly designated and authorized employees shall have power to admin-
56 ister oaths and take affidavits in relation to any matter or proceeding

1 in the exercise of their powers and duties under this chapter. The
2 commissioner of finance and the tax appeals tribunal shall have power to
3 subpoena and require the attendance of witnesses and the production of
4 books, papers and documents to secure information pertinent to the
5 performance of the duties of the commissioner or of the tax appeals
6 tribunal hereunder and of the enforcement of this chapter and to examine
7 them in relation thereto, and to issue commissions for the examination
8 of witnesses who are out of the state or unable to attend before the
9 commissioner or the tax appeals tribunal or excused from attendance.

10 b. A justice of the supreme court either in court or at chambers shall
11 have power summarily to enforce by proper proceedings the attendance and
12 testimony of witnesses and the production and examination of books,
13 papers and documents called for by the subpoena of the commissioner of
14 finance or the tax appeals tribunal under this chapter.

15 c. Cross-reference; criminal penalties. For failure to obey subpoenas
16 or for testifying falsely, see section 11-4007 of the code of the
17 preceding municipality; for supplying false or fraudulent information,
18 see section 11-4009 of the code of the preceding municipality.

19 d. The officers who serve the summons or subpoena of the commissioner
20 of finance or the tax appeals tribunal hereunder and witnesses attending
21 in response thereto shall be entitled to the same fees as are allowed to
22 officers and witnesses in civil cases in courts of record, except as
23 herein otherwise provided. Such officers shall be the city sheriff, and
24 the sheriff's duly appointed deputies or any officers or employees of
25 the department of finance or the tax appeals tribunal, designated to
26 serve such process.

27 § 11-817 Interest and penalties. (a) Interest on underpayments. If
28 any amount of tax is not paid on or before the last date prescribed for
29 payment, without regard to any extension of time granted for payment,
30 interest on such amount at the rate set by the commissioner of finance
31 pursuant to subdivision (g) of this section, or, if no rate is set, at
32 the rate of seven and one-half percent per annum, shall be paid for the
33 period from such last date to the date of payment. In computing the
34 amount of interest to be paid, such interest shall be compounded daily.
35 Interest under this subdivision shall not be paid if the amount thereof
36 is less than one dollar.

37 (b) (1) Failure to file return. (A) In case of failure to file a
38 return under this chapter on or before the prescribed date, determined
39 with regard to any extension of time for filing, unless it is shown that
40 such failure is due to reasonable cause and not due to willful neglect,
41 there shall be added to the amount required to be shown as tax on such
42 return five percent of the amount of such tax if the failure is for not
43 more than one month, with an additional five percent for each additional
44 month or fraction thereof during which such failure continues, not
45 exceeding twenty-five percent in the aggregate.

46 (B) In the case of a failure to file a return of tax within sixty days
47 of the date prescribed for filing of such return, determined with regard
48 to any extension of time for filing, unless it is shown that such fail-
49 ure is due to reasonable cause and not due to willful neglect, the addi-
50 tion to tax under subparagraph (A) of this paragraph shall not be less
51 than the lesser of one hundred dollars or one hundred percent of the
52 amount required to be shown as tax on such return.

53 (C) For purposes of this paragraph, the amount of tax required to be
54 shown on the return shall be reduced by the amount of any part of the
55 tax which is paid on or before the date prescribed for payment of the

1 tax and by the amount of any credit against the tax which may be claimed
2 upon the return.

3 (2) Failure to pay tax shown on return. In case of failure to pay the
4 amount shown as tax on a return required to be filed under this chapter
5 on or before the prescribed date, determined with regard to any exten-
6 sion of time for payment, unless it is shown that such failure is due to
7 reasonable cause and not due to willful neglect, there shall be added to
8 the amount shown as tax on such return one-half of one percent of the
9 amount of such tax if the failure is not for more than one month, with
10 an additional one-half of one percent for each additional month or frac-
11 tion thereof during which such failure continues, not exceeding twenty-
12 five percent in the aggregate. For the purpose of computing the addition
13 for any month the amount of tax shown on the return shall be reduced by
14 the amount of any part of the tax which is paid on or before the begin-
15 ning of such month and by the amount of any credit against the tax which
16 may be claimed upon the return. If the amount of tax required to be
17 shown on a return is less than the amount shown as tax on such return,
18 this paragraph shall be applied by substituting such lower amount.

19 (3) Failure to pay tax required to be shown on return. In case of
20 failure to pay any amount in respect of any tax required to be shown on
21 a return required to be filed under this chapter which is not so shown,
22 including a determination made pursuant to section 11-810 of this chap-
23 ter, within ten days of the date of a notice and demand therefor, unless
24 it is shown that such failure is due to reasonable cause and not due to
25 willful neglect, there shall be added to the amount of tax stated in
26 such notice and demand one-half of one percent of such tax if the fail-
27 ure is not for more than one month, with an additional one-half of one
28 percent for each additional month or fraction thereof during which such
29 failure continues, not exceeding twenty-five percent in the aggregate.
30 For the purpose of computing the addition for any month, the amount of
31 tax stated in the notice and demand shall be reduced by the amount of
32 any part of the tax which is paid before the beginning of such month.

33 (4) Limitations on additions.

34 (A) With respect to any return, the amount of the addition under para-
35 graph one of this subdivision shall be reduced by the amount of the
36 addition under paragraph two of this subdivision for any month to which
37 an addition applies under both such paragraphs one and two. In any case
38 described in subparagraph (B) of paragraph one of this subdivision, the
39 amount of the addition under such paragraph one shall not be reduced
40 below the amount provided in such subparagraph.

41 (B) With respect to any return, the maximum amount of the addition
42 permitted under paragraph three of this subdivision shall be reduced by
43 the amount of the addition under paragraph one of this subdivision,
44 determined without regard to subparagraph (B) of such paragraph one,
45 which is attributable to the tax for which the notice and demand is made
46 and which is not paid within ten days of such notice and demand.

47 (c) Underpayment due to negligence. (1) If any part of an underpayment
48 of tax is due to negligence or intentional disregard of this chapter or
49 any rules or regulations hereunder, but without intent to defraud, there
50 shall be added to the tax a penalty equal to five percent of the under-
51 payment.

52 (2) There shall be added to the tax, in addition to the amount deter-
53 mined under paragraph one of this subdivision, an amount equal to fifty
54 percent of the interest payable under subdivision (a) of this section
55 with respect to the portion of the underpayment described in such para-
56 graph one which is attributable to the negligence or intentional disre-

1 gard referred to in such paragraph one, for the period beginning on the
2 last date prescribed by law for payment of such underpayment, determined
3 without regard to any extension, and ending on the date of the assess-
4 ment of the tax, or, if earlier, the date of the payment of the tax.

5 (d) Underpayment due to fraud. (1) If any part of an underpayment of
6 tax is due to fraud, there shall be added to the tax a penalty equal to
7 fifty percent of the underpayment.

8 (2) There shall be added to the tax, in addition to the penalty deter-
9 mined under paragraph one of this subdivision, an amount equal to fifty
10 percent of the interest payable under subdivision (a) of this section
11 with respect to the portion of the underpayment described in such para-
12 graph one which is attributable to fraud, for the period beginning on
13 the last day prescribed by law for payment of such underpayment, deter-
14 mined without regard to any extension, and ending on the date of the
15 assessment of the tax, or, if earlier, the date of the payment of the
16 tax.

17 (3) The penalty under this subdivision shall be in lieu of any other
18 addition to tax imposed by subdivision (b) or (c) of this section.

19 (e) Additional penalty. Any person who, with fraudulent intent, shall
20 fail to pay any tax imposed by this chapter, or to make, render, sign or
21 certify any return, or to supply any information within the time
22 required by or under this chapter, shall be liable for a penalty of not
23 more than one thousand dollars, in addition to any other amounts
24 required under this chapter to be imposed, assessed and collected by the
25 commissioner of finance. The commissioner of finance shall have the
26 power, in his or her discretion, to waive, reduce or compromise any
27 penalty under this subdivision.

28 (f) The interest and penalties imposed by this section shall be paid
29 and disposed of in the same manner as other revenues from this subchap-
30 ter. Unpaid interest and penalties may be enforced in the same manner as
31 the tax imposed by this chapter.

32 (g) (1) Authority to set interest rates. The commissioner of finance
33 shall set the rate of interest to be paid pursuant to subdivision (a) of
34 this section, but if no such rate of interest is set, such rate shall be
35 deemed to be set at seven and one-half percent per annum. Such rate
36 shall be the rate prescribed in paragraph two of this subdivision but
37 shall not be less than seven and one-half percent per annum. Any such
38 rate set by the commissioner of finance shall apply to taxes, or any
39 portion thereof, which remain or become due on or after the date on
40 which such rate becomes effective and shall apply only with respect to
41 interest computed or computable for periods or portions of periods
42 occurring in the period in which such rate is in effect.

43 (2) General rule. The rate of interest set under this subdivision
44 shall be the sum of (i) the federal short-term rate as provided under
45 paragraph three of this subdivision, plus (ii) seven percentage points.

46 (3) Federal short-term rate. For purposes of this subdivision:

47 (A) The federal short-term rate for any month shall be the federal
48 short-term rate determined by the United States secretary of the treas-
49 ury during such month in accordance with subsection (d) of section
50 twelve hundred seventy-four of the internal revenue code for use in
51 connection with section six thousand six hundred twenty-one of the
52 internal revenue code. Any such rate shall be rounded to the nearest
53 full percent, or, if a multiple of one-half of one percent, such rate
54 shall be increased to the next highest full percent.

55 (B) Period during which rate applies.

1 (i) In general. Except as provided in clause (ii) of this subpara-
2 graph, the federal short-term rate for the first month in each calendar
3 quarter shall apply during the first calendar quarter beginning after
4 such month.

5 (ii) Special rule for the month of September, nineteen hundred eight-
6 y-nine. The federal short-term rate for the month of April, nineteen
7 hundred eighty-nine shall apply with respect to setting the rate of
8 interest for the month of September, nineteen hundred eighty-nine.

9 (4) Publication of interest rate. The commissioner of finance shall
10 cause to be published in the City Record, and give other appropriate
11 general notice of, the interest rate to be set under this subdivision no
12 later than twenty days preceding the first day of the calendar quarter
13 during which such interest rate applies. The setting and publication of
14 such interest rate shall not be included within paragraph (a) of subdi-
15 vision five of section one thousand forty-one of the city charter of the
16 preceding municipality as it existed January first, nineteen hundred
17 ninety-four relating to the definition of a rule.

18 (h) Miscellaneous. (1) The certificate of the commissioner of finance
19 to the effect that a tax has not been paid, that a motor vehicle has not
20 been registered, that a return has not been filed, or that information
21 has not been supplied pursuant to the provisions of this chapter, shall
22 be presumptive evidence thereof.

23 (2) Cross-reference: For criminal penalties, see chapter forty of this
24 title.

25 § 11-818 Information and records to be secret. a. Except in accord-
26 ance with proper judicial order, or as otherwise provided by law, it
27 shall be unlawful for the commissioner of finance, the tax appeals
28 tribunal, any other agency, officer or employee of the city, the commis-
29 sioner of motor vehicles, any officer or employee of the department of
30 motor vehicles, any agent of the commissioner of motor vehicles, or any
31 other person who, pursuant to this section, is permitted to inspect any
32 registration or return filed pursuant to this chapter, or to whom a
33 copy, an abstract or portion of any registration or return filed pursu-
34 ant to this chapter is furnished, or to whom any information contained
35 in any registration or return filed pursuant to this chapter is
36 furnished, to divulge or make known in any manner any information relat-
37 ing to or contained in any registration or any kind of return filed
38 pursuant to this chapter. The officers charged with the custody of such
39 registration and returns pertaining to the tax assessed pursuant to this
40 chapter shall not be required to produce any of them or evidence of
41 anything contained in them in any action or proceeding in any court,
42 except on behalf of the city, the commissioner of finance, the state or
43 the commissioner of motor vehicles, in an action or proceeding under the
44 provisions of this chapter, or on behalf of any party to any action or
45 proceeding under the provisions of this chapter when the registration,
46 return or facts shown therein are directly involved in such action or
47 proceeding, in either of which events, the court may require the
48 production of, and may admit in evidence, so much of said registration,
49 return, or of the facts shown therein, as are pertinent to the action or
50 proceeding and no more. The commissioner of finance may, nevertheless,
51 publish a copy or a summary of any determination or decision rendered
52 after a formal hearing held pursuant to section 11-810 or 11-811 of this
53 chapter. Nothing herein shall be construed to prohibit the delivery to a
54 person or such person's duly authorized representative of a certified
55 copy of any registration or return filed by such person; nor to prohibit
56 the delivery of any original return, with any notation that the commis-

1 sioner of finance or the commissioner of motor vehicles may cause to be
2 made thereon, to the person filing the return, whether such person files
3 the return on his or her own behalf or on behalf of another, or to the
4 person on whose behalf the return is filed; nor to prohibit the commis-
5 sioner of finance from providing by rule for the display or production
6 of any original return, as an indicium of payment of the tax imposed by
7 this chapter; nor to prohibit the publication of statistics so classi-
8 fied as to prevent the identification of particular registrations and
9 returns and the items thereof; nor to prohibit the delivery of a certi-
10 fied copy of any registration or return to the United States of America
11 or any department thereof, the state of New York or any department ther-
12 eof, the city of New York or any department thereof provided it is
13 requested for official business, nor to prohibit the inspection by the
14 corporation counsel or other legal representatives of the city, the
15 attorney general of the state of New York or other legal representatives
16 of the department of motor vehicles, or by the district attorney of any
17 county within the city of the registration or return of any person who
18 shall bring action to set aside or review any tax assessed pursuant to
19 this section, or against whom an action or proceeding under this chapter
20 is instituted. Returns, or reproductions thereof, pertaining to any
21 motor vehicle registered pursuant to this section shall be preserved for
22 three years and thereafter until the commissioner of finance or the
23 commissioner of motor vehicles permits them to be destroyed.

24 b. (1) Any officer or employee of the city or the state of New York
25 who willfully violates the provisions of subdivision a of this section
26 shall be dismissed from office and be incapable of holding any public
27 office in this city or the state of New York for a period of five years
28 thereafter.

29 (2) Cross-reference: For criminal penalties, see chapter forty of this
30 title.

31 c. This section shall be deemed a state statute for purposes of para-
32 graph (a) of subdivision two of section eighty-seven of the public offi-
33 cers law.

34 d. Notwithstanding anything in subdivision a of this section to the
35 contrary, if a taxpayer has petitioned the tax appeals tribunal for
36 administrative review as provided in section one hundred seventy of the
37 charter of the preceding municipality as it existed January first, nine-
38 teen hundred ninety-four, the commissioner of finance shall be author-
39 ized to present to the tribunal any report or return of such taxpayer,
40 or any information contained therein or relating thereto, which may be
41 material or relevant to the proceeding before the tribunal. The tax
42 appeals tribunal shall be authorized to publish a copy or a summary of
43 any decision rendered pursuant to section one hundred seventy-one of the
44 charter of the preceding municipality as it existed January first, nine-
45 teen hundred ninety-four.

46 § 11-819 Notices and limitations of time. a. Any notice authorized or
47 required under the provisions of this chapter may be given to the person
48 for whom it is intended by mailing it in a postpaid envelope addressed
49 to such person at the address given in the last registration of a motor
50 vehicle filed by such person pursuant to the provisions of this chapter,
51 or in any application made by such person, or if no such registration
52 has been filed or application made, then to such address as may be
53 obtainable. The mailing of a notice as in this subdivision provided for
54 shall be presumptive evidence of the receipt of the same by the person
55 to whom addressed. Any period of time which is determined according to
56 the provisions of this chapter by the giving of notice shall commence to

1 run from the date of mailing of such notice as in this subdivision
2 provided.

3 b. The provisions of the civil practice law and rules or any other law
4 relative to limitations of time for the enforcement of a civil remedy
5 shall not apply to any proceeding or action taken by the city to levy,
6 appraise, assess, determine or enforce the collection of any tax or
7 penalty provided by this chapter. However, except in the case of a
8 wilfully false or fraudulent registration or return with intent to evade
9 the tax, no assessment of additional tax shall be made after the expira-
10 tion of more than three years from the date of such return; provided,
11 however, that where no registration or no return has been made as
12 provided by law, the tax may be assessed at any time.

13 c. Where before the expiration of the period prescribed in this
14 section for the assessment of an additional tax, a person has consented
15 in writing that such period be extended, the amount of such additional
16 tax due may be determined at any time within such extended period. The
17 period so extended may be further extended by subsequent consents in
18 writing made before the expiration of the extended period.

19 d. If any return, claim, statement, notice, application, or other
20 document required to be filed, or any payment required to be made, with-
21 in a prescribed period or on or before a prescribed date under authority
22 of any provision of this chapter is, after such period or such date,
23 delivered by United States mail to the commissioner of finance, commis-
24 sioner of motor vehicles, the tax appeals tribunal, bureau, office,
25 officer or person with which or with whom such document is required to
26 be filed, or to which or to whom such payment is required to be made,
27 the date of the United States postmark stamped on the envelope shall be
28 deemed to be the date of delivery. This subdivision shall apply only if
29 the postmark date falls within the prescribed period or on or before the
30 prescribed date for the filing of such document, or for making the
31 payment, including any extension granted for such filing or payment, and
32 only if such document or payment was deposited in the mail, postage
33 prepaid, properly addressed to the commissioner of finance, commissioner
34 of motor vehicles, the tax appeals tribunal, bureau, office, officer or
35 person with which or with whom the document is required to be filed or
36 to which or to whom such payment is required to be made. If any document
37 is sent by United States registered mail, such registration shall be
38 prima facie evidence that such document was delivered to the commis-
39 sioner of finance, commissioner of motor vehicles, the tax appeals tribunal,
40 bureau, office, officer or person to which or to whom addressed, and the
41 date of registration shall be deemed the postmark date. The commissioner
42 of finance or, where relevant, the tax appeals tribunal is authorized to
43 provide by regulation the extent to which the provisions of this subdivi-
44 sion with respect to prima facie evidence of delivery and the postmark
45 date shall apply to certified mail. Except as provided in subdivision f
46 of this section, this subdivision shall apply in the case of postmarks
47 not made by the United States postal service only if and to the extent
48 provided by rule of the commissioner of finance or, where relevant, the
49 tax appeals tribunal.

50 e. When the last day prescribed under authority of this chapter,
51 including any extension of time, for performing any act falls on a
52 Saturday, Sunday or legal holiday in the state of New York, the perform-
53 ance of such act shall be considered timely if it is performed on the
54 next succeeding day which is not a Saturday, Sunday or legal holiday.

55 f. (1) Any reference in subdivision d of this section to the United
56 States mail shall be treated as including a reference to any delivery

1 service designated by the secretary of the treasury of the United States
2 pursuant to section seventy-five hundred two of the internal revenue
3 code and any reference in subdivision d of this section to a United
4 States postmark shall be treated as including a reference to any date
5 recorded or marked in the manner described in section seventy-five
6 hundred two of the internal revenue code by a designated delivery
7 service. If the commissioner of finance finds that any delivery service
8 designated by such secretary is inadequate for the needs of the city,
9 the commissioner of finance may withdraw such designation for purposes
10 of this title. The commissioner of finance may also designate additional
11 delivery services meeting the criteria of section seventy-five hundred
12 two of the internal revenue code for purposes of this title, or may
13 withdraw any such designation if the commissioner of finance finds that
14 a delivery service so designated is inadequate for the needs of the
15 city. Any reference in subdivision d of this section to the United
16 States mail shall be treated as including a reference to any delivery
17 service designated by the commissioner of finance and any reference in
18 subdivision d of this section to a United States postmark shall be
19 treated as including a reference to any date recorded or marked in the
20 manner described in section seventy-five hundred two of the internal
21 revenue code by a delivery service designated by the commissioner of
22 finance. Notwithstanding the provisions of this paragraph, any with-
23 drawal of designation or additional designation by the commissioner of
24 finance shall not be effective for purposes of service upon the tax
25 appeals tribunal, unless and until such withdrawal of designation or
26 additional designation is ratified by the president of the tax appeals
27 tribunal.

28 (2) Any equivalent of registered or certified mail designated by the
29 United States secretary of the treasury, or as may be designated by the
30 commissioner of finance pursuant to the same criteria used by such
31 secretary for such designations pursuant to section seventy-five hundred
32 two of the internal revenue code, shall be included within the meaning
33 of registered or certified mail as used in subdivision d of this
34 section. If the commissioner of finance finds that any equivalent of
35 registered or certified mail designated by such secretary or the commis-
36 sioner of finance is inadequate for the needs of the city, the commis-
37 sioner of finance may withdraw such designation for purposes of this
38 title. Notwithstanding the provisions of this paragraph, any withdrawal
39 of designation or additional designation by the commissioner of finance
40 shall not be effective for purposes of service upon the tax appeals
41 tribunal, unless and until such withdrawal of designation or additional
42 designation is ratified by the president of the tax appeals tribunal.

43 § 11-820 Construction and enforcement. This chapter shall be
44 construed and enforced in conformity with chapter one thousand thirty-
45 two of the laws of nineteen hundred sixty, pursuant to which it is
46 enacted.

47 CHAPTER 9

48 TAX UPON FOREIGN AND ALIEN INSURERS

49 § 11-901 Definitions. Wherever used in this chapter, the following
50 words and phrases shall mean and include:

51 "Alien insurer." Any insurer incorporated or organized under the laws
52 of any foreign nation, or of any province or territory not included
53 under the definition of a foreign insurer.

54 "Foreign insurer." Any insurer, except a mutual insurance company
55 taxed under the provisions of section nine thousand one hundred five of

1 the insurance law, incorporated or organized under the laws of any
2 state, as herein defined, other than this state.

3 "Fire insurance corporation, association or individuals." Any insurer,
4 regardless of the name, designation or authority under which it purports
5 to act, which insures property of any kind or nature against loss or
6 damage by fire.

7 "Loss or damage by fire." Loss or damage by fire, lightning, smoke or
8 anything used to combat fire, regardless of whether such risks or the
9 premiums therefor are stated or charged separately and apart from any
10 other risk or premium.

11 "State." Any state of the United States and the District of Columbia.

12 "Commissioner of finance." The commissioner of finance of the city or
13 any other officer of the city designated to perform the same functions.

14 "Department of finance." The department of finance of the city or any
15 other agency or department designated to perform the same functions.

16 "Fire commissioner." The fire commissioner of the city.

17 "Comptroller." The comptroller of the city.

18 "Tax appeals tribunal." The tax appeals tribunal established by
19 section one hundred sixty-eight of the charter of the preceding munici-
20 pality as it existed January first, nineteen hundred ninety-four.

21 § 11-902 General powers of the commissioner of finance. In addition
22 to all other powers granted to the commissioner of finance under this
23 chapter, the commissioner is hereby authorized and empowered:

24 1. To make, adopt and amend rules and regulations appropriate to the
25 carrying out of this chapter and the purposes thereof.

26 2. To compromise disputed claims in connection with taxes hereby
27 imposed.

28 3. To delegate his or her functions hereunder to any officer or
29 employee of the department of finance.

30 4. To prescribe reasonable methods, approved by the New York state
31 superintendent of insurance, for determining the amounts of premiums
32 subject to the tax.

33 5. To require any foreign or alien insurer subject to the tax to keep
34 detailed records of the premiums in a manner reasonably designed to show
35 the amounts thereof subject to the tax and to furnish such information
36 on request.

37 6. To assess, determine, revise and adjust the tax imposed under this
38 chapter.

39 7. To audit the reports of any insurer.

40 8. To allow an extension of time not in excess of thirty days for
41 filing the report and paying the tax required by this chapter, provided
42 the taxpayer requests such extension in writing prior to the date
43 prescribed for such filing and such payment by sections 11-904 and
44 11-903 of this chapter.

45 § 11-903 Tax on premiums on policies of foreign and alien insurers.
46 There shall be paid to the department of finance for the use and benefit
47 of the fire department of the city, on or before the first day of March,
48 in each year by every foreign and alien fire insurance corporation,
49 association or individuals which insure property against loss or damage
50 by fire, the sum of two percent of all gross direct premiums less return
51 premiums which, during the year ending on the preceding thirty-first day
52 of December, shall have been received by any such insurer for any insur-
53 ance against loss or damage by fire in the city. Any such insurer which
54 in any year shall cease or terminate doing business in the city shall
55 pay the tax for such year within thirty days after such cessation or
56 termination.

1 § 11-904 Report of premiums by insurers. Each insurer required to pay
2 a tax under this chapter shall, at the time such tax is paid or payable,
3 whichever is sooner, render to the commissioner of finance a verified
4 report setting forth such information as may be required by the commis-
5 sioner for the determination of the tax and the proper administration of
6 this chapter. The commissioner of finance shall prescribe the form and
7 furnish the necessary forms to enable such insurers to make such
8 reports. The commissioner or the commissioner's designated represen-
9 tative or the tax appeals tribunal or its designated representative
10 shall have power to examine any such insurer under oath and to require
11 the production by such insurer of all books and papers as the commis-
12 sioner or the tax appeals tribunal may deem necessary. All expenses of
13 collecting such tax shall be paid by the commissioner of finance from
14 the funds received under this chapter prior to the distribution thereof
15 as hereinafter authorized.

16 § 11-905 Interest and penalties. (a) Interest on underpayments. If any
17 amount of tax is not paid on or before the last date prescribed for
18 payment, without regard to any extension of time granted for payment,
19 interest on such amount at the underpayment rate set by the commissioner
20 of finance pursuant to subdivision (g) of this section, or, if no rate
21 is set, at the rate of seven and one-half percent per annum, shall be
22 paid for the period from such last date to the date of payment. In
23 computing the amount of interest to be paid, such interest shall be
24 compounded daily. Interest under this subdivision shall not be paid if
25 the amount thereof is less than one dollar.

26 (b) (1) Failure to file return. (A) In case of failure to file a
27 return under this chapter on or before the prescribed date, determined
28 with regard to any extension of time for filing, unless it is shown that
29 such failure is due to reasonable cause and not due to willful neglect,
30 there shall be added to the amount required to be shown as tax on such
31 return five percent of the amount of such tax if the failure is for not
32 more than one month, with an additional five percent for each additional
33 month or fraction thereof during which such failure continues, not
34 exceeding twenty-five percent in the aggregate.

35 (B) In the case of a failure to file a return of tax within sixty days
36 of the date prescribed for filing of such return, determined with regard
37 to any extension of time for filing, unless it is shown that such fail-
38 ure is due to reasonable cause and not due to willful neglect, the addi-
39 tion to tax under subparagraph (A) of this paragraph shall not be less
40 than the lesser of one hundred dollars or one hundred percent of the
41 amount required to be shown as tax on such return.

42 (C) For purposes of this paragraph, the amount of tax required to be
43 shown on the return shall be reduced by the amount of any part of the
44 tax which is paid on or before the date prescribed for payment of the
45 tax and by the amount of any credit against the tax which may be claimed
46 upon the return.

47 (2) Failure to pay tax shown on return. In case of failure to pay the
48 amount shown as tax on a return required to be filed under this chapter
49 on or before the prescribed date, determined with regard to any exten-
50 sion of time for payment, unless it is shown that such failure is due to
51 reasonable cause and not due to willful neglect, there shall be added to
52 the amount shown as tax on such return one-half of one percent of the
53 amount of such tax if the failure is not for more than one month, with
54 an additional one-half of one percent for each additional month or frac-
55 tion thereof during which such failure continues, not exceeding twenty-
56 five percent in the aggregate. For the purpose of computing the addition

1 for any month the amount of tax shown on the return shall be reduced by
2 the amount of any part of the tax which is paid on or before the begin-
3 ning of such month and by the amount of any credit against the tax which
4 may be claimed upon the return. If the amount of tax required to be
5 shown on a return is less than the amount shown as tax on such return,
6 this paragraph shall be applied by substituting such lower amount.

7 (3) Failure to pay tax required to be shown on return. In case of
8 failure to pay any amount in respect of any tax required to be shown on
9 a return required to be filed under this chapter which is not so shown,
10 including a determination made pursuant to section 11-906 of this chap-
11 ter, within ten days of the date of a notice and demand therefor, unless
12 it is shown that such failure is due to reasonable cause and not due to
13 willful neglect, there shall be added to the amount of tax stated in
14 such notice and demand one-half of one percent of such tax if the fail-
15 ure is not for more than one month, with an additional one-half of one
16 percent for each additional month or fraction thereof during which such
17 failure continues, not exceeding twenty-five percent in the aggregate.
18 For the purpose of computing the addition for any month, the amount of
19 tax stated in the notice and demand shall be reduced by the amount of
20 any part of the tax which is paid before the beginning of such month.

21 (4) Limitations on additions.

22 (A) With respect to any return, the amount of the addition under para-
23 graph one of this subdivision shall be reduced by the amount of the
24 addition under paragraph two of this subdivision for any month to which
25 an addition applies under both paragraphs one and two of this subdivi-
26 sion. In any case described in subparagraph (B) of paragraph one of
27 this subdivision, the amount of the addition under such paragraph one
28 shall not be reduced below the amount provided in such subparagraph.

29 (B) With respect to any return, the maximum amount of the addition
30 permitted under paragraph three of this subdivision shall be reduced by
31 the amount of the addition under paragraph one of this subdivision,
32 determined without regard to subparagraph (B) of such paragraph one
33 which is attributable to the tax for which the notice and demand is made
34 and which is not paid within ten days of such notice and demand.

35 (c) Underpayment due to negligence. (1) If any part of an underpayment
36 of tax is due to negligence or intentional disregard of this chapter or
37 any rules and regulations hereunder, but without intent to defraud,
38 there shall be added to the tax a penalty equal to five percent of the
39 underpayment.

40 (2) There shall be added to the tax, in addition to the amount deter-
41 mined under paragraph one of this subdivision an amount equal to fifty
42 percent of the interest payable under subdivision (a) of this section
43 with respect to the portion of the underpayment described in such para-
44 graph one which is attributable to the negligence or intentional disre-
45 gard referred to in such paragraph one, for the period beginning on the
46 last date prescribed by law for payment of such underpayment, determined
47 without regard to any extension, and ending on the date of the assess-
48 ment of the tax, or, if earlier, the date of the payment of the tax.

49 (d) Underpayment due to fraud. (1) If any part of an underpayment of
50 tax is due to fraud, there shall be added to the tax a penalty equal to
51 fifty percent of the underpayment.

52 (2) There shall be added to the tax, in addition to the penalty deter-
53 mined under paragraph one of this subdivision, an amount equal to fifty
54 percent of the interest payable under subdivision (a) of this section
55 with respect to the portion of the underpayment described in such para-
56 graph one which is attributable to fraud, for the period beginning on

1 the last day prescribed by law for payment of such underpayment, deter-
2 mined without regard to any extension, and ending on the date of the
3 assessment of the tax, or, if earlier, the date of the payment of the
4 tax.

5 (3) The penalty under this subdivision shall be in lieu of any other
6 addition to tax imposed by subdivision (b) or (c) of this section.

7 (e) Additional penalty. Any insurer who, with fraudulent intent, shall
8 fail to pay any tax imposed by this chapter, or to make, render, sign or
9 certify any return, or to supply any information within the time
10 required by or under this chapter, shall be liable for a penalty of not
11 more than one thousand dollars, in addition to any other amounts
12 required under this chapter to be imposed, assessed and collected by the
13 commissioner of finance. The commissioner of finance shall have the
14 power, in his or her discretion, to waive, reduce or compromise any
15 penalty under this subdivision.

16 (f) The interest and penalties imposed by this section shall be paid
17 and disposed of in the same manner as other revenues from this chapter.
18 Unpaid interest and penalties may be enforced in the same manner as the
19 tax imposed by this chapter.

20 (g) (1) Authority to set interest rates. The commissioner of finance
21 shall set the overpayment and underpayment rates of interest to be paid
22 pursuant to subdivision (a) of this section and subdivision (a) of
23 section 11-906 of this chapter, but if no such overpayment rate of
24 interest are set, such rate or rates shall be deemed to be set at six
25 percent per annum and such underpayment rate shall be deemed to be set
26 at seven and one-half percent per annum. Such rates shall be the over-
27 payment and underpayment rates prescribed in paragraph two of this
28 subdivision but the underpayment rate shall not be less than seven and
29 one-half percent per annum. Any such rates set by the commissioner of
30 finance shall apply to taxes, or any portion thereof, which remain or
31 become due or overpaid on or after the date on which such rates become
32 effective and shall apply only with respect to interest computed or
33 computable for periods or portions of periods occurring in the period in
34 which such rates are in effect.

35 (2) General rule. (A) Overpayment rate. The overpayment rate set under
36 this subdivision shall be the sum of (i) the federal short-term rate as
37 provided under paragraph three of this subdivision, plus (ii) two
38 percentage points.

39 (B) Underpayment rate. The underpayment rate set under this subdivi-
40 sion shall be the sum of (i) the federal short-term rate as provided
41 under paragraph three of this subdivision, plus (ii) seven percentage
42 points.

43 (3) Federal short-term rate. For purposes of this subdivision:

44 (A) The federal short-term rate for any month shall be the federal
45 short-term rate determined by the United States secretary of the treas-
46 ury during such month in accordance with subsection (d) of section
47 twelve hundred seventy-four of the internal revenue code for use in
48 connection with section six thousand six hundred twenty-one of the
49 internal revenue code. Any such rate shall be rounded to the nearest
50 full percent, or, if a multiple of one-half of one percent, such rate
51 shall be increased to the next highest full percent.

52 (B) Period during which rate applies.

53 (i) In general. Except as provided in clause (ii) of this subpara-
54 graph, the federal short-term rate for the first month in each calendar
55 quarter shall apply during the first calendar quarter beginning after
56 such month.

1 (ii) Special rule for the month of September, nineteen hundred eight-
2 y-nine. The federal short-term rate for the month of April, nineteen
3 hundred eighty-nine shall apply with respect to setting the rate of
4 interest for the month of September, nineteen hundred eighty-nine.

5 (4) Publication of interest rate. The commissioner of finance shall
6 cause to be published in the City Record, and give other appropriate
7 general notice of, the interest rate to be set under this subdivision
8 later than twenty days preceding the first day of the calendar quarter
9 during which such interest rate applies. The setting and publication of
10 such interest rate shall not be included within paragraph (a) of subdi-
11 vision five of section one thousand forty-one of the city charter of the
12 preceding municipality as it existed January first, nineteen hundred
13 ninety-four relating to the definition of a rule.

14 § 11-906 Assessment, refund, collection, review and reserves. (a) The
15 provisions of the civil practice law and rules or any other law relative
16 to limitations of time for the enforcement of a civil remedy shall not
17 apply to any proceeding or action by the commissioner of finance to
18 levy, assess, determine or enforce the collection of tax, interest or
19 penalty imposed by this chapter. However, except in the case of a
20 wilfully false or fraudulent report, no assessment of additional tax,
21 interest or penalty shall be made after the expiration of more than
22 three years from the date of the filing of a report, provided, however,
23 that where no report has been filed as provided by law the tax may be
24 assessed at any time. The commissioner of finance shall refund or cred-
25 it, with interest at the overpayment rate set by the commissioner of
26 finance pursuant to subdivision (g) of section 11-905 of this chapter
27 or, if no rate is set, at the rate of six percent per annum computed
28 from the date of overpayment to a date, to be determined by the commis-
29 sioner of finance, preceding the date of a refund check by not more than
30 thirty days, any tax, penalty or interest erroneously, illegally or
31 unconstitutionally collected or paid if application to the commissioner
32 of finance for such refund shall be made within six months from the
33 payment thereof. Notice of any determination of the commissioner of
34 finance with respect to an assessment of tax, interest or penalty or
35 with respect to a claim for refund or any other notice, demand or
36 request shall be given by mailing the same to the insurer to the address
37 of its city of Staten Island office last filed with the commissioner of
38 finance or, if there is no such office, to the address of its main
39 office last filed with the commissioner of finance or, in the absence of
40 any filed address, to such address as may be obtainable. The mailing of
41 any notice, demand or request by the commissioner of finance shall be
42 presumptive evidence of its receipt by the insurer and any period of
43 time to be determined with reference to the giving of such notice,
44 demand or request shall commence to run from the date of such mailing.
45 The determination of the commissioner of finance shall finally and irre-
46 vocably fix the amount of any tax, interest or penalty due or to be
47 refunded unless the taxpayer, within ninety days after the giving of
48 notice of such determination, or if the commissioner of finance has
49 established a conciliation procedure pursuant to section 11-124 of this
50 title and the taxpayer has requested a conciliation conference in
51 accordance therewith, within ninety days from the mailing of a concil-
52 iation decision or the date of the commissioner's confirmation of the
53 discontinuance of the conciliation proceeding, both (1) serves a peti-
54 tion upon the commissioner of finance and (2) files a petition with the
55 tax appeals tribunal for a hearing, or unless the commissioner of
56 finance of his or her own motion shall redetermine the same. Such hear-

1 ing and any appeal to the tax appeals tribunal sitting en banc from the
2 decision rendered in such hearing shall be conducted in the manner and
3 subject to the requirements prescribed by the tax appeals tribunal
4 pursuant to sections one hundred sixty-eight through one hundred seven-
5 ty-two of the charter of the preceding municipality as it existed Janu-
6 ary first, nineteen hundred ninety-four. After such hearing the tax
7 appeals tribunal shall give notice of its decision to the taxpayer and
8 to the commissioner of finance with reference to the amount of the tax,
9 interest or penalty assessed or to be refunded. The decision of the tax
10 appeals tribunal sitting en banc shall be reviewable for error, illegal-
11 ity or unconstitutionality or any other reason, by a proceeding under
12 article seventy-eight of the civil practice law and rules if such
13 proceeding is commenced by the person against whom the tax was assessed
14 within four months after the giving of the notice of such tax appeals
15 tribunal decision. Such proceeding shall not be commenced by the taxpay-
16 er unless: (1) the amount of any tax assessed and sought to be reviewed
17 with penalties and interest thereon, if any, shall be first deposited
18 with the commissioner of finance and there shall be filed with the
19 commissioner of finance an undertaking in such amount and with such
20 sureties as a justice of the supreme court shall approve, to the effect
21 that if such proceeding be dismissed or the decision confirmed, the
22 taxpayer will pay all costs and charges which may accrue against the
23 taxpayer in the prosecution of the proceeding, or (2) in the case of a
24 review of a decision assessing any taxes, penalties and interest, at the
25 option of the taxpayer, such undertaking may be in a sum sufficient to
26 cover all of the taxes, penalties and interest assessed by such decision
27 plus the costs and charges which may accrue against the taxpayer in the
28 prosecution of the proceeding, in which event the taxpayer shall not be
29 required to deposit such taxes, penalties and interest as a condition
30 precedent to the commencement of the proceeding. No determination or
31 proposed determination of tax, interest or penalty due or to be refunded
32 shall be reviewed or enjoined in any manner except as set forth herein.

33 (b) In cases where the taxpayer has applied for a refund and has
34 commenced a proceeding under article seventy-eight of the civil practice
35 law and rules to review a decision of the tax appeals tribunal adverse
36 to such taxpayer on its application for a refund, the commissioner of
37 finance shall set up appropriate reserves to meet any decision adverse
38 to the city.

39 (c) In computing the amount of interest to be paid under this section,
40 such interest shall be compounded daily.

41 § 11-907 Place of business to be reported. Every insurer, on or
42 before the first day of March in each year, and as often in each year as
43 such insurer shall change its principal place of business or change or
44 terminate any office or place of business in the city, shall report in
45 writing, to the commissioner of finance, the location of its principal
46 place of business and any new principal place of business or of any new
47 office or place of business in the city or of the termination of any
48 such office or place of business. In the event of such change or termi-
49 nation, such report shall be made no later than fifteen days after such
50 change or termination. Any insurer who fails or neglects to make such
51 report within the time limited therefor shall be subject to a penalty of
52 one hundred dollars and, in addition thereto, fifty dollars for each
53 month or part thereof during which such report is not made. The total
54 of such penalties shall not exceed one thousand dollars.

55 § 11-908 Suits for violations. The tax provided to be paid by this
56 chapter, and the pecuniary penalties and interest imposed therein, or

1 any or either of them, may be sued for and recovered, with costs of
2 suit, in any court of record, by the commissioner of finance.

3 § 11-909 Distribution of tax on policies covering property in the city
4 of Staten Island. (a) The moneys received by the commissioner of finance
5 as a tax on policies covering property in the city shall be disbursed by
6 the commissioner of finance as follows:

7 1. Ten percent to the firemen's association of the state of New York,
8 for the endowment, benefit and maintenance of the volunteer firemen's
9 home at Hudson, but in no event to exceed the sum of thirty-five thou-
10 sand dollars annually.

11 2. The balance to the general fund of the city established pursuant to
12 section one hundred nine of the charter, except as provided in paragraph
13 three of this subdivision.

14 3. a. Volunteer firemen's benevolent fund; trustee. From the balance
15 specified in paragraph two of this subdivision, a sum, not to exceed one
16 hundred fifty thousand dollars in any one year, shall be paid into a
17 fund to be known as the volunteer firemen's benevolent fund, which shall
18 be administered as provided by the fire commissioner, as trustee of such
19 fund, for the benefit of indigent volunteer firefighters, their surviv-
20 ing spouses and orphans.

21 b. Persons entitled to benefits from fund. All funds received by the
22 fire commissioner as trustee under this paragraph shall be expended by
23 the fire commissioner for the relief of:

24 (i) all indigent volunteer firefighters who served as such for a peri-
25 od of five years in a duly organized volunteer fire company in the
26 former towns of New Lots, Flatlands, Gravesend, New Utrecht and Flatbush
27 in the county of Kings, or in the territory now included in the city of
28 Staten Island, or in the territory now included in the borough of
29 Queens, or in the territory now included in the borough of the Bronx,
30 and who were honorably discharged after such five years of service, or
31 who having been members of a duly organized volunteer fire company with-
32 in any such town or territory, which company was disbanded by reason of
33 the installation of a paid fire department, and were members of such
34 company for at least one year prior to its disbandment;

35 (ii) the surviving spouses and orphans of any such volunteer fire-
36 fighters.

37 c. Fund benefits of beneficiaries on rolls as of December thirty-
38 first, nineteen hundred fifty-one. During the lifetime of those relief
39 beneficiaries who appear as such as of December thirty-first, nineteen
40 hundred fifty-one upon the records of the trustees of the exempt fire-
41 men's benevolent fund of the county of Kings, or of the trustees of the
42 exempt firemen's benevolent fund of the borough of Queens, or of the
43 trustees of the exempt firemen's benevolent fund of the borough of
44 Staten Island, or of the trustees of the exempt firemen's benevolent
45 fund of the borough of the Bronx, it shall be the duty of the fire
46 commissioner, as such trustee, to pay to such beneficiaries from the
47 volunteer firemen's benevolent fund referred to in subparagraph a of
48 this paragraph, the same amounts as were being periodically paid to such
49 beneficiaries as of June thirtieth, nineteen hundred fifty-two.

50 d. Fund benefits of residents of firemen's home. It shall be the duty
51 of the fire commissioner, as such trustee, to pay from such fund
52 referred to in subparagraph a of this paragraph, the sum of ten dollars
53 monthly to each volunteer firefighter in residence at the volunteer
54 firemen's home at Hudson, who qualified for entrance into such home by
55 reason of service as a volunteer firefighter within the area now
56 included within the boundaries of the city. No other payments shall be

1 made from such fund to any such volunteer firefighter while in residence
2 at such home.

3 e. Eligibility of persons who applied for fund benefits after December
4 thirty-first, nineteen hundred fifty-one, and prior to the establishment
5 of fund. Upon the establishment of the volunteer firemen's benevolent
6 fund referred to in subparagraph a of this paragraph, the fire commis-
7 sioner or the fire commissioner's authorized subordinates shall investi-
8 gate and determine the need for benefits of all persons who, after
9 December thirty-first, nineteen hundred fifty-one and prior to the
10 establishment of such volunteer firemen's benevolent fund, applied for
11 benefits payable from any of the benevolent funds mentioned in subpara-
12 graph c of this paragraph, and who are receiving benefits therefrom at
13 the time of the establishment of such fund referred to in subparagraph a
14 of this paragraph. No such person shall be found to be in need of bene-
15 fits, nor shall any such person be paid any benefits from such last-men-
16 tioned fund unless the fire commissioner or the fire commissioner's
17 authorized subordinates shall determine that such person is indigent. In
18 the event that any such person is thus found to be in need of benefits,
19 the fire commissioner shall pay to such person from such last-mentioned
20 fund, the same periodic amounts as the trustees mentioned in subpara-
21 graph c of this paragraph were paying as of June thirtieth, nineteen
22 hundred fifty-two, to a person who had the same status and who was
23 receiving benefits from the borough or county fund which would be
24 currently liable for the payment of benefits to such person, but for the
25 provision of section 13-532 of the code of the preceding municipality.
26 It shall be the duty of the fire commissioner and the fire commis-
27 sioner's authorized subordinates to maintain and carry out continuously,
28 such investigation procedures as may be necessary to assure that bene-
29 fits will not be paid from such fund to any persons who are not in need
30 as herein specified.

31 f. Eligibility for benefits of persons applying therefor after estab-
32 lishment of fund. All persons applying after the establishment of the
33 volunteer firemen's benevolent fund for benefits payable therefrom shall
34 be investigated as to need by the fire commissioner or the fire commis-
35 sioner's authorized subordinates, and the eligibility of such persons
36 for benefits and the amount thereof to be awarded and paid to them shall
37 be determined by the fire commissioner or the fire commissioner's
38 authorized subordinates in accordance with the standards specified in
39 subparagraph e of this paragraph. Benefits shall be paid from such fund
40 to eligible persons in accordance with such determination and it shall
41 be the duty of the fire commissioner and the fire commissioner's subor-
42 dinates continuously to maintain and carry out as to such persons inves-
43 tigation procedures such as are described in subparagraph e of this
44 paragraph. The fire commissioner, as part of his or her investigation to
45 determine eligibility of persons for fund benefits, shall request from
46 the duly appointed representative of the volunteer firefighters in each
47 borough a report on such person's service and indigency. Such report
48 shall be solely for the information of the fire commissioner and shall
49 not be binding upon the fire commissioner in arriving at a determination
50 as to eligibility. In the event that such report is not submitted within
51 ten days from the date of request, the fire commissioner shall determine
52 eligibility on the basis of the facts developed in the fire commis-
53 sioner's own investigation.

54 g. Excess moneys. In the event that the benefits paid by the fire
55 commissioner, as trustee, during any period of one year beginning on the
56 first day of February shall not equal the sum of one hundred fifty thou-

1 sand dollars, the unexpended balance shall be paid into the general fund
2 of the city established pursuant to section one hundred nine of the
3 charter, except that the fire commissioner may retain in the volunteer
4 firemen's benevolent fund such amount as may be necessary to meet the
5 commitments of such fund until the revenue from the tax collected under
6 this chapter in the ensuing taxable year shall become available.

7 h. Depositories. The fire commissioner, as trustee, is hereby
8 empowered and directed to receive all moneys and assets belonging or
9 payable to such volunteer firemen's benevolent fund and shall deposit
10 all such moneys to the credit of such fund in banks and trust companies
11 to be selected by the fire commissioner.

12 i. Bond. The fire commissioner, as trustee of such fund, shall give a
13 bond with one or more sureties, in a sum sufficient for the faithful
14 performance of his or her duties, such bond to be approved as to amount
15 and adequacy, by the comptroller and filed in the comptroller's office.

16 j. Records. The officers and employees of the fire department who are
17 responsible for the maintenance of the books and records of the New York
18 fire department pension fund shall have charge of, and keep the accounts
19 of the fire commissioner as trustee of the volunteer firemen's benevo-
20 lent fund.

21 k. Reports. The fire commissioner, as trustee of such volunteer fire-
22 men's benevolent fund, shall submit to the mayor on or before the first
23 day of April of each year, a verified report in which shall be set forth
24 the account of the fire commissioner's proceedings as such trustee
25 during the twelve-month period ending on the thirty-first day of January
26 immediately preceding. Such report shall include a statement of all
27 receipts and disbursements on account of such benevolent fund, a list of
28 the names, residences and as nearly as possible, the ages of the benefi-
29 ciaries of such fund and the respective amounts paid to them during such
30 period.

31 l. Audit. The comptroller shall have the power to audit the books and
32 records of the fire commissioner as trustee of the volunteer firemen's
33 benevolent fund.

34 (b) The moneys received by the fire commissioner as trustee pursuant
35 to the provisions of paragraph three of subdivision (a) of this section
36 shall be expended by the fire commissioner only as provided in such
37 paragraph.

38 CHAPTER 10

39 OCCUPANCY TAX FOR LOW RENT HOUSING AND SLUM CLEARANCE

40 § 11-1001 Legislative findings. It is hereby declared that: In
41 certain areas of the city of Staten Island there exist unsanitary or
42 substandard housing conditions owing to overcrowding and concentration
43 of population, improper planning, excessive land coverage, lack of prop-
44 er light, air and space, unsanitary design and arrangement, or lack of
45 proper sanitary facilities; there is not an adequate supply of decent,
46 safe and sanitary dwelling accommodations for persons of low income;
47 these conditions cause an increase and spread of disease and crime and
48 constitute a menace to the health, safety, morals, welfare and comfort
49 of the citizens of the state, and impair economic values; these condi-
50 tions cannot be remedied by the ordinary operation of private enter-
51 prise; the clearance, replanning and reconstruction of the areas in
52 which unsanitary or substandard housing conditions exist and the provid-
53 ing of decent, safe and sanitary dwelling accommodations in such areas
54 and elsewhere for persons of low income are public uses and purposes for

1 which public money may be spent and private property acquired; therefore
2 the necessity in the public interest to enact the provisions of this
3 chapter is hereby declared, as a matter of legislative determination.

4 § 11-1002 Low rent housing and slum clearance; governmental functions.
5 It is hereby declared as a matter of legislative determination that the
6 clearing of areas in which the conditions described in section 11-1001
7 of this chapter exist and the furnishing of low rent housing for the
8 occupants thereof be hereafter a function of the government of the city
9 of Staten Island.

10 § 11-1003 Housing authority; agent for city. It is hereby declared
11 that the city housing authority be and it hereby is appointed as the
12 agent for the city of Staten Island to carry out the functions described
13 in section 11-1002 of this chapter.

14 § 11-1004 Definitions. When used in this chapter: a. The word "occu-
15 pation" means the use or possession for a consideration of any premises
16 under any lease, concession, permit, right of access, license to use, or
17 other agreement, for any gainful purpose.

18 b. The word "occupant" means any person who uses or possesses for a
19 consideration any premises under any lease, concession, permit, right of
20 access, license to use or other agreement for any gainful purpose.

21 c. The word "person" means an individual, co-partnership, society,
22 association, joint-stock company, corporation, estate, receiver, assign-
23 nee, trustee or any other person acting in a fiduciary capacity, whether
24 appointed by a court or otherwise, and any combination of individuals.

25 d. The word "premises" means any real property, or any part thereof,
26 any kind of space, or structure, except premises, as defined in this
27 subdivision, which are located in, upon, above or under any public
28 street, highway or public place, separately occupied in the city of
29 Staten Island by any person for his or her own use for gainful purpose
30 or by any concessionaire for such use for gainful purpose, whether by
31 ownership, lease, sublease, profit-sharing arrangement or otherwise.

32 e. The words "rental value" mean the amount of the consideration annu-
33 ally fixed or charged against any person for the occupation of any prem-
34 ises during the period of one year commencing on July sixteenth of the
35 year prior to the year in which the tax is due and terminating on July
36 fifteenth of the year in which the tax is due, or if computed on a basis
37 other than an annual basis, then the amount which would be equivalent to
38 an annual charge for the occupation of the premises.

39 f. The words "non-federal project" shall mean a project not aided or
40 financed in whole or in part by the federal government and where such
41 government does not reserve the right to approve or supervise the
42 construction or operation of the project.

43 g. The words "vending machine" mean a machine which vends or sells
44 tangible personal property; and shall also include but not be limited to
45 amusement devices, automatic sanitary facilities and all other machines
46 vending services.

47 § 11-1005 Imposition of the tax. a. To provide additional funds for
48 the purpose of fulfilling any contract to make capital or periodic
49 subsidies to the city housing authority in aid of a low rent or slum
50 clearance project or for the purpose of paying an indebtedness incurred
51 for a low rent or slum clearance project, every occupant of premises for
52 a year or any part thereof in excess of one month and fifteen days shall
53 pay annually to the commissioner of finance on June twentieth of each
54 year until and including June twentieth, nineteen hundred eighty-one, a
55 tax for each separate premises occupied at the rates computed, with

1 reference to the rental value for separate premises in the city of
2 Staten Island, as specified in the following table:

3 =====

4 When the rental	5 And not	6 The amount of
5 value is at least	more than	the tax shall be
7 \$1.00.....	\$1,000.99	\$2.00
8 1,001.00.....	2,000.99	4.00
9 2,001.00.....	3,000.99	6.00
10 3,001.00.....	4,000.99	8.00
11 4,001.00.....	5,000.99	10.00
12 5,001.00 and over.....		12.00

13 =====

14 b. Where the premises are occupied by vending machines which sell
15 tangible personal property the tax shall be computed as specified in the
16 following table:

17 =====

18 When the total value of the	19 The amount of
19 coins used in such vending	the tax shall be
20 machines is	
22 \$.01.....	\$.20
23 .02 to .14 incl.....	.40
24 .15 to .24 incl.....	1.00
25 .25 and over.....	2.00

26 =====

27 c. Where the premises are occupied by vending machines other than
28 those which sell tangible personal property the tax shall be computed as
29 specified in the following table:

30 =====

31 When the total value of the	32 The amount of
32 coins used in such vending	the tax shall be
33 machines is	
35 \$.01.....	\$.40
36 .02 and over.....	2.00

37 =====

38 § 11-1006 Exemptions. No tax as imposed by section 11-1005 of this
39 chapter shall be due or payable in any event for the occupation of any
40 of the premises described in this section to the extent so occupied and
41 no return need be made therefor pursuant to the provisions of this chap-
42 ter if any of the following conditions be demonstrated to the satisfac-
43 tion of the commissioner of finance:

- 44 1. That the premises are occupied by:
- 45 (a) Peddlers.
 - 46 (b) Bootblacks, excluding shoe shine machines or enterprises where
47 services other than the shining of shoes are rendered.
 - 48 (c) Operators of pushcarts.
 - 49 (d) Operators of kiosk or subway stands engaged solely and exclusively
50 in the sale of newspapers, magazines and periodicals, or any combination
51 thereof.
 - 52 (e) Operators of stoop line stands licensed pursuant to chapter two of
53 title twenty of the code of the preceding municipality.
 - 54 (f) Operators of newspaper stands licensed pursuant to chapter two of
55 title twenty of the code of the preceding municipality.

1 2. That the premises are occupied for a period of less than one month
2 and fifteen days during the period of one year preceding July fifteenth
3 of the year in which the tax is due.

4 3. That the premises are occupied by a co-operative corporation organ-
5 ized under the provisions of the cooperative corporations law of the
6 state of New York, or an agricultural co-operative organized under the
7 authority of the federal government.

8 4. That the premises are occupied by the state of New York, or any
9 public corporation, including a public corporation created pursuant to
10 agreement or compact with another state or the dominion of Canada,
11 improvement district or other political subdivision of the state where
12 it is the purchaser, user or consumer.

13 5. That the premises are occupied by the United Nations or other
14 world-wide international organizations of which the United States of
15 America is a member.

16 6. That the premises are occupied by a corporation, or association, or
17 trust, or community chest, fund or foundation, organized and operated
18 exclusively for religious, charitable, or educational purposes, or for
19 the prevention of cruelty to children or animals, no part of the net
20 earnings of which inures to the benefit of any private shareholder or
21 individual, and no substantial part of the activities of which is carry-
22 ing on propaganda, or otherwise attempting to influence legislation;
23 provided, however, that nothing in this subdivision shall include an
24 organization operated for the primary purpose of carrying on a trade or
25 business for profit, whether or not all of its profits are payable to
26 one or more organizations described in this subdivision.

27 7. That the premises are occupied by the United States of America
28 under circumstances which make the premises immune from taxation.

29 § 11-1007 Returns; payment of taxes. On or before the twentieth day
30 of June in each year, every person subject to a tax hereunder, shall
31 file a return with the commissioner of finance on the form to be
32 furnished by the commissioner of finance. At the time of filing such
33 return each person shall pay to the commissioner of finance the tax
34 imposed pursuant to this chapter. Such tax shall be due and payable
35 annually upon the twentieth day of June, whether or not a return is
36 filed.

37 § 11-1008 Presumption and burden of proof. It shall be presumed that
38 the occupant of any premises is subject to the tax until the contrary is
39 established, and the burden of proving that any occupation of premises
40 is exempt from taxation shall be upon such occupant.

41 § 11-1009 Determination of tax by the commissioner of finance. a. If
42 a return required by this chapter is not filed, or if a return when
43 filed is incorrect or insufficient and the maker fails to file a
44 corrected or sufficient return within twenty days after it is required
45 by a notice from the commissioner of finance, the commissioner of
46 finance shall tentatively determine the amount of tax due from such
47 information as he or she may be able to obtain and, if necessary, may
48 estimate the tax on the basis of external indices. The commissioner of
49 finance shall give notice of the amount so fixed to the person liable
50 for the tax. Unless the person against whom the tax is assessed shall
51 within fifteen days after the giving of such notice apply in writing to
52 the commissioner of finance for a hearing to correct such assessment,
53 such notice shall constitute a final and irrevocable determination of
54 the tax. After such hearing the commissioner of finance shall give
55 notice of his or her decision to the person liable for the tax.

1 b. Such determination and the decision of the commissioner of finance
2 upon any application to correct may be reviewed for error, illegality or
3 unconstitutionality or for any reason whatsoever by a proceeding under
4 article seventy-eight of the civil practice law and rules in the nature
5 of a certiorari proceeding if application therefor is made to the
6 supreme court within thirty days after the giving of notice thereof.
7 Whenever under this chapter a proceeding to review is instituted, it
8 shall not be allowed unless the amount of any tax sought to be reviewed,
9 with penalties thereon, if any, shall be first deposited with the
10 commissioner of finance, and an undertaking filed with the commissioner
11 of finance, in such amount and with such sureties as a justice of the
12 supreme court shall approve, to the effect that if such proceeding be
13 dismissed or the tax confirmed, such person will pay all costs and
14 charges which may accrue in the prosecution of such proceeding.

15 § 11-1010 Refunds. The commissioner of finance shall refund any tax
16 erroneously, illegally or unconstitutionally collected by or paid to him
17 or her, under protest in writing, stating in detail the ground or
18 grounds of the protest, if application therefor shall be made to the
19 commissioner of finance within one year from the payment thereof. For
20 like cause and within the same period a refund may be made on the initi-
21 ative of the commissioner of finance. Whenever a refund is made the
22 commissioner of finance shall state his or her reasons therefor in writ-
23 ing. A person shall not be entitled to a hearing in connection with any
24 application for a refund if he or she has already been given the oppor-
25 tunity of a hearing as provided in section 11-1009 of this chapter. No
26 refund shall be made of a tax or penalty paid pursuant to a determi-
27 nation of the commissioner of finance as provided in section 11-1009 of
28 this chapter, unless the commissioner of finance, after a hearing as in
29 said section provided, or of his or her own motion, shall have reduced
30 the tax or penalty, or it shall have been established in a proceeding
31 under article seventy-eight of the civil practice law and rules that
32 such determination was erroneous, illegal, unconstitutional, or other-
33 wise improper, in which event a refund with interest shall be made as
34 provided upon the determination of such proceeding. An application for
35 a refund made as provided in this chapter shall be deemed an application
36 for a revision of any tax or penalty complained of and the commissioner
37 of finance may receive evidence with respect thereto. After making his
38 or her determination the commissioner of finance shall give notice ther-
39 eof to the person interested who shall be entitled to review such deter-
40 mination by a proceeding under article seventy-eight of the civil prac-
41 tice law and rules if application to the supreme court be made therefor
42 within thirty days after such determination and an undertaking shall
43 first be filed with the commissioner of finance in such amount and with
44 such sureties as a justice of the supreme court shall approve, to the
45 effect that if such order be dismissed or the tax confirmed, the appli-
46 cant for the order will pay all costs and charges which may accrue in
47 the prosecution of the certiorari proceeding.

48 § 11-1011 Remedies exclusive. The remedies provided by section
49 11-1009 of this chapter shall be the exclusive remedies available to any
50 person for the review of tax liability imposed by this chapter; and no
51 determination of tax or determination on an application for refund shall
52 be enjoined or reviewed by an action for declaratory judgment, an action
53 for money had and received or by any legal or equitable action or
54 proceeding other than one under article seventy-eight of the civil prac-
55 tice law and rules.

1 § 11-1012 Reserves. In cases where the taxpayer has paid any tax
2 under written protest stating in detail the ground or grounds therefor,
3 or has applied for a refund and an order under article seventy-eight of
4 the civil practice law and rules to review a determination adverse to
5 the taxpayer on the taxpayer's application for refund, or has deposited
6 the amount of tax assessed in connection with a proceeding under section
7 11-1009 of this chapter the commissioner of finance shall set up appro-
8 priate reserves to meet any decision adverse to the city.

9 § 11-1013 Proceeding to recover tax. a. The commissioner of finance
10 may issue a warrant directed to any officer or employee of the depart-
11 ment of finance commanding him or her to levy upon and sell the real and
12 personal property of the person from whom the tax is due for the payment
13 of the amount thereof, with penalties, and the cost of executing the
14 warrants, and to return such warrant to the commissioner of finance and
15 to pay to him or her the money collected by virtue thereof, and in the
16 execution thereof such officer or employee shall have all the powers
17 conferred by law upon sheriffs, but he or she shall be entitled to no
18 fee or compensation in excess of the actual expenses paid in the
19 performance of such duty. If a warrant is returned not satisfied in
20 full, the commissioner of finance may from time to time issue new
21 warrants and shall also have the same remedies to enforce the amount due
22 pursuant to this section as if the city had recovered judgment therefor
23 and the execution thereon had been returned not satisfied. A copy of
24 any warrant issued may be filed with the county clerk in Richmond county
25 and thereupon such clerk shall enter in the judgment docket the name of
26 the person mentioned in the warrant and the amount of the tax and penal-
27 ty for which the warrant is issued and the date when such copy is filed.
28 Thereupon the amount of such warrant so docketed shall become a lien
29 upon the title to and interest in the real and personal property of the
30 person against whom the warrant is issued.

31 b. As an additional or alternate remedy the commissioner of finance
32 may request the corporation counsel to bring an action in the name of
33 the city to enforce payment of a tax or penalty which any person has
34 failed to pay.

35 c. The commissioner of finance, if he or she finds that the interests
36 of the city will not thereby be jeopardized, and upon such conditions as
37 the commissioner of finance may require, may release any property from
38 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
39 tions to tax, penalties and interest filed pursuant to subdivision a of
40 this section, and such release or vacating of the warrant may be
41 recorded in the office of any recording officer in which such warrant
42 has been filed. The clerk shall thereupon cancel and discharge as of the
43 original date of docketing the vacated warrant.

44 § 11-1014 Notices and limitation of time. a. Any notice authorized or
45 required under the provisions of this chapter may be given by mailing
46 the same to the person for whom it is intended in a post paid envelope
47 addressed to such person at the address given in the return filed by
48 such person pursuant to the provisions of this chapter or if no return
49 has been filed then to such address as may be obtainable. The mailing
50 of such notice shall be presumptive evidence of the receipt of the same
51 by the person to whom addressed. Any period of time which is determined
52 according to the provisions of this chapter by the giving of notice
53 shall commence to run from the date of mailing of such notice.

54 b. The provisions of the civil practice law and rules relative to
55 limitations of time for the enforcement of a civil remedy shall not
56 apply to any proceeding or action by the city taken to levy, appraise,

1 assess, determine or enforce the collection of any tax or penalty
2 provided by this chapter.

3 § 11-1015 Penalties and interest. a. Any person failing to file a
4 return or corrected return or to pay any tax or any portion thereof that
5 may be required by this chapter shall be subject to a penalty of five
6 times the amount of the tax due, plus five per centum of such tax for
7 each month of delay or fraction thereof, but the commissioner of
8 finance, if satisfied that the delay was excusable, may remit all or any
9 part of such penalty, but not interest. Penalties shall be paid to the
10 commissioner of finance and disposed of in the manner as other receipts
11 under this chapter. Unpaid penalties may be enforced in the same manner
12 as the tax imposed by this chapter.

13 b. Any person filing or causing to be filed any return, certificate,
14 affidavit or statement required or authorized by this chapter, which is
15 wilfully false and any person who shall fail to file a return or to
16 furnish a statement or other information as required under this chapter,
17 shall be guilty of a misdemeanor, punishment for which shall be a fine
18 of not more than one thousand dollars or imprisonment for not more than
19 one year, or both such fine and imprisonment.

20 A certificate of the commissioner of finance to the effect that a tax
21 has not been paid, that a return has not been filed, or that information
22 has not been supplied pursuant to the provisions of this chapter, shall
23 be prima facie evidence thereof.

24 § 11-1016 General powers of the commissioner of finance. In the
25 administration of this chapter, the commissioner of finance is author-
26 ized to:

27 1. Make and publish reasonable rules and regulations as may be neces-
28 sary for the exercise of the commissioner's powers and the performance
29 of the commissioner's duties under this chapter.

30 2. Assess the tax authorized to be imposed under this chapter.

31 3. Subpoena and require the attendance of witnesses and the production
32 of books, papers and other documents, and to take testimony and proofs,
33 under oath, with reference to any matter within the line of the commis-
34 sioner's official duty under this chapter.

35 4. Delegate the commissioner's functions hereunder to a deputy commis-
36 sioner of finance or other employee or employees of the department of
37 finance.

38 5. Prescribe methods for determining the rental values of premises,
39 the occupant of which is taxable pursuant to the provisions of this
40 chapter.

41 6. Require any person who receives or is entitled to receive a consid-
42 eration for the occupation of premises to furnish a statement to the
43 commissioner of finance, upon his or her request, containing information
44 as to the name of each occupant and rental value of each for the occupa-
45 tion of such premises.

46 7. Nothing contained in section 11-1017 of this chapter or in any
47 other provision of this chapter shall be construed to limit the authori-
48 ty of the commissioner of finance, hereby authorized, to furnish any
49 information, whether or not contained in a return, to the tax commission
50 or any other agency or department of the state of New York, or to the
51 treasury department of the United States, or to any agency of the city
52 of Staten Island, or to the district attorney of Richmond county.

53 8. To extend, for cause shown, the time for filing any return for a
54 period not exceeding twenty days.

55 § 11-1017 Returns to be secret. Except in accordance with judicial
56 order, or upon subpoena issued by a court of competent jurisdiction, it

1 shall be unlawful for the commissioner of finance or any officer or
2 employee of the city to divulge or make known in any manner, any infor-
3 mation contained in any return required under this chapter. Nothing in
4 this section shall be construed to prohibit the delivery to a taxpayer
5 of a certified copy of any return filed by the taxpayer, nor to prohibit
6 the publication of statistics so classified as to prevent the identifi-
7 cation of particular returns, or the inspection by the corporation coun-
8 sel of the return to any taxpayer who shall bring action or proceeding
9 to set aside or review the tax based thereon, or against whom an action
10 or proceeding has been instituted or is contemplated for the collection
11 of a tax or penalty. Returns shall be preserved for three years and
12 thereafter until the commissioner of finance orders them to be
13 destroyed.

14 § 11-1018 Disposition of revenue. All revenues and moneys heretofore
15 or hereafter collected resulting from the imposition of taxes and penal-
16 ties imposed by this chapter shall be deposited in the city treasury,
17 and credited to a separate account. During each fiscal year, an amount
18 not in excess of the amount of the subsidies to be made, and the amount
19 of indebtedness incurred for low rent or slum clearance projects to be
20 paid, during such fiscal year shall be charged to such account and cred-
21 ited to the general fund. No other payments shall be charged to such an
22 account. The mayor may contract to make capital or periodic subsidies
23 to the city housing authority in aid of a low rent project, or may incur
24 indebtedness for a low rent slum clearance project, but such periodic
25 subsidies shall not be contracted for a period longer than the life of
26 such project and in no event for more than fifty years. If the amount
27 of any such periodic subsidy shall be equal to or greater than the
28 interest on and the amounts required annually for the payment of the
29 indebtedness contracted by the authority on account of such project in
30 each year, such contract shall constitute a guarantee of the principal
31 of and the interest on such indebtedness, and such contract and the
32 payments thereunder may be pledged by the authority as security in addi-
33 tion to all other security which the authority may give for such bonds.
34 No such contract or periodic subsidies shall be made until the plan for
35 such project shall have been approved in the manner provided by the
36 public housing law.

37 § 11-1019 Application; construction. If any provision of this chapter
38 shall be adjudged by any court of competent jurisdiction to be invalid,
39 such judgment shall not affect, impair or invalidate the remainder ther-
40 eof, but shall be confined in its operation to the provision directly
41 involved in the controversy in which such judgment shall have been
42 rendered. This chapter shall be construed in conformity with the public
43 housing law.

44 CHAPTER 11

45 UTILITY TAX

46 § 11-1101 Definitions. When used in this chapter the following terms
47 shall mean or include:

- 48 1. "Person." Includes any individual, partnership, society, associ-
49 ation, joint-stock company, corporation, estate, receiver, lessee, trus-
50 tee, assignee, assignee of rents, referee, or any other person acting in
51 a fiduciary or representative capacity, whether appointed by a court or
52 otherwise, and any combination of individuals.
- 53 2. "Comptroller." The comptroller of the city.
- 54 3. "Commissioner of finance." The commissioner of finance of the
55 city.

1 4. "Gross income." All receipts received in or by reason of any sale
2 made including receipts from the sale of residuals and by-products,
3 except sale of real property, or service rendered in the city, including
4 cash, credits and property of any kind or nature, whether or not such
5 sale is made or such service is rendered for profit, without any
6 deduction therefrom on account of the cost of the property sold, the
7 cost of material used, labor or services, delivery costs, any other
8 costs whatsoever, interest or discount paid, or any other expense what-
9 soever; also profits from the sale of securities; also profits from the
10 sale of real property growing out of the ownership or use of or interest
11 in such property; also profit from the sale of personal property, other
12 than property of a kind which would properly be included in the invento-
13 ry of the taxpayer if on hand at the close of the taxable period for
14 which a return is made; also receipts from interest, dividends and
15 royalties without any deductions therefrom for any expense whatsoever
16 incurred in connection with the receipt thereof, and also gains or
17 profits from any source whatsoever; but shall not include gross income
18 of railroads from the transportation of freight, gross income from the
19 operation of hotels, multiple dwellings or office buildings by persons
20 in the business of operating or leasing sleeping or parlor railroad cars
21 or of operating railroads other than street surface, rapid transit,
22 subway and elevated railroads, or interest or dividends received from a
23 corporation by such persons or by persons subject to taxation under the
24 provisions of section one hundred eighty-six-a of the tax law. Rents or
25 rentals shall not be deemed to be gross receipts subject to tax, except
26 rents or rentals derived from facilities used in the public service;
27 provided, however, that in the case of persons in the business of oper-
28 ating or leasing sleeping or parlor railroad cars or of operating rail-
29 roads other than street surface, rapid transit, subways and elevated
30 railroads, such last-mentioned rents or rentals derived from other such
31 utilities with respect to the operation of terminal facilities shall not
32 be deemed to be gross income subject to tax except for the amount in
33 excess of a user proportion of New York city real property and special
34 franchise taxes and expenses of maintenance and operation. Notwithstand-
35 ing anything to the contrary in this subdivision or any other provision
36 of law, for taxable periods beginning on or after August first, two
37 thousand two, gross income shall include eighty-four percent of charges
38 for the provision of mobile telecommunications services where the place
39 of primary use of the mobile telecommunications services is within the
40 territorial limits of the city except to the extent that such inclusion
41 would result in the taxation of charges for the provision of mobile
42 telecommunications services that is prohibited by federal law.

43 5. "Gross operating income." Includes receipts received in or by
44 reason of any sale made or service rendered, of the property and
45 services specified in subdivision seven of this section in the city,
46 including cash, credits and property of any kind or nature, whether or
47 not such sale is made or such service is rendered for profit, without
48 any deduction therefrom on account of the cost of the property sold, the
49 cost of materials used, labor or other services, delivery costs or any
50 other costs whatsoever, interest or discount paid or any other expenses
51 whatsoever, provided however, that if a vendor of utility service
52 purchases gas, electricity, steam, water or refrigeration or gas, elec-
53 tric, steam, water or refrigeration service in a transaction the
54 receipts from which are not subject to the tax imposed under this chap-
55 ter, the gross operating income derived by such vendor of utility
56 service from the resale of such gas, electricity, steam, water or

1 refrigeration or such gas, electric, steam, water or refrigeration
2 service to its tenants as an incident to such vendor's activity of rent-
3 ing premises to tenants, shall, if subject to the tax imposed under this
4 chapter on such vendor, be conclusively presumed to be equal to the
5 amount of such vendor's cost, including any associated transportation
6 cost, for the purchase of such gas, electricity, steam, water or refrig-
7 eration or gas, electric, steam, water or refrigeration service for
8 resale by such vendor. Notwithstanding anything to the contrary in this
9 subdivision or any other provision of law, for taxable periods beginning
10 on or after August first, two thousand two, gross operating income shall
11 include eighty-four percent of charges for the provision of mobile tele-
12 communications services where the place of primary use of the mobile
13 telecommunications services is within the territorial limits of the city
14 except to the extent that such inclusion would result in the taxation of
15 charges for the provision of mobile telecommunications services that is
16 prohibited by federal law.

17 6. "Utility." Every person subject to the supervision of the depart-
18 ment of public service and, for taxable periods beginning on or after
19 August first, two thousand two, every person, whether or not supervised
20 by the department of public service, eighty percent or more of the gross
21 receipts of which consists of charges for the provision of mobile tele-
22 communications services to customers. Notwithstanding anything to the
23 contrary in any other provision of law, for purposes of this subdivi-
24 sion, the gross receipts of a person shall not include the gross
25 receipts of any other related or unrelated person.

26 7. "Vendor of utility services." Every person not subject to the
27 supervision of the department of public service, and not otherwise a
28 utility as defined in subdivision six of this section, who furnishes or
29 sells gas, electricity, steam, water or refrigeration, or furnishes or
30 sells gas, electric, steam, water, refrigeration or telecommunications
31 services, or who operates omnibuses, whether or not such operation is on
32 the public streets; regardless of whether such furnishing, selling or
33 operation constitutes the main activity of such person or is merely
34 incidental thereto.

35 8. "Return." Includes any return filed or required to be filed as
36 provided under this chapter.

37 9. "Telecommunications services." Telephony or telegraphy, or tele-
38 phone or telegraph service, including, but not limited to, any trans-
39 mission of voice image, data, information and paging, through the use of
40 wire, cable, fiber-optic, laser, microwave, radio wave, satellite or
41 similar media or any combination thereof and shall include services that
42 are ancillary to the provision of telephone service, such as, but not
43 limited to, dial tone, basic service, directory information, call
44 forwarding, caller-identification, call waiting and the like, and also
45 include any equipment and services provided therewith; provided, howev-
46 er, that the definition of telecommunication services shall not apply to
47 separately stated charges for any service that alters the substantive
48 content of the message received by the recipient from that sent; and
49 that such services shall not include (i) cable television services that
50 consist of the transmitting to subscribers of programs broadcast by one
51 or more television or radio stations or any other programs originated by
52 any person by means of wire, cable, microwave or any other means or (ii)
53 air safety and navigation services where such telecommunication service
54 is provided by an organization, at least ninety percent of which, if a
55 corporation, ninety percent of the voting stock of which, is owned,
56 directly or indirectly, by air carriers, and which organization's prin-

1 cipal function is to fulfill the requirements of (a) the federal
2 aviation administration, or the successor thereto, or (b) the interna-
3 tional civil aviation organization, or the successor thereto, relating
4 to the existence of a communication system between aircraft and
5 dispatcher, aircraft and air traffic control or ground station and
6 ground station, or any combination of such, for the purposes of air
7 safety and navigation.

8 10. "Limited fare omnibus company." An omnibus company whose principal
9 source of revenue is derived from the daily transportation of passengers
10 wholly within the city on a route or zoned portion thereof pursuant to a
11 franchise agreement with, or consent of, the city, at the following
12 fares: for the period from August first, nineteen hundred sixty-five
13 until and including December thirty-first, nineteen hundred seventy-
14 five, at a fare not in excess of thirty-five cents per passenger; for
15 the period from January first, nineteen hundred seventy-six until and
16 including June twenty-seventh, nineteen hundred eighty, at a fare not in
17 excess of fifty cents per passenger; for the period from June twenty-
18 eighth, nineteen hundred eighty until and including August thirty-first,
19 nineteen hundred eighty, at a fare not in excess of sixty cents per
20 passenger; for the period from September first, nineteen hundred eighty
21 and thereafter, at a fare not in excess of the regular rate of fare
22 charged per passenger for comparable service both local and express on
23 regular rapid transit and surface lines operated by the New York city
24 transit authority. For purposes of this subdivision, the term "regular
25 rate of fare" shall be exclusive of fares for special train or bus
26 service, or additional charges for bridge or tunnel tolls or transfer
27 privileges.

28 11. "Commuter service." Mass transportation service, exclusive of
29 limited stop service to airports, racetracks or any place where enter-
30 tainment, amusement or sport activities are held or where recreational
31 facilities are supplied, provided pursuant to a franchise with, or
32 consent of, the city of New York.

33 12. "Tax appeals tribunal." The tax appeals tribunal established by
34 section one hundred sixty-eight of the charter of the preceding munici-
35 pality.

36 13. "Base Year." Means the calendar year ending immediately prior to
37 the calendar year containing the taxable period or periods for which a
38 return is required to be filed pursuant to the provisions of section
39 11-1104 of this chapter.

40 14. "Taxable Period." Means the period for which a return is required
41 to be filed pursuant to the provisions of this chapter and shall be
42 either (i) the semiannual period beginning the first day of January or
43 the first day of July of the calendar year, or (ii) the calendar month.

44 15. "Premises." Means for purposes of section 11-1102 of this chapter,
45 any real property or part thereof, and any structure thereon or space
46 therein.

47 16. "Tenant." Means a person paying, or required to pay, rent for
48 premises as a lessee, sublessee, licensee or concessionaire.

49 17. "Mobile telecommunications services." Telecommunications services
50 that are commercial mobile radio services.

51 18. "Commercial mobile radio services." Commercial mobile radio
52 services as defined in section 20.3 of title forty-seven of the Code of
53 Federal Regulations as in effect on June first, nineteen hundred nine-
54 ty-nine.

55 19. "Charges for mobile telecommunications services." Any charge for,
56 or associated with, the provision of mobile telecommunications services

1 and any charge for, or associated with, a service provided as an adjunct
2 to mobile telecommunications services that is billed to the customer by
3 or for the customer's home service provider regardless of whether indi-
4 vidual transmissions originate or terminate within the licensed service
5 area of the home service provider.

6 20. "Place of primary use." The street address representative of where
7 the customer's use of the mobile telecommunications services primarily
8 occurs, which must be (i) the residential street address or the primary
9 business street address of the customer; and (ii) within the licensed
10 service area of the home service provider.

11 21. "Licensed service area." The geographic area in which the home
12 service provider is authorized by law or contract to provide commercial
13 mobile radio services to the customer.

14 22. "Home service provider." The facilities-based carrier or reseller
15 with which the customer contracts for the provision of mobile telecommu-
16 nications services.

17 23. "Customer." The person or entity that contracts with the home
18 service provider for mobile telecommunications services. If the end user
19 of mobile telecommunications services is not the contracting party,
20 then, solely for purposes of subdivision twenty of this section, the
21 term "customer" shall mean the end user of the mobile telecommunications
22 services. The term customer does not include a reseller of mobile tele-
23 communications services, or a serving carrier under an arrangement to
24 serve the customer outside the home service provider's licensed service
25 area.

26 24. "Reseller." A provider who purchases telecommunications services
27 from another telecommunications service provider and then resells, uses
28 as a component part of, or integrates the purchased services into a
29 mobile telecommunications service. The term reseller does not include a
30 serving carrier with which a home service provider arranges for the
31 services to its customers outside the home service provider's licensed
32 service area.

33 25. "Serving carrier." A facilities-based carrier providing mobile
34 telecommunications service to a customer outside a home service provid-
35 er's or reseller's licensed service area.

36 26. "Cogeneration facility" means (i) a facility that was in operation
37 before January first, two thousand four and that produces electric ener-
38 gy and steam or other forms of useful energy, such thermal energy, that
39 are supplied to and used by tenants and/or occupants of a cooperative
40 corporation for industrial, commercial, or residential heating or cool-
41 ing purposes; or (ii) a cogeneration facility, as defined in clause (i)
42 of this subparagraph, that has been replaced by any other facility used
43 to generate electricity and steam or other forms of useful energy, such
44 as thermal energy, when such electricity and steam or other forms of
45 useful energy, such as thermal energy, are supplied to and used by
46 tenants and/or occupants of a cooperative corporation.

47 27. "Enhanced zip code." A United States postal zip code of nine or
48 more digits.

49 28. "Cooperative corporation" means a corporation organized under the
50 laws of New York, at least some of the stockholders of which are enti-
51 tled, by reason of the stockholders' ownership interest of stock in the
52 corporation, to occupy for dwelling purposes an apartment in a building
53 owned by the corporation pursuant to a lease or occupancy agreement with
54 the corporation.

55 § 11-1102 Imposition of excise tax. a. Notwithstanding any other
56 provisions of law to the contrary, for the privilege of exercising its

1 franchise or franchises, or of holding property, or of doing business in
2 the city, on or after August first, nineteen hundred sixty-five, every
3 utility shall pay to the commissioner of finance an excise tax which
4 shall be equal to two per centum of its gross income until and including
5 December thirty-first, nineteen hundred sixty-five, and shall be equal
6 to two and thirty-five hundredths per centum thereafter, except that the
7 rate as to persons engaged in the business of operating omnibuses with a
8 carrying capacity of more than seven persons shall be one per centum
9 until and including December thirty-first, nineteen hundred sixty-five,
10 and one and seventeen hundredths per centum thereafter, and except that
11 as to persons engaged in the business of operating or leasing sleeping
12 and parlor railroad cars or of operating railroads other than street
13 surface, rapid transit, subway and elevated railroads, the rate shall be
14 three per centum until and including December thirty-first, nineteen
15 hundred sixty-five, and three and fifty-two one hundredths per centum
16 thereafter, and every vendor of utility services in the city shall pay
17 to the commissioner of finance an excise tax which shall be equal to two
18 per centum of its gross operating income until and including December
19 thirty-first, nineteen hundred sixty-five, and shall be equal to two and
20 thirty-five one hundredths per centum thereafter, except that as to
21 persons engaged in the business of operating omnibuses with a carrying
22 capacity of more than seven persons other than omnibuses used exclu-
23 sively for the transportation of children to and from schools operated
24 under contracts made pursuant to the provisions of the education law,
25 and not subject to the jurisdiction of the department of public service,
26 the rate shall be one per centum of its gross operating income until and
27 including December thirty-first, nineteen hundred sixty-five, and one
28 and seventeen hundredths per centum thereafter. Such tax shall be in
29 addition to any and all other taxes, charges and fees imposed by any
30 other provision of law and shall be paid at the time and in the manner
31 provided in this section, but any person to the extent that it is
32 subject to tax pursuant to this section shall not be liable to any tax
33 under any other of the local laws of the preceding municipality as it
34 existed January first, nineteen hundred ninety-four enacted pursuant to
35 chapter ninety-three of the laws of nineteen hundred sixty-five as
36 amended, or the former article two-b of the general city law, with
37 respect to its gross income or gross operating income taxed pursuant to
38 this section, as the case may be.

39 b. So much of the gross income of a utility shall be excluded from the
40 measure of the tax imposed by this chapter, as is derived from sales for
41 resale to vendors of utility services validly subject to the tax imposed
42 by this chapter, except to the extent that such gross income is derived
43 from sales of gas, electricity, steam, water or refrigeration or sales
44 or rendering of gas, electric, steam, water or refrigeration service to
45 a vendor of utility services for resale to its tenants as an incident to
46 such vendor's activity of renting premises to tenants.

47 c. For the purpose of proper administration of this chapter and to
48 prevent evasion of the tax imposed by this section, it shall be presumed
49 that the gross income or gross operating income of any person taxable
50 pursuant to this section is taxable and is derived from business
51 conducted wholly within the territorial limits of the city until the
52 contrary is established, and the burden of proving that any part of its
53 gross income or gross operating income is not so derived shall be upon
54 such person. Notwithstanding anything to the contrary in this subdivi-
55 sion or in any provision of section twenty-b of the general city law or
56 any other provision of law, for taxable periods beginning on or after

1 August first, two thousand two, gross income and gross operating income
2 derived from the provision of mobile telecommunications services shall
3 be deemed to be derived from business conducted wholly within the terri-
4 torial limits of the city where the place of primary use of the mobile
5 telecommunications services is within the territorial limits of the
6 city.

7 d. The tax imposed by this chapter shall be inapplicable to the gross
8 income received by a limited fare omnibus company until and including
9 August thirty-first, nineteen hundred eighty. Thereafter, such tax shall
10 be applicable to such gross income received as follows: (1) for gross
11 income received from commuter service from September first, nineteen
12 hundred eighty until and including December thirty-first, nineteen
13 hundred eighty-three, the rate of tax shall be one hundredth of one per
14 centum; (2) for gross income received from commuter service from January
15 first, nineteen hundred eighty-four and thereafter, the rate of tax
16 shall be one tenth of one per centum; and (3) for gross income received
17 from all other sources, the rate of tax shall be as provided in subdivi-
18 sion a of this section.

19 e. The gross operating income of a vendor of utility services derived
20 from sales to its tenants of gas, electricity, steam, water, or refrig-
21 eration or sales or rendering to its tenants of gas, electric, steam,
22 water or refrigeration service, as an incident to such vendor's activity
23 of renting premises to tenants, shall be excluded from the measure of
24 the tax imposed by this chapter, but, with regard to sales to its
25 tenants of gas, electricity, or steam or sales or rendering to its
26 tenants of gas, electric or steam service, only to the extent that the
27 tax imposed by this chapter has been validly paid or accrued with
28 respect to a prior sale of such gas, electricity or steam or sale or
29 rendering of gas, electric or steam service.

30 f. (1) Notwithstanding anything contained in this chapter to the
31 contrary, for taxable periods beginning on or after August first, two
32 thousand two, if a partnership is subject to the tax imposed by this
33 chapter as a utility or as a vendor of utility services, no person who
34 is a partner in such a partnership shall be subject to the tax imposed
35 by this chapter on such partner's distributive share of the gross income
36 or gross operating income of such partnership.

37 (2) If a person is a partner in a partnership subject to the tax
38 imposed by this chapter and that person is separately subject to the
39 supervision of the state department of public service or is a utility or
40 a vendor of utility services based on its activities exclusive of any
41 activities of such partnership, for taxable periods beginning on or
42 after August first, two thousand two, such person shall be subject to
43 the tax imposed by this chapter only on its separate gross income or
44 separate gross operating income, which shall not include such person's
45 distributive share of the gross income or gross operating income of such
46 partnership.

47 (3) For purposes of this subdivision, the term "partner" shall include
48 a person who receives a distributive share of the gross income or gross
49 operating income, directly or indirectly through one or more tiers of
50 partnerships, of a partnership subject to the tax imposed by this chap-
51 ter.

52 g. Notwithstanding anything else contained in this chapter to the
53 contrary, for the taxable periods beginning on or after January first,
54 two thousand six, if a cooperative corporation containing at least
55 fifteen hundred apartments furnishes or sells electricity, steam,
56 refrigeration or water, or furnishes or sells electric, steam, refriger-

1 ation or water services that are (i) metered, (ii) generated or produced
2 by a cogeneration facility owned or operated by such cooperative corpo-
3 ration, and (iii) such electricity, steam, refrigeration or water and/or
4 electric, steam, refrigeration or water services are distributed to
5 tenants and/or occupants of a cooperative corporation, then such cooper-
6 ative corporation shall pay to the commissioner of finance an excise tax
7 which shall be equal to zero per centum of its gross income or its gross
8 operating income, as the case may be.

9 § 11-1103 Records to be kept. Every person subject to tax pursuant to
10 this chapter shall keep records of its business and in such form as the
11 commissioner of finance may by regulation require. Such records shall
12 be offered for inspection and examination at any time upon demand by
13 such commissioner or his or her duly authorized agent or employee and
14 shall be preserved for a period of three years, except that the commis-
15 sioner of finance may consent to their destruction within that period or
16 may require that they be kept longer.

17 § 11-1104 Returns; requirements as to. a. Except as otherwise
18 provided in subdivision e of this section with respect to taxable peri-
19 ods beginning after nineteen hundred ninety-eight, on or before the
20 twenty-fifth day of September, nineteen hundred sixty-five, and on or
21 before the twenty-fifth day of every month thereafter, every person
22 subject to tax pursuant to this chapter shall file a return with the
23 commissioner of finance on a form to be prescribed by such commissioner.
24 Such return shall state the gross income or gross operating income as
25 the case may be for the preceding calendar month, and shall contain any
26 other data, information or other matter which the commissioner of
27 finance may require to be included therein. The commissioner of finance
28 may require at any further time a supplemental return, which shall
29 contain any data upon such matters as such commissioner may specify.
30 Notwithstanding the provisions of this subdivision and notwithstanding
31 the provisions of subdivision e of this section, a vendor of utility
32 services, all of whose gross operating income is excluded from the meas-
33 ure of the tax imposed by this chapter pursuant to subdivision e of
34 section 11-1102 of this chapter during any taxable period, shall not be
35 required to file a return for such taxable period, provided, however,
36 that on or before the first day of September of each year, any such
37 vendor of utility services who was not required to file a return for any
38 taxable period during the period covered by the statement required to be
39 filed by such date pursuant to subdivision a of section 11-208.1 of this
40 title shall file an information return covering such period in such form
41 and containing such information as the commissioner of finance may spec-
42 ify.

43 b. The commissioner of finance may require amended returns to be filed
44 within twenty days after notice and to contain the information specified
45 in the notice.

46 c. If a return required by this chapter is not filed or if a return
47 when filed is incorrect or insufficient on its face, the commissioner of
48 finance shall take the necessary steps to enforce the filing of such
49 return or of a corrected return.

50 d. Where the state tax commission changes or corrects a taxpayer's
51 sales and compensating use tax liability with respect to the purchase or
52 use of items for which a sales or compensating use tax credit against
53 the tax imposed by this chapter was claimed, the taxpayer shall report
54 such change or correction to the commissioner of finance within ninety
55 days of the final determination of such change or correction, or as
56 required by the commissioner of finance, and shall concede the accuracy

1 of such determination or state wherein it is erroneous. Any taxpayer
2 filing an amended return or report with the state tax commission relat-
3 ing to the purchase or use of such items shall also file within ninety
4 days thereafter a copy of such amended return or report with the commis-
5 sioner of finance.

6 e. With respect to taxable periods beginning after nineteen hundred
7 ninety-eight, notwithstanding the provisions of subdivision a of this
8 section, if the amount of tax imposed pursuant to this section on any
9 person in the base year does not exceed one hundred thousand dollars,
10 the taxable period for which such person is required to file a return is
11 the semiannual period described in paragraph i of subdivision fourteen
12 of section 11-1101 of this chapter, and such person shall file a return
13 for each semiannual period of the first calendar year beginning after
14 the base year on or before the twenty-fifth day of the month following
15 the end of each such taxable period. Such return shall be filed with the
16 commissioner of finance on a form to be prescribed by such commissioner.

17 Such return shall state the gross income or gross operating income as
18 the case may be for the preceding taxable period and shall contain any
19 other data, information or other matter which the commissioner of
20 finance may require to be included therein. The commissioner of finance
21 may require at any further time a supplemental return, which shall
22 contain any data upon such matters as such commissioner may specify. For
23 the purposes of this subdivision, if the amount of tax imposed pursuant
24 to this chapter on such person in the base year is for a period of less
25 than one year, the amount of tax imposed on such person shall be annual-
26 ized by multiplying the amount of tax imposed by a fraction, the denomi-
27 nator of which is the number of months or parts thereof during which the
28 person was subject to the tax imposed pursuant to this chapter and the
29 numerator of which is twelve. Notwithstanding the provisions of this
30 subdivision, a person that first becomes subject to the tax pursuant to
31 this chapter shall file a return for each month in the calendar year in
32 which such person first becomes subject to such tax in accordance with
33 subdivision a of this section.

34 § 11-1105 Payment of tax; credit for certain sales and compensating
35 use taxes. a. At the time of filing each return, as provided under
36 section 11-1104 of this chapter, each person taxable pursuant to this
37 chapter shall pay to the commissioner of finance the taxes imposed by
38 this chapter upon its gross income or gross operating income, as the
39 case may be, for the taxable period covered by such return, less any
40 credit to which such person may be entitled under subdivision b of this
41 section. Such taxes shall be due and payable on the last day on which
42 the return for such period is required to be filed, regardless of wheth-
43 er a return is filed or whether the return which is filed correctly
44 indicates the amount of tax due.

45 b. (1) A taxpayer shall be allowed a credit against the taxes imposed
46 by this chapter for the amount of sales and compensating use taxes
47 imposed by section eleven hundred seven of the tax law which became
48 legally due on or after, and which were paid on or after, July first,
49 nineteen hundred seventy-seven but within the taxable period for which a
50 credit is claimed, with respect to the purchase or use by the taxpayer
51 of machinery or equipment for use or consumption directly and predomi-
52 nantly in the production of steam for sale, by manufacturing, process-
53 ing, generating, assembling, refining, mining or extracting, or tele-
54 phone central office equipment or station apparatus or comparable
55 telegraph equipment for use directly and predominantly in receiving at
56 destination or initiating and switching telephone or telegraph communi-

1 cation, but not including parts with a useful life of one year or less
2 or tools or supplies used in connection with such machinery, equipment
3 or apparatus.

4 (2) The amount of the credit provided in paragraph one of this subdi-
5 vision shall be limited to the amount of such sales and compensating use
6 taxes paid during the taxable period covered by the return under this
7 chapter on which the credit is taken less the amount of any credit or
8 refund of such sales and compensating use taxes during such taxable
9 period. If such credit exceeds the amount of tax under this chapter
10 payable for the taxable period in question, such excess amount shall be
11 refunded or credited except in the case of a vendor of utility services
12 who is entitled to a credit and/or refund for such sales and compensat-
13 ing use taxes under chapter five or six of this title. The credit
14 allowed under this subdivision shall be deemed an erroneous payment of
15 tax by the taxpayer to be credited or refunded in accordance with the
16 provisions of section 11-1108 of this chapter, except as otherwise
17 provided in this paragraph.

18 (3) Where the taxpayer receives a refund or credit of any tax imposed
19 under section eleven hundred seven of the tax law for which the taxpayer
20 has claimed a credit under the provisions of this subdivision in a prior
21 taxable period, the amount of such refund or credit shall be added to
22 the tax imposed by section 11-1102 of this chapter of the taxable period
23 in which such refund or credit of tax under section eleven hundred seven
24 of the tax law is received.

25 § 11-1105.1 Credit for rebates of charges for energy. A taxpayer shall
26 be allowed a credit against the amount of taxes imposed by this chapter
27 for the amount of special rebates and discounts made in accordance with
28 the provisions of section 22-602 of the code of the preceding municipi-
29 pality and for the amount of special rebates and discounts made in
30 accordance with the provisions of section twenty-five-bb of the general
31 city law. Such credit shall be applied against the amount of tax other-
32 wise required to be paid as provided in subdivision a of section 11-1105
33 of this chapter and shall be claimed for the taxable period immediately
34 succeeding the taxable period in which such rebates or discounts are
35 made.

36 § 11-1105.2 Relocation and employment assistance program credit. (a) A
37 taxpayer that has obtained the certifications required by chapter six-B
38 of title twenty-two of the code of the preceding municipality shall be
39 allowed a credit against the tax imposed by this chapter, provided,
40 however, that a taxpayer that is a vendor of utility services shall not
41 be allowed the credit against the tax imposed by this chapter unless it
42 elects as provided in subdivision (d) of section 22-622 of the code of
43 the preceding municipality to take the credit against the tax imposed by
44 this chapter. The amount of the credit shall be the amount determined by
45 multiplying one thousand dollars or, in the case of an eligible business
46 that has obtained pursuant to chapter six-B of such title twenty-two a
47 certification of eligibility dated on or after July first, two thousand,
48 for a relocation to eligible premises located within a revitalization
49 area defined in subdivision (n) of section 22-621 of the code of the
50 preceding municipality, three thousand dollars, by the number of eligi-
51 ble aggregate employment shares maintained by the taxpayer during the
52 calendar year with respect to particular premises to which the taxpayer
53 has relocated; provided, however, with respect to a relocation for which
54 no application for a certificate of eligibility is submitted prior to
55 July first, two thousand three, to eligible premises that are within a
56 revitalization area, if the date of such relocation as determined pursu-

1 ant to subdivision (j) of section 22-621 of the code of the preceding
2 municipality is on or after January first, nineteen hundred ninety-nine,
3 and before July first, two thousand, the amount to be multiplied by the
4 number of eligible aggregate employment shares shall be one thousand
5 dollars; provided, however, that no credit shall be allowed for the
6 relocation of any retail activity or hotel services; and provided that
7 in the case of an eligible business that has obtained pursuant to chap-
8 ter six-B of such title twenty-two certifications of eligibility for
9 more than one relocation, the portion of the total amount of eligible
10 aggregate employment shares to be multiplied by the dollar amount speci-
11 fied in this subdivision for each such certification of a relocation
12 shall be the number of total attributed eligible aggregate employment
13 shares determined with respect to such relocation pursuant to subdivi-
14 sion (o) of section 22-621 of the code of the preceding municipality.
15 For purposes of this subdivision, the terms "eligible aggregate employ-
16 ment shares", "relocate", "retail activity" and "hotel services" shall
17 have the meanings ascribed by section 22-621 of the code of the preced-
18 ing municipality.

19 (b) The credit allowed under this subdivision with respect to eligible
20 aggregate employment shares maintained with respect to particular prem-
21 ises to which the taxpayer has relocated shall be allowed for the taxa-
22 ble periods in the first calendar year during which such eligible aggre-
23 gate employment shares are maintained with respect to such premises and
24 for taxable periods in any of the twelve succeeding calendar years
25 during which eligible aggregate employment shares are maintained with
26 respect to such premises, provided that the credit allowed for the taxa-
27 ble periods in the twelfth succeeding calendar year shall be calculated
28 by multiplying the number of eligible aggregate employment shares main-
29 tained with respect to such premises in the twelfth succeeding calendar
30 year by the lesser of one and a fraction the numerator of which is the
31 number of days in the calendar year of relocation less the number of
32 days the eligible business maintained employment shares in the eligible
33 premises in the calendar year of relocation and the denominator of which
34 is the number of days in such twelfth succeeding year during which such
35 eligible aggregate employment shares are maintained with respect to such
36 premises. The credit allowable under this section shall be applied
37 against the amount of tax otherwise required to be paid for the last
38 taxable period of the calendar year as provided in subdivision a of
39 section 11-1105 of this chapter, shall be deducted from the taxpayer's
40 tax prior to the deduction of the credit provided in subdivision b of
41 such section, and shall be claimed on the tax return for the last taxa-
42 ble period of the calendar year. Except as provided in subdivision (c)
43 of this section, if the amount of the credit allowable under this subdivi-
44 sion for any calendar year exceeds the tax imposed for such last taxa-
45 ble period in such calendar year, the excess may be carried over, in
46 order, to the immediately succeeding taxable periods in the five imme-
47 diately succeeding calendar years and, to the extent not previously
48 allowable, shall be applied against the tax otherwise required to be
49 paid for such periods. Such carryover credit shall be deducted from the
50 taxpayer's tax prior to the deduction of the credit provided in subdivi-
51 sion b of section 11-1105 of this chapter. With respect to the last
52 taxable period in a calendar year, the credit for such calendar year
53 shall be taken prior to any carryover credit. If in any period there are
54 carryover credits available from more than one year, such credits shall
55 be applied against the tax in the order in which they were earned with
56 the oldest available credit being taken first.

1 (c) In the case of a taxpayer that has obtained a certification of
2 eligibility pursuant to chapter six-B of title twenty-two of the code of
3 the preceding municipality dated on or after July first, two thousand
4 for a relocation to eligible premises located within the revitalization
5 area defined in subdivision (n) of section 22-621 of the code of the
6 preceding municipality, the credits allowed under this section, or in
7 the case of a taxpayer that has relocated more than once, the portion of
8 such credits attributed to such certification of eligibility pursuant to
9 subdivision (a) of this section, against the tax imposed by this chapter
10 for the calendar year of such relocation and for the four calendar years
11 immediately succeeding the calendar year of such relocation, shall be
12 deemed to be erroneous payments of tax by the taxpayer to be credited or
13 refunded, in accordance with the provisions of section 11-1108 of this
14 chapter. For such calendar years, such credits or portions thereof may
15 not be carried over to any succeeding taxable year; provided, however,
16 that this subdivision shall not apply to any relocation for which an
17 application for a certification of eligibility was not submitted prior
18 to July first, two thousand three unless the date of such relocation is
19 on or after July first, two thousand.

20 § 11-1105.3 Lower Manhattan relocation employment assistance credit.
21 (a) A taxpayer that has obtained the certifications required by chapter
22 six-C of title twenty-two of the code of the preceding municipality
23 shall be allowed a credit against the tax imposed by this chapter,
24 provided, however, that a taxpayer that is a vendor of utility services
25 shall not be allowed the credit against the tax imposed by this chapter
26 unless it elects as provided in subdivision (d) of section 22-624 of the
27 code of the preceding municipality to take the credit against the tax
28 imposed by this chapter. The amount of the credit shall be the amount
29 determined by multiplying three thousand dollars by the number of eligi-
30 ble aggregate employment shares maintained by the taxpayer during the
31 calendar year with respect to eligible premises to which the taxpayer
32 has relocated; provided, however, that no credit shall be allowed for
33 the relocation of any retail activity or hotel services. For purposes of
34 this subdivision, the terms "eligible aggregate employment shares",
35 "eligible premises", "relocate", "retail activity" and "hotel services"
36 shall have the meanings ascribed by section 22-623 of the code of the
37 preceding municipality.

38 (b) The credit allowed under this section with respect to eligible
39 aggregate employment shares maintained with respect to eligible premises
40 to which the taxpayer has relocated shall be allowed for the taxable
41 period in which the relocation to eligible premises takes place and for
42 succeeding taxable periods in the calendar year of the relocation and in
43 any of the twelve succeeding calendar years during which eligible aggre-
44 gate employment shares are maintained with respect to eligible premises,
45 provided that the credit allowed for the taxable periods in the twelfth
46 succeeding calendar year shall be calculated by multiplying the number
47 of eligible aggregate employment shares maintained with respect to
48 eligible premises in the twelfth succeeding calendar year by the lesser
49 of one and a fraction the numerator of which is the number of days in
50 the calendar year of relocation less the number of days the taxpayer
51 maintained employment shares in eligible premises in the calendar year
52 of relocation and the denominator of which is the number of days in such
53 twelfth succeeding calendar year during which such eligible aggregate
54 employment shares are maintained with respect to such premises. The
55 credit allowable under this section shall be applied against the amount
56 of tax otherwise required to be paid for the last taxable period of the

1 calendar year as provided in subdivision a of section 11-1105 of this
2 chapter, shall be deducted from the taxpayer's tax prior to the
3 deduction of the credit provided in subdivision b of such section but
4 after the credit provided for in section 11-1105.2 of this chapter, and
5 shall be claimed on the tax return for the last taxable period of the
6 calendar year. Except as provided in subdivision (c) of this section, if
7 the amount of the credit allowable under this subdivision for any calen-
8 dar year exceeds the tax imposed for such last taxable period in such
9 calendar year, the excess may be carried over, in order, to the imme-
10 diately succeeding taxable periods in the five immediately succeeding
11 calendar years and, to the extent not previously allowable, shall be
12 applied against the tax otherwise required to be paid for such periods.
13 Such carryover credit shall be deducted from the taxpayer's tax prior to
14 the deduction of the credit provided in subdivision b of section 11-1105
15 of this chapter but after the credit provided for in section 11-1105.2
16 of this chapter. With respect to the last taxable period in a calendar
17 year, the credit for such calendar year shall be taken prior to any
18 carryover credit. If in any period there are carryover credits available
19 from more than one year, such credits shall be applied against the tax
20 in the order in which they were earned with the oldest available credit
21 being taken first.

22 (c) The credits allowed under this section, against the tax imposed by
23 this chapter for the calendar year of the relocation and for the four
24 taxable years immediately succeeding the calendar year of such relo-
25 cation, shall be deemed to be overpayments of tax by the taxpayer to be
26 credited or refunded, without interest, in accordance with the
27 provisions of section 11-1108 of this chapter. For such calendar years,
28 such credits or portions thereof may not be carried over to any succeed-
29 ing calendar year.

30 § 11-1106 Determination of tax. In case the return required by this
31 chapter shall be insufficient or unsatisfactory or if such return is not
32 filed, the commissioner of finance shall determine the amount of the tax
33 due from such information as is obtainable, and if necessary the tax may
34 be estimated upon the basis of external indices. Notice of such determi-
35 nation shall be given to the person liable for the payment of the tax.
36 Such determination shall finally and irrevocably fix such tax unless the
37 person against whom it is assessed, within ninety days after the giving
38 of notice of such determination or, if the commissioner of finance has
39 established a conciliation procedure pursuant to section 11-124 of this
40 title and the taxpayer has requested a conciliation conference in
41 accordance therewith, within ninety days from the mailing of a concil-
42 iation decision or the date of the commissioner's confirmation of the
43 discontinuance of the conciliation proceeding, both (1) serves a peti-
44 tion upon the commissioner of finance and (2) files a petition with the
45 tax appeals tribunal for a hearing, or unless such commissioner of his
46 or her own motion shall redetermine the same. Such hearing and any
47 appeal to the tax appeals tribunal sitting en banc from the decision
48 rendered in such hearing shall be conducted in the manner and subject to
49 the requirements prescribed by the tax appeals tribunal pursuant to
50 sections one hundred sixty-eight through one hundred seventy-two of the
51 charter of the preceding municipality as it existed January first, nine-
52 teen hundred ninety-four. After such hearing the tax appeals tribunal
53 shall give notice of its decision to the person against whom the tax is
54 assessed and to the commissioner of finance. A decision of the tax
55 appeals tribunal sitting en banc shall be reviewable for error, illegal-
56 ity, unconstitutionality or any other reason whatsoever by a proceeding

1 under article seventy-eight of the civil practice law and rules if
2 instituted by the person against whom the tax was assessed within four
3 months after the giving of the notice of such tax appeals tribunal deci-
4 sion. A proceeding under such article of such law and rules shall not be
5 instituted by a taxpayer unless (a) the amount of any tax sought to be
6 reviewed with penalties and interest thereon, if any, shall first be
7 deposited with the commissioner of finance and there shall be filed with
8 such commissioner an undertaking, issued by a surety company authorized
9 to transact business in this state and approved by the superintendent of
10 insurance of this state as to solvency and responsibility, in such
11 amount and with such sureties as a justice of the supreme court shall
12 approve, to the effect that if such proceeding be dismissed or the tax
13 confirmed, the taxpayer will pay all costs and charges which may accrue
14 in the prosecution of the proceeding, or (b) at the option of the
15 taxpayer such undertaking filed with the commissioner of finance may be
16 in a sum sufficient to cover the taxes, penalties and interest thereon
17 stated in such decision, plus the costs and charges which may accrue
18 against it in the prosecution of the proceeding, in which event the
19 taxpayer shall not be required to deposit such taxes, penalties and
20 interest as a condition precedent to the application.

21 § 11-1107 Assessment of tax where change or correction of sales and
22 compensating use tax liability involved. a. If a taxpayer fails to
23 comply with subdivision d of section 11-1104 of this chapter in not
24 reporting a change or correction of its sales and compensating use tax
25 liability or in not filing a copy of an amended return or report relat-
26 ing to its sales and compensating use tax liability, instead of the mode
27 and time of assessment provided for in section 11-1106 of this chapter,
28 the commissioner of finance may assess a deficiency based upon such
29 changed or corrected sales and compensating use tax liability, as same
30 relates to credits claimed under this chapter, by mailing to the taxpay-
31 er a notice of additional tax due specifying the amount of the deficien-
32 cy, and such deficiency, together with the interest and penalties stated
33 in such notice, shall be deemed assessed on the date such notice is
34 mailed unless within thirty days after the mailing of such notice a
35 report of the state change or correction or a copy of an amended return
36 or report, where such copy was required, is filed accompanied by a
37 statement showing wherein such state determination and such notice of
38 additional tax due are erroneous. Such notice shall not be considered as
39 a notice of determination for the purposes of section 11-1106 of this
40 chapter.

41 b. If a report filed pursuant to subdivision d of section 11-1104 of
42 this chapter concedes the accuracy of a state change or correction of
43 sales and compensating use tax liability, any deficiency in tax result-
44 ing therefor shall be deemed assessed on the date of filing such report.

45 § 11-1108 Refunds. a. In the manner provided in this section the
46 commissioner of finance shall refund or credit, without interest, any
47 tax, penalty or interest erroneously, illegally or unconstitutionally
48 collected or paid, if application for such refund shall be made to the
49 commissioner of finance within three years from the time the return was
50 filed or two years from the time the tax was paid, whichever of such
51 periods expires later, or if no return was filed, within two years from
52 the time the tax was paid. If the claim is filed within the three-year
53 period, the amount of the credit or refund shall not exceed the portion
54 of the tax paid within the three years immediately preceding the filing
55 of the claim plus the period of any extension of time for filing the
56 return. Whenever a refund or credit is made or denied by the commission-

1 er of finance, he or she shall state his or her reason therefor and give
2 notice thereof to the taxpayer in writing. The commissioner of finance
3 may, in lieu of any refund required to be made, allow credit therefor on
4 payments due from the applicant.

5 b. Any determination of the commissioner of finance denying a refund
6 or credit pursuant to subdivision a of this section shall be final and
7 irrevocable unless the applicant for such refund or credit, within nine-
8 ty days from the mailing of notice of such determination, or, if the
9 commissioner of finance has established a conciliation procedure pursu-
10 ant to section 11-124 of this title and the applicant has requested a
11 conciliation conference in accordance therewith, within ninety days from
12 the mailing of a conciliation decision or the date of the commissioner's
13 confirmation of the discontinuance of the conciliation proceeding, both
14 (1) serves a petition upon the commissioner of finance and (2) files a
15 petition with the tax appeals tribunal for a hearing. Such petition for
16 a refund or credit, made as provided in this section, shall be deemed an
17 application for a revision of any tax, penalty or interest complained
18 of. Such hearing and any appeal to the tax appeals tribunal sitting en
19 banc from the decision rendered in such hearing shall be conducted in
20 the manner and subject to the requirements prescribed by the tax appeals
21 tribunal pursuant to sections one hundred sixty-eight through one
22 hundred seventy-two of the charter of the preceding municipality as it
23 existed January first, nineteen hundred ninety-four. After such hearing,
24 the tax appeals tribunal shall give notice of its decision to the appli-
25 cant and to the commissioner of finance. The applicant shall be entitled
26 to institute a proceeding under article seventy-eight of the civil prac-
27 tice law and rules to review a decision of the tax appeals tribunal
28 sitting en banc if application to the supreme court be made therefor
29 within four months after the giving of notice of such decision, and
30 provided, in the case of an application by a taxpayer, a final determi-
31 nation of tax due was not previously made.

32 c. If a taxpayer is required by subdivision d of section 11-1104 of
33 this chapter to file a report or amended return in respect of a change
34 or correction of its sales and compensating use tax liability, claim for
35 credit or refund of any resulting overpayment of tax shall be filed by
36 the taxpayer within one year from the time such report or amended return
37 was required to be filed with the commissioner of finance. This subdivi-
38 sion shall not affect the time within which or the amount for which a
39 claim for credit or refund may be filed apart from this subdivision.

40 d. A person shall not be entitled to a revision, refund or credit
41 under this section of a tax, interest or penalty which had been deter-
42 mined to be due pursuant to the provisions of section 11-1106 or 11-1107
43 of this chapter where he or she has had a hearing or an opportunity for
44 a hearing, as provided in such sections, or has failed to avail himself
45 or herself of the remedies therein provided. No refund or credit shall
46 be made of a tax, interest or penalty paid after a determination by the
47 commissioner of finance made pursuant to section 11-1106 or 11-1107 of
48 this chapter unless it be found that such determination was erroneous,
49 illegal or unconstitutional or otherwise improper, by the tax appeals
50 tribunal after a hearing or of the commissioner of finance's own motion
51 or, if such tax appeals tribunal affirms in whole or in part the deter-
52 mination of the commissioner of finance, in a proceeding under article
53 seventy-eight of the civil practice law and rules pursuant to the
54 provisions of said section, in which event refund or credit without
55 interest shall be made of the tax, interest or penalty found to have
56 been overpaid.

1 § 11-1109 Reserves. In cases where the taxpayer has applied for a
2 refund and has instituted a proceeding under article seventy-eight of
3 the civil practice law and rules to review a determination adverse to
4 him or her on his or her application for refund, the comptroller shall
5 set up appropriate reserves to meet any decision adverse to the city.

6 § 11-1110 Remedies exclusive. The remedies provided by this chapter
7 shall be the exclusive remedies available to any person for the review
8 of tax liability imposed by this chapter; and no determination or
9 proposed determination of tax or determination on any application for
10 refund by the commissioner of finance, nor any decision by the tax
11 appeals tribunal or any of its administrative law judges, shall be
12 enjoined or reviewed by an action for declaratory judgment, an action
13 for money had and received or by any action or proceeding other than, in
14 the case of a decision by the tax appeals tribunal sitting en banc, a
15 proceeding under article seventy-eight of the civil practice law and
16 rules; provided, however, that a taxpayer may proceed by a declaratory
17 judgment if he or she institutes suit within thirty days after a defi-
18 ciency assessment is made and pays the amount of the deficiency assess-
19 ment to the commissioner of finance prior to the institution of such
20 suit and posts a bond for costs as provided in section 11-1106 of this
21 chapter.

22 § 11-1111 Proceedings to recover tax. a. Whenever any person shall
23 fail to pay any tax or penalty or interest imposed by this chapter as
24 provided in this section, the corporation counsel shall, upon the
25 request of the commissioner of finance, bring or cause to be brought an
26 action to enforce payment of the same against the person liable for the
27 same on behalf of the city of Staten Island in any court of the state of
28 New York or of any other state or of the United States. If, however,
29 such commissioner in his or her discretion believes that a taxpayer
30 subject to the provisions of this chapter is about to cease business,
31 leave the state or remove or dissipate the assets out of which tax or
32 penalties might be satisfied and that any such tax or penalty will not
33 be paid when due, he or she may declare such tax or penalty to be imme-
34 diately due and payable and may issue a warrant immediately.

35 b. As a further additional or alternate remedy, the commissioner of
36 finance may issue a warrant, directed to the city sheriff, commanding
37 him or her to levy upon and sell the real and personal property of such
38 person which may be found within the city, for the payment of the amount
39 thereof, with any penalties and the cost of executing the warrant and to
40 return such warrant to such commissioner and to pay to him or her the
41 money collected by virtue thereof within sixty days after the receipt of
42 such warrant. The city sheriff shall, within five days after the
43 receipt of the warrant, file with the county clerk a copy thereof and
44 thereupon such clerk shall enter in the judgment docket the name of the
45 person mentioned in the warrant and the amount of the tax and penalties
46 for which the warrant is issued and the date when such copy is filed.
47 Thereupon the amount of such warrant so docketed shall have the full
48 force and effect of a judgment and shall become a lien upon the title to
49 and interest in real and personal property of the person against whom
50 the warrant is issued. The city sheriff shall then proceed upon the
51 warrant in the same manner and with like effect as that provided by law
52 in respect to executions against property upon judgments of a court of
53 record, and for services in executing the warrant he or she shall be
54 entitled to the same fees which he or she may collect in the same
55 manner. In the discretion of the commissioner of finance a warrant of
56 like terms, force and effect may be issued and directed to any officer

1 or employee of the department of finance and in the execution thereof
2 such officer or employee shall have all the power conferred by law upon
3 sheriffs, but he or she shall be entitled to no fee or compensation in
4 excess of the actual expenses paid in the performance of such duty. If
5 a warrant is returned not satisfied in full, the commissioner of finance
6 may from time to time issue new warrants and shall also have the same
7 remedies to enforce the amount due thereunder as if the city had recover-
8 ed judgment therefor and execution thereon had been returned unsatis-
9 fied.

10 c. Whenever there is made a sale, transfer or assignment in bulk of
11 any part or the whole of a stock of merchandising or of fixtures, or
12 merchandise and of fixtures pertaining to the conducting of the business
13 of the seller, transferor or assignor, otherwise than in the ordinary
14 course of trade and in the regular prosecution of said business, the
15 purchaser, transferee or assignee shall at least ten days before taking
16 possession of such merchandise, fixtures, or merchandise and fixtures,
17 or paying therefor, notify the commissioner of finance by registered
18 mail of the proposed sale and of the price, terms and conditions there-
19 of, whether or not the seller, transferor or assignor, has represented
20 to, or informed the purchaser, transferee or assignee that it owes any
21 tax pursuant to this chapter, whether or not the purchaser, transferee
22 or assignee has knowledge that such taxes are owing, and whether or not
23 any such taxes are in fact owing.

24 Whenever the purchaser, transferee or assignee shall fail to give the
25 notice to the commissioner of finance required by this subdivision, or
26 whenever such commissioner shall inform the purchaser, transferee or
27 assignee that a possible claim for such tax or taxes exists, any sums of
28 money, property or choses in action, or other consideration, which the
29 purchaser, transferee or assignee is required to transfer over to the
30 seller, transferor or assignor shall be subject to a first priority
31 right and lien for any such taxes theretofore or thereafter determined
32 to be due from the seller, transferor or assignor to the city, and the
33 purchaser, transferee or assignee is forbidden to transfer to the sell-
34 er, transferor or assignor any such sums of money, property or choses in
35 action to the extent of the amount of the city's claim. For failure to
36 comply with the provisions of this subdivision the purchaser, transferee
37 or assignee, in addition to being subject to the liabilities and reme-
38 dies imposed under the provisions of former article six of the uniform
39 commercial code shall be personally liable for the payment to the city
40 of any such taxes theretofore or thereafter determined to be due to the
41 city from the seller, transferor or assignor and such liability may be
42 assessed and enforced in the same manner as the liability for tax is
43 imposed under this chapter.

44 d. The commissioner of finance, if he or she finds that the interests
45 of the city will not thereby be jeopardized, and upon such conditions as
46 the commissioner of finance may require, may release any property from
47 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
48 tions to tax, penalties and interest filed pursuant to subdivision b of
49 this section, and such release or vacating of the warrant may be
50 recorded in the office of any recording officer in which such warrant
51 has been filed. The clerk shall thereupon cancel and discharge as of the
52 original date of docketing the vacated warrant.

53 § 11-1112 General powers of the commissioner of finance. In addition
54 to the powers granted to the commissioner of finance in this chapter, he
55 or she is hereby authorized and empowered:

1 1. To make, adopt and amend rules and regulations appropriate to the
2 carrying out of this chapter and the purposes thereof; and to prescribe
3 the form of blanks, reports and other records relating to the enforce-
4 ment and administration of this chapter;

5 2. To prescribe methods for determining the amount of "gross income"
6 and "gross operating income" received by a person subject to tax pursu-
7 ant to this chapter;

8 3. To request information from the tax commission of the state of New
9 York or treasury department of the United States relative to any person;
10 and to afford returns, reports and other information to such tax commis-
11 sion or such treasury department relative to any person, any other
12 provision in this chapter to the contrary notwithstanding;

13 4. To extend, for cause shown, the time for filing any return for a
14 period not exceeding thirty days; and to compromise disputed claims in
15 connection with the taxes imposed pursuant to this chapter;

16 5. To delegate his or her functions hereunder to a deputy commis-
17 sioner of finance or other employee or employees of the department of
18 finance of the city;

19 6. To assess, determine, revise and readjust the taxes imposed under
20 this chapter.

21 § 11-1113 Administration of oaths and compelling testimony. a. The
22 commissioner of finance, his or her employees duly designated and
23 authorized by him or her, the tax appeals tribunal and any of its duly
24 designated and authorized employees shall have power to administer oaths
25 and take affidavits in relation to any matter or proceedings in the
26 exercise of their powers and duties under this chapter. Such commis-
27 sioner and the tax appeals tribunal shall have power to subpoena and
28 require the attendance of witnesses and the production of books, papers
29 and documents to secure information pertinent to the performance of the
30 duties of such commissioner or of the tax appeals tribunal hereunder and
31 of the enforcement of this chapter, and to examine them in relation
32 thereto, and to issue commissions for the examination of witnesses who
33 are out of the state or unable to attend before the commissioner or the
34 tax appeals tribunal or excused from attendance.

35 b. A justice of the supreme court either in court or at chambers shall
36 have power summarily to enforce by proper proceedings the attendance and
37 testimony of witnesses and the production and examination of books,
38 papers and documents called for by the subpoena of the commissioner of
39 finance or the tax appeals tribunal under this chapter.

40 c. Cross-reference; criminal penalties. For failure to obey subpoenas
41 or for testifying falsely, see section 11-4007 of this title; for
42 supplying false or fraudulent information, see section 11-4002 of this
43 title.

44 d. The officers who serve the summons or subpoena of the commissioner
45 of finance or the tax appeals tribunal and witnesses attending in
46 response thereto shall be entitled to the same fees as are allowed to
47 officers and witnesses in civil cases in courts of record, except as
48 herein otherwise provided. Such officers shall be the city sheriff, and
49 his or her duly appointed deputies or any officers or employees of the
50 department of finance or the tax appeals tribunal, designated to serve
51 such process.

52 § 11-1114 Interest and penalties. (a) Interest on underpayments. If
53 any amount of tax is not paid on or before the last date prescribed for
54 payment, without regard to any extension of time granted for payment,
55 interest on such amount at the rate set by the commissioner of finance
56 pursuant to subdivision (g) of this section, or, if no rate is set, at

1 the rate of seven and one-half percent per annum, shall be paid for the
2 period from such last date to the date of payment. In computing the
3 amount of interest to be paid, such interest shall be compounded daily.
4 Interest under this subdivision shall not be paid if the amount thereof
5 is less than one dollar.

6 (b) (1) Failure to file return. (A) In case of failure to file a
7 return under this chapter on or before the prescribed date, determined
8 with regard to any extension of time for filing, unless it is shown that
9 such failure is due to reasonable cause and not due to willful neglect,
10 there shall be added to the amount required to be shown as tax on such
11 return five percent of the amount of such tax if the failure is for not
12 more than one month, with an additional five percent for each additional
13 month or fraction thereof during which such failure continues, not
14 exceeding twenty-five percent in the aggregate.

15 (B) In the case of a failure to file a return of tax within sixty days
16 of the date prescribed for filing of such return, determined with regard
17 to any extension of time for filing, unless it is shown that such fail-
18 ure is due to reasonable cause and not due to willful neglect, the addi-
19 tion to tax under subparagraph (A) of this paragraph shall not be less
20 than the lesser of one hundred dollars or one hundred percent of the
21 amount required to be shown as tax on such return.

22 (C) For purposes of this paragraph, the amount of tax required to be
23 shown on the return shall be reduced by the amount of any part of the
24 tax which is paid on or before the date prescribed for payment of the
25 tax and by the amount of any credit against the tax which may be claimed
26 upon the return.

27 (2) Failure to pay tax shown on return. In case of failure to pay the
28 amount shown as tax on a return required to be filed under this chapter
29 on or before the prescribed date, determined with regard to any exten-
30 sion of time for payment, unless it is shown that such failure is due to
31 reasonable cause and not due to willful neglect, there shall be added
32 to the amount shown as tax on such return one-half of one percent of the
33 amount of such tax if the failure is not for more than one month, with
34 an additional one-half of one percent for each additional month or frac-
35 tion thereof during which such failure continues, not exceeding twenty-
36 five percent in the aggregate. For the purpose of computing the addition
37 for any month the amount of tax shown on the return shall be reduced by
38 the amount of any part of the tax which is paid on or before the begin-
39 ning of such month and by the amount of any credit against the tax which
40 may be claimed upon the return. If the amount of tax required to be
41 shown on a return is less than the amount shown as tax on such return,
42 this paragraph shall be applied by substituting such lower amount.

43 (3) Failure to pay tax required to be shown on return. In case of
44 failure to pay any amount in respect of any tax required to be shown on
45 a return required to be filed under this chapter which is not so shown,
46 including a determination made pursuant to section 11-1106 of this chap-
47 ter, within ten days of the date of a notice and demand therefor, unless
48 it is shown that such failure is due to reasonable cause and not due to
49 willful neglect, there shall be added to the amount of tax stated in
50 such notice and demand one-half of one percent of such tax if the fail-
51 ure is not for more than one month, with an additional one-half of one
52 percent for each additional month or fraction thereof during which such
53 failure continues, not exceeding twenty-five percent in the aggregate.
54 For the purpose of computing the addition for any month, the amount of
55 tax stated in the notice and demand shall be reduced by the amount of
56 any part of the tax which is paid before the beginning of such month.

1 (4) Limitations on additions.

2 (A) With respect to any return, the amount of the addition under para-
3 graph one of this subdivision shall be reduced by the amount of the
4 addition under paragraph two of this subdivision for any month to which
5 an addition applies under both paragraphs one and two of this subdivi-
6 sion. In any case described in subparagraph (B) of paragraph one of
7 this subdivision, the amount of the addition under such paragraph one
8 shall not be reduced below the amount provided in such subparagraph.

9 (B) With respect to any return, the maximum amount of the addition
10 permitted under paragraph three of this subdivision shall be reduced by
11 the amount of the addition under paragraph one of this subdivision,
12 determined without regard to subparagraph (B) of such paragraph one
13 which is attributable to the tax for which the notice and demand is made
14 and which is not paid within ten days of such notice and demand.

15 (c) Underpayment due to negligence. (1) If any part of an underpayment
16 of tax is due to negligence or intentional disregard of this chapter or
17 any rules or regulations hereunder, but without intent to defraud, there
18 shall be added to the tax a penalty equal to five percent of the under-
19 payment.

20 (2) There shall be added to the tax, in addition to the amount deter-
21 mined under paragraph one of this subdivision, an amount equal to fifty
22 percent of the interest payable under subdivision (a) of this section
23 with respect to the portion of the underpayment described in such para-
24 graph one which is attributable to the negligence or intentional disre-
25 gard referred to in such paragraph one, for the period beginning on the
26 last date prescribed by law for payment of such underpayment, determined
27 without regard to any extension, and ending on the date of the assess-
28 ment of the tax, or, if earlier, the date of the payment of the tax.

29 (3) If any payment is shown on a return made by a payor with respect
30 to dividends, patronage dividends and interest under subsection (a) of
31 section six thousand forty-two, subsection (a) of section six thousand
32 forty-four or subsection (a) of section six thousand forty-nine of the
33 internal revenue code of nineteen hundred fifty-four, respectively, and
34 the payee fails to include any portion of such payment in gross income
35 or gross operating income, when required under this chapter to be so
36 included, any portion of an underpayment attributable to such failure
37 shall be treated, for purposes of this subdivision, as due to negligence
38 in the absence of clear and convincing evidence to the contrary. If any
39 penalty is imposed under this subdivision by reason of this paragraph,
40 the amount of the penalty imposed by paragraph one of this subdivision
41 shall be five percent of the portion of the underpayment which is
42 attributable to the failure described in this paragraph.

43 (d) Underpayment due to fraud. (1) If any part of an underpayment of
44 tax is due to fraud, there shall be added to the tax a penalty equal to
45 two times of the underpayment.

46 (2) The penalty under this subdivision shall be in lieu of any other
47 addition to tax imposed by subdivision (b) or (c) of this section.

48 (e) Additional penalty. Any person who, with fraudulent intent, shall
49 fail to pay any tax imposed by this chapter, or to make, render, sign or
50 certify any return, or to supply any information within the time
51 required by or under this chapter, shall be liable for a penalty of not
52 more than one thousand dollars, in addition to any other amounts
53 required under this chapter to be imposed, assessed and collected by the
54 commissioner of finance. The commissioner of finance shall have the
55 power, in his or her discretion, to waive, reduce or compromise any
56 penalty under this subdivision.

1 (f) The interest and penalties imposed by this section shall be paid
2 and disposed of in the same manner as other revenues from this chapter.
3 Unpaid interest and penalties may be enforced in the same manner as the
4 tax imposed by this chapter.

5 (g) (1) Authority to set interest rates. The commissioner of finance
6 shall set the rate of interest to be paid pursuant to subdivision (a) of
7 this section, but if no such rate of interest is set, such rate shall be
8 deemed to be set at seven and one-half percent per annum. Such rate
9 shall be the rate prescribed in paragraph two of this subdivision but
10 shall not be less than seven and one-half percent per annum. Any such
11 rate set by the commissioner of finance shall apply to taxes, or any
12 portion thereof, which remain or become due on or after the date on
13 which such rate becomes effective and shall apply only with respect to
14 interest computed or computable for periods or portions of periods
15 occurring in the period in which such rate is in effect.

16 (2) General rule. The rate of interest set under this subdivision
17 shall be the sum of (i) the federal short-term rate as provided under
18 paragraph three of this subdivision, plus (ii) seven percentage points.

19 (3) Federal short-term rate. For purposes of this subdivision:

20 (A) The federal short-term rate for any month shall be the federal
21 short-term rate determined by the United States secretary of the treas-
22 ury during such month in accordance with subsection (d) of section
23 twelve hundred seventy-four of the internal revenue code for use in
24 connection with section six thousand six hundred twenty-one of the
25 internal revenue code. Any such rate shall be rounded to the nearest
26 full percent, or, if a multiple of one-half of one percent, such rate
27 shall be increased to the next highest full percent.

28 (B) Period during which rate applies.

29 (i) In general. Except as provided in clause (ii) of this subpara-
30 graph, the federal short-term rate for the first month in each calendar
31 quarter shall apply during the first calendar quarter beginning after
32 such month.

33 (ii) Special rule for the month of September, nineteen hundred eight-
34 y-nine. The federal short-term rate for the month of April, nineteen
35 hundred eighty-nine shall apply with respect to setting the rate of
36 interest for the month of September, nineteen hundred eighty-nine.

37 (4) Publication of interest rate. The commissioner of finance shall
38 cause to be published in the City Record, and give other appropriate
39 general notice of, the interest rate to be set under this subdivision no
40 later than twenty days preceding the first day of the calendar quarter
41 during which such interest rate applies. The setting and publication of
42 such interest rate shall not be included within paragraph (a) of subdi-
43 vision five of section one thousand forty-one of the city charter of the
44 preceding municipality as it existed January first, nineteen hundred
45 ninety-four relating to the definition of a rule.

46 (h) Miscellaneous. (1) The certificate of the commissioner of finance
47 to the effect that a tax has not been paid, that a return has not been
48 filed, or that information has not been supplied pursuant to the
49 provisions of this chapter shall be prima facie evidence thereof.

50 (2) Cross-reference: For criminal penalties, see chapter forty of this
51 title.

52 (i) Substantial understatement of liability. If there is a substantial
53 understatement of tax for any taxable period, there shall be added to
54 the tax an amount equal to ten percent of the amount of any underpayment
55 attributable to such understatement. For purposes of this subdivision,
56 there is a substantial understatement of tax for any taxable period if

1 the amount of the understatement for the taxable period exceeds the
2 greater of ten percent of the tax required to be shown on the return for
3 the taxable period or five thousand dollars. For purposes of this subdivi-
4 sion, the term "understatement" means the excess of the amount of the
5 tax required to be shown on the return for the taxable period, over the
6 amount of the tax imposed which is shown on the return, reduced by any
7 rebate. The amount of such understatement shall be reduced by that
8 portion of the understatement which is attributable to the tax treatment
9 of any item by the taxpayer if there is or was substantial authority for
10 such treatment, or any item with respect to which the relevant facts
11 affecting the item's tax treatment are adequately disclosed in the
12 return or in a statement attached to the return. The commissioner of
13 finance may waive all or any part of the addition to tax provided by
14 this subdivision on a showing by the taxpayer that there was reasonable
15 cause for the understatement, or part thereof, and that the taxpayer
16 acted in good faith.

17 (j) Aiding or assisting in the giving of fraudulent returns, reports,
18 statements or other documents. (1) Any person who, with the intent that
19 tax be evaded, shall, for a fee or other compensation or as an incident
20 to the performance of other services for which such person receives
21 compensation, aid or assist in, or procure, counsel, or advise the prep-
22 aration or presentation under, or in connection with any matter arising
23 under this title of any return, report, statement or other document
24 which is fraudulent or false as to any material matter, or supply any
25 false or fraudulent information, whether or not such falsity or fraud is
26 with the knowledge or consent of the person authorized or required to
27 present such return, report, statement or other document shall pay a
28 penalty not exceeding ten thousand dollars.

29 (2) For purposes of paragraph one of this subdivision, the term
30 "procures" includes ordering, or otherwise causing, a subordinate to do
31 an act, and knowing of, and not attempting to prevent, participation by
32 a subordinate in an act. The term "subordinate" means any other person,
33 whether or not a director, officer, employee, or agent of the taxpayer
34 involved, over whose activities the person has direction, supervision,
35 or control.

36 (3) For purposes of paragraph one of this subdivision, a person
37 furnishing typing, reproducing, or other mechanical assistance with
38 respect to a document shall not be treated as having aided or assisted
39 in the preparation of such document by reason of such assistance.

40 (4) The penalty imposed by this subdivision shall be in addition to
41 any other penalty provided by law.

42 (k) Failure to include on return information relating to issuer's
43 allocation percentage. Where a return is filed but does not contain (1)
44 the information necessary to compute the taxpayer's issuer's allocation
45 percentage, as defined in subparagraph one of paragraph (b) of subdivi-
46 sion three of section 11-604 of this title, where the same is called for
47 on the return, or, (2) the taxpayer's issuer's allocation percentage,
48 where the same is called for on the return but where all of the informa-
49 tion necessary for the computation of such percentage is not called for
50 on the return, then unless it is shown that such failure is due to
51 reasonable cause and not due to willful neglect there shall be added to
52 the tax a penalty of five hundred dollars.

53 (l) False or fraudulent document penalty. Any taxpayer that submits a
54 false or fraudulent document to the department shall be subject to a
55 penalty of one hundred dollars per document submitted, or five hundred

1 dollars per tax return submitted. Such penalty shall be in addition to
2 any other penalty or addition provided by law.

3 § 11-1115 Notices and limitations of time. a. Any notice authorized
4 or required under the provisions of this chapter may be given by mailing
5 the same to the person for whom it is intended in a postpaid envelope
6 addressed to such person at the address given in the last return filed
7 by such person pursuant to the provisions of this chapter or in any
8 application made by him or her, or, if no return has been filed or
9 application made, then to such address as may be obtainable. The mail-
10 ing of such notice shall be presumptive evidence of the receipt of the
11 same by the person to whom addressed. Any period of time which is
12 determined according to the provisions of this chapter by the giving of
13 notice shall commence to run from the date of mailing of such notice.

14 b. The provisions of the civil practice law and rules or any other law
15 relative to limitations of time for the enforcement of a civil remedy
16 shall not apply to any proceeding or action by the city taken to levy,
17 appraise, assess, determine or enforce the collection of any tax or
18 penalty provided by this chapter. However, except in the case of a
19 wilfully false or fraudulent return with intent to evade the tax, no
20 assessment of additional tax imposed under a local law for the preceding
21 municipality enacted subsequent to July first, nineteen hundred thirty-
22 eight, shall be made after the expiration of more than three years from
23 the date of the filing of a return, provided, however, that where no
24 return has been filed, or where the taxpayer fails to file a report or
25 return in respect of a change or correction in the amount of sales and
26 compensating use tax liability as provided by law, the tax may be
27 assessed at any time. Where the taxpayer files a report or return in
28 respect of a change or correction in sales and compensating use tax
29 liability, as required by subdivision d of section 11-1104 of this chap-
30 ter, an assessment may be made at any time within two years after such
31 report or return was filed, provided, however, that this sentence shall
32 not affect the time within which an assessment may otherwise be made.

33 c. Where, before the expiration of the period prescribed herein for
34 the assessment of an additional tax, a taxpayer has consented in writing
35 that such period be extended, the amount of such additional tax due may
36 be determined at any time within such extended period. The period so
37 extended may be further extended by subsequent consents in writing made
38 before the expiration of the extended period.

39 d. If any return, claim, statement, notice, application, or other
40 document required to be filed, or any payment required to be made, with-
41 in a prescribed period or on or before a prescribed date under authority
42 of any provision of this chapter is, after such period or such date,
43 delivered by United States mail to the commissioner of finance, the tax
44 appeals tribunal, bureau, office, officer or person with which or with
45 whom such document is required to be filed, or to which or to whom such
46 payment is required to be made, the date of the United States postmark
47 stamped on the envelope shall be deemed to be the date of delivery. This
48 subdivision shall apply only if the postmark date falls within the
49 prescribed period or on or before the prescribed date for the filing of
50 such document, or for making the payment, including any extension grant-
51 ed for such filing or payment, and only if such document or payment was
52 deposited in the mail, postage prepaid, properly addressed to the
53 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
54 cer or person with which or with whom the document is required to be
55 filed or to which or to whom such payment is required to be made. If any
56 document is sent by United States registered mail, such registration

1 shall be prima facie evidence that such document was delivered to the
2 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
3 cer or person to which or to whom addressed, and the date of registra-
4 tion shall be deemed the postmark date. The commissioner of finance or,
5 where relevant, the tax appeals tribunal is authorized to provide by
6 regulation the extent to which the provisions such with respect to prima
7 facie evidence of delivery and the postmark date shall apply to certi-
8 fied mail. Except as provided in subdivision f of this section, this
9 subdivision shall apply in the case of postmarks not made by the United
10 States postal service only if and to the extent provided by regulation
11 of the commissioner of finance or where relevant, the tax appeals tribu-
12 nal.

13 e. When the last day prescribed under authority of this chapter,
14 including any extension of time, for performing any act falls on a
15 Saturday, Sunday or legal holiday in the state, the performance of such
16 act shall be considered timely if it is performed on the next succeeding
17 day which is not a Saturday, Sunday or legal holiday.

18 f. (1) Any reference in subdivision d of this section to the United
19 States mail shall be treated as including a reference to any delivery
20 service designated by the secretary of the treasury of the United States
21 pursuant to section seventy-five hundred two of the internal revenue
22 code and any reference in subdivision d of this section to a United
23 States postmark shall be treated as including a reference to any date
24 recorded or marked in the manner described in section seventy-five
25 hundred two of the internal revenue code by a designated delivery
26 service. If the commissioner of finance finds that any delivery service
27 designated by such secretary is inadequate for the needs of the city,
28 the commissioner of finance may withdraw such designation for purposes
29 of this title. The commissioner of finance may also designate additional
30 delivery services meeting the criteria of section seventy-five hundred
31 two of the internal revenue code for purposes of this title, or may
32 withdraw any such designation if the commissioner of finance finds that
33 a delivery service so designated is inadequate for the needs of the
34 city. Any reference in subdivision d of this section to the United
35 States mail shall be treated as including a reference to any delivery
36 service designated by the commissioner of finance and any reference in
37 subdivision d of this section to a United States postmark shall be
38 treated as including a reference to any date recorded or marked in the
39 manner described in section seventy-five hundred two of the internal
40 revenue code by a delivery service designated by the commissioner of
41 finance; provided, however, any withdrawal of designation or additional
42 designation by the commissioner of finance shall not be effective for
43 purposes of service upon the tax appeals tribunal, unless and until such
44 withdrawal of designation or additional designation is ratified by the
45 president of the tax appeals tribunal.

46 (2) Any equivalent of registered or certified mail designated by the
47 United States secretary of the treasury, or as may be designated by the
48 commissioner of finance pursuant to the same criteria used by such
49 secretary for such designations pursuant to section seventy-five hundred
50 two of the internal revenue code, shall be included within the meaning
51 of registered or certified mail as used in subdivision d of this
52 section. If the commissioner of finance finds that any equivalent of
53 registered or certified mail designated by such secretary or the commis-
54 sioner of finance is inadequate for the needs of the city, the commis-
55 sioner of finance may withdraw such designation for purposes of this
56 title. Notwithstanding the foregoing, any withdrawal of designation or

1 additional designation by the commissioner of finance shall not be
2 effective for purposes of service upon the tax appeals tribunal, unless
3 and until such withdrawal of designation or additional designation is
4 ratified by the president of the tax appeals tribunal.

5 § 11-1116 Returns to be secret. a. Except in accordance with proper
6 judicial order or as otherwise provided by law, it shall be unlawful for
7 the commissioner of finance, the tax appeals tribunal, or any officer or
8 employee of the department of finance or the tax appeals tribunal to
9 divulge or make known in any manner, the receipts or any other informa-
10 tion relating to the business of a taxpayer contained in any return
11 required under this chapter. The officers charged with the custody of
12 such returns shall not be required to produce any of them or evidence of
13 anything contained in them in any action or proceeding in any court,
14 except on behalf of the city or the commissioner of finance, or on
15 behalf of any party to any action or proceeding under the provisions of
16 this chapter when the returns or facts shown thereby are directly
17 involved in such action or proceeding, in either of which events, the
18 court may require the production of, and may admit in evidence, so much
19 of said returns or of the facts shown thereby, as are pertinent to the
20 action or proceeding and no more. Nothing in this subdivision shall be
21 construed to prohibit the delivery to a taxpayer or his or her duly
22 authorized representative of a certified copy of any return filed in
23 connection with his or her tax, nor to prohibit the publication of
24 statistics so classified as to prevent the identification of particular
25 returns and the items thereof, or the inspection by the corporation
26 counsel of the city or other legal representatives of such city of the
27 return of any taxpayer who shall bring action or proceeding to set aside
28 or review the tax based thereon, or against whom an action or proceeding
29 has been instituted or is contemplated for the collection of a tax,
30 penalty or interest. Returns shall be preserved for three years and
31 thereafter until the commissioner of finance permits them to be
32 destroyed.

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

37 (2) Cross-reference: For criminal penalties, see chapter forty of this
38 title.

39 c. This section shall be deemed a state statute for purposes of para-
40 graph (a) of subdivision two of section eighty-seven of the public offi-
41 cers law.

42 d. Notwithstanding anything in subdivision a of this section to the
43 contrary, if a taxpayer has petitioned the tax appeals tribunal for
44 administrative review as provided in section one hundred seventy of the
45 charter of the preceding municipality as it existed January first, nine-
46 teen hundred ninety-four, the commissioner of finance shall be author-
47 ized to present to the tribunal any report or return of such taxpayer,
48 or any information contained therein or relating thereto, which may be
49 material or relevant to the proceeding before the tribunal. The tax
50 appeals tribunal shall be authorized to publish a copy or a summary of
51 any decision rendered pursuant to section one hundred seventy-one of the
52 charter of the preceding municipality as it existed January first, nine-
53 teen hundred ninety-four.

54 § 11-1117 Construction and enforcement. This chapter shall be
55 construed and enforced in conformity with chapter ninety-three of the

1 laws of nineteen hundred sixty-five, as amended, pursuant to which it is
2 enacted.

3 § 11-1118 Disposition of revenues. All revenues resulting from the
4 imposition of the tax under this chapter shall be paid into the treasury
5 of the city and shall be credited to and deposited in the general fund
6 of the city, but no part of such revenues may be expended unless appro-
7 priated in the annual budget of the city.

8 § 11-1119 Determinations of place of primary use of wireless telecom-
9 munications services. a. A home service provider shall be responsible
10 for obtaining and maintaining the customer's place of primary use as
11 defined in subdivision twenty of section 11-1101 of this chapter. Except
12 as provided in subdivision b of this section, if the home service
13 provider's reliance on the information provided by its customer is in
14 good faith: (1) the home service provider can rely on the applicable
15 residential or business street address supplied by the home service
16 provider's customer; and (2) the home service provider shall not be held
17 liable for any additional taxes under this chapter based on a different
18 determination of the place of primary use.

19 b. The commissioner of finance, or the commissioner of taxation and
20 finance of the state of New York on behalf of the commissioner of
21 finance, may determine that the address used by a home service provider
22 for purposes of this chapter does not meet the definition of place of
23 primary use as defined in subdivision twenty of section 11-1101 of this
24 chapter and may give binding notice to the home service provider to
25 change the place of primary use on a prospective basis from the date of
26 notice of determination if:

27 (1) where the determination is made by the commissioner of finance,
28 such commissioner obtains the consent of all affected taxing jurisdic-
29 tions within this state before giving such notice of determination; and

30 (2) before the commissioner of finance or the commissioner of taxation
31 and finance of the state of New York gives such notice of determination,
32 the customer is given an opportunity to demonstrate, in accordance with
33 applicable procedures established by the commissioner of finance making
34 the determination, that that address is the customer's place of primary
35 use.

36 c. Except as provided in subdivision b of this section, a home service
37 provider may treat the address used by the home service provider for
38 purposes of this chapter for the last taxable period beginning before
39 August first, two thousand two, for any customer under a service
40 contract or agreement in effect on July twenty-eighth, two thousand two
41 as that customer's place of primary use for the remaining term of such
42 service contract or agreement, excluding any extension or renewal of
43 such service contract or agreement.

44 § 11-1120 Assignment of place of primary use of telecommunications
45 services to the city. a. If an electronic database meeting the require-
46 ments of subsection a of section one hundred nineteen of title four of
47 the United States Code is provided by the state of New York, or by a
48 designated database provider as defined in subsection three of section
49 one hundred twenty-four of such title, and the requirements of
50 subsection b of such section one hundred nineteen are met, a home
51 service provider shall use that database to determine whether the
52 customer's place of primary use is within the territorial limits of the
53 city and shall reflect changes to such database in accordance with
54 subsection c of such section one hundred nineteen.

55 b. A home service provider using the data contained in an electronic
56 database described in subdivision a of this section shall be held harm-

1 less from any tax liability that otherwise would be due under this chap-
2 ter solely as a result of any error or omission in such database
3 provided the home service provider has properly reflected changes to
4 such database in accordance with subsection c of section one hundred
5 nineteen of title four of the United States Code.

6 c. (1) If no electronic database is provided as described in subdivi-
7 sion a of this section, a home service provider shall be held harmless
8 from any tax liability under this chapter that otherwise would be due
9 solely as a result of an assignment of a street address to an incorrect
10 taxing jurisdiction if, subject to subdivision d of this section, the
11 home service provider employs an enhanced zip code to assign each street
12 address to a specific taxing jurisdiction for each level of taxing
13 jurisdiction and exercises due diligence at each level of taxing juris-
14 diction to ensure that each such street address is assigned to the
15 correct taxing jurisdiction. If an enhanced zip code overlaps boundaries
16 of taxing jurisdictions of the same level, the home service provider
17 must designate one specific jurisdiction within such enhanced zip code
18 for use in taxing the activity for such enhanced zip code for each level
19 of taxing jurisdiction. Any enhanced zip code assignment changed in
20 accordance with subdivision d of this section is deemed to be in compli-
21 ance with this subdivision. For purposes of this subdivision, there is a
22 rebuttable presumption that a home service provider has exercised due
23 diligence if such home service provider demonstrates that it has: (i)
24 expended reasonable resources to implement and maintain an appropriately
25 detailed electronic database of street address assignments to taxing
26 jurisdictions; (ii) implemented and maintained reasonable internal
27 controls to promptly correct misassignments of street addresses to
28 taxing jurisdictions; and (iii) used all reasonably obtainable and
29 usable data pertaining to municipal annexations, incorporations, reor-
30 ganizations and any other changes in jurisdictional boundaries that
31 materially affect the accuracy of such database.

32 (2) Paragraph one of this subdivision applies to a home service
33 provider that is in compliance with the requirements of such paragraph
34 until the later of: (i) eighteen months after the nationwide standard
35 numeric code described in subsection (a) of section one hundred nineteen
36 of title four of the United States Code has been approved by the feder-
37 ation of tax administrators and the multistate tax commission; or (ii)
38 six months after the state of New York or a designated database provider
39 provides a database as prescribed in subdivision a of this section.

40 d. The commissioner of finance, or the commissioner of taxation and
41 finance of the state of New York on behalf of the commissioner of
42 finance, may determine that the assignment of a street address to a
43 taxing jurisdiction by a home service provider under subdivision c of
44 this section does not reflect the correct taxing jurisdiction and give
45 binding notice to the home service provider to change the assignment on
46 a prospective basis from the date of notice of determination if: (1)
47 where the determination is made by the commissioner of finance, such
48 commissioner obtains the consent of all affected taxing jurisdictions
49 within this state before giving such notice of determination; and (2)
50 the home service provider is given an opportunity to demonstrate in
51 accordance with applicable procedures established by the commissioner of
52 finance making the determination that the assignment reflects the
53 correct taxing jurisdiction.

CHAPTER 12
HORSE RACE ADMISSIONS TAX

§ 11-1201 Definitions. When used in this chapter the following terms shall mean or include:

1. "Racing corporation or association." A racing corporation or association or other person owning or operating race meeting grounds or enclosures located wholly or partly within the city of Staten Island, and/or a racing corporation or association or other person conducting race meetings at such grounds or enclosures.

2. "Person." Includes an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

3. "Return." Includes any return filed or required to be filed as herein provided.

4. "Comptroller." The comptroller of the city.

5. "Commissioner of finance." The commissioner of finance of the city.

6. "Admissions." The charge required to be paid by patrons for admission to a running horse race meeting, including any charge required to be paid by such patrons for admission to the clubhouse or other special facilities within the race meeting grounds or enclosure at which the running race meeting is conducted.

7. "Tax appeals tribunal." The tax appeals tribunal established by section one hundred sixty-eight of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four.

§ 11-1202 Imposition of tax. A tax is hereby imposed on all admissions to running horse race meetings conducted at race meeting grounds or enclosures located wholly or partly within the city of Staten Island at the rate of three percent of the admission price. The racing association or corporation conducting a running horse race meeting shall, in addition to the admission price, collect such tax on all tickets sold or otherwise disposed of to patrons for admission with the sole exception of those issued free passes, cards or badges in accordance with the specific authority of the laws of the state of New York. In case of failure to collect such tax the tax shall be imposed on the racing corporation or association conducting such meeting.

§ 11-1203 Payment of the tax. a. The tax imposed by this chapter shall be paid by the racing corporation or association to the commissioner of finance daily after each day of each race meeting, by depositing it to the account of the city in such bank or banks as may be designated by the city in accordance with the provisions of section four hundred twenty-one of the charter of the preceding municipality as it existed January first, nineteen hundred ninety-four or at such regular intervals as the commissioner of finance may require.

b. The amount of the tax paid on admissions pursuant to this chapter shall be the property of the city of Staten Island and shall be held by the racing corporation or association as trustee for and on account of the city of Staten Island and the racing corporation or association shall be liable for the tax. Officers of the racing corporation or association shall be personally liable for the tax collected or required to be collected hereunder.

c. Every racing corporation or association conducting running horse race meetings at race meeting grounds or enclosures located wholly or partly within the city of Staten Island shall, on or before April first,

1 nineteen hundred fifty-two and annually thereafter, before the opening
2 of any race meeting in each year, execute and file with the commissioner
3 of finance a bond issued by a surety company authorized to transact
4 business in this state and approved by the superintendent of insurance
5 of this state as to solvency and responsibility in an amount sufficient
6 to secure the payment of the taxes and/or penalties and interest due or
7 which may become due pursuant to this section, to be fixed by the
8 commissioner of finance.

9 § 11-1204 Returns. a. Every racing corporation or association
10 shall file with the commissioner of finance daily after each day of each
11 race meeting or at such regular intervals as the commissioner of finance
12 may require and upon such forms as shall be prescribed by the commis-
13 sioner of finance a return showing the taxes collected pursuant to this
14 chapter and the number of persons admitted to meetings conducted by the
15 racing corporation or association during the periods covered by the
16 return, together with any and all other information which the commis-
17 sioner of finance shall require to be included and reported in such
18 return. The commissioner of finance may require at any time supple-
19 mental or amended returns of such additional information or data as he
20 or she may specify.

21 b. Every return required pursuant to this section shall have annexed
22 thereto an affidavit of an officer of the racing corporation or associ-
23 ation to the effect that the statements contained therein are true.

24 § 11-1205 Records to be kept and audits by commissioner of finance.
25 Every racing corporation or association shall keep such records as may
26 be prescribed by the commissioner of finance, of all admissions and
27 taxes collected pursuant to this chapter. Such records shall be avail-
28 able for inspection and examination at any time upon demand by the
29 commissioner of finance or the commissioner's duly authorized agents or
30 employees, and such records shall be preserved for a period of three
31 years, except that the commissioner of finance may consent to their
32 destruction within that period, and may require that they be kept longer
33 than three years.

34 § 11-1206 Determination of tax. If a return required by this chapter
35 is not filed, or if a return when filed is incorrect or insufficient the
36 amount of tax due shall be determined by the commissioner of finance
37 from such information as may be obtainable and, if necessary, the tax
38 may be estimated on the basis of external indices, such as number of
39 race meetings held, admissions, paid attendance, and/or other factors.
40 Notice of such determination shall be given to the person liable for the
41 collection and/or payment of the tax. Such determination shall finally
42 and irrevocably fix the tax unless the person against whom it is
43 assessed, within ninety days after giving the notice of such determi-
44 nation, or, if the commissioner of finance has established a concil-
45 iation procedure pursuant to section 11-124 of this title and the
46 taxpayer has requested a conciliation conference in accordance there-
47 with, within ninety days from the mailing of a conciliation decision or
48 the date of the commissioner's confirmation of the discontinuance of the
49 conciliation proceeding, both (1) serves a petition upon the commis-
50 sioner of finance and (2) files a petition with the tax appeals tribunal for
51 a hearing, or unless the commissioner of finance of his or her own
52 motion shall redetermine the same. Such hearing and any appeal to the
53 tax appeals tribunal sitting en banc from the decision rendered in such
54 hearing shall be conducted in the manner and subject to the requirements
55 prescribed by the tax appeals tribunal pursuant to sections one hundred
56 sixty-eight through one hundred seventy-two of the charter of the

1 preceding municipality as it existed January first, nineteen hundred
2 ninety-four. After such hearing the tax appeals tribunal shall give
3 notice of its decision to the person liable for the tax and to the
4 commissioner of finance. A decision of the tax appeals tribunal sitting
5 en banc shall be reviewable for error, illegality or unconstitutionality
6 or any other reason whatsoever by a proceeding under article seventy-
7 eight of the civil practice law and rules if application therefor is
8 made to the supreme court by the person against whom the tax was
9 assessed within four months after the giving of the notice of such tax
10 appeals tribunal decision. A proceeding under article seventy-eight of
11 the civil practice law and rules shall not be instituted by a person
12 liable for the tax unless the amount of any tax sought to be reviewed
13 with interest and penalties thereon, if any, shall be first deposited
14 with the commissioner of finance and there shall be filed with the
15 commissioner of finance an undertaking, issued by a surety company
16 authorized to transact business in this state and approved by the super-
17 intendent of insurance of this state as to solvency and responsibility,
18 in such amount as a justice of the supreme court shall approve to the
19 effect that if such proceeding be dismissed or the tax confirmed, such
20 person will pay all costs and charges which may accrue in the prose-
21 cution of the proceeding, or at the option of such person such undertak-
22 ing filed with the commissioner of finance may be in a sum sufficient to
23 cover the taxes, penalties and interest thereon stated in such decision
24 plus the costs and charges which may accrue against it in the prose-
25 cution of the proceeding, in which event such person shall not be
26 required to deposit such taxes, penalties and interest as a condition
27 precedent to the application.

28 § 11-1207 Refunds. a. In the manner provided in this section the
29 commissioner of finance shall refund or credit, without interest, any
30 tax, penalty or interest erroneously, illegally, or unconstitutionally
31 collected or paid if application to the commissioner of finance for such
32 refund shall be made within one year from the payment thereof. Whenever
33 a refund or credit is made or denied by the commissioner of finance, he
34 or she shall state his or her reason therefor and give notice thereof to
35 the applicant in writing. The commissioner of finance may, in lieu of
36 any refund required to be made, allow credit therefor on payments due
37 from the applicant.

38 b. Any determination of the commissioner of finance denying a refund
39 or credit pursuant to subdivision a of this section shall be final and
40 irrevocable unless the applicant for such refund or credit, within nine-
41 ty days from the mailing of notice of such determination, or, if the
42 commissioner of finance has established a conciliation procedure, pursu-
43 ant to section 11-124 of this title and the applicant has requested a
44 conciliation conference in accordance therewith, within ninety days of
45 the mailing of a conciliation decision or the date of the commissioner's
46 confirmation of the discontinuance of the conciliation proceeding, both
47 (1) serves a petition upon the commissioner of finance and (2) files a
48 petition with the tax appeals tribunal for a hearing. Such petition for
49 a refund or credit, made as provided under this section, shall be deemed
50 an application for a revision of any tax, penalty or interest complained
51 of. Such hearing and any appeal to the tax appeals tribunal sitting en
52 banc from the decision rendered in such hearing shall be conducted in
53 the manner and subject to the requirements prescribed by the tax appeals
54 tribunal pursuant to section one hundred sixty-eight through one hundred
55 seventy-two of the charter of the preceding municipality as it existed
56 January first, nineteen hundred ninety-four. After such hearing, the tax

1 appeals tribunal shall give notice of its decision to the applicant and
2 to the commissioner of finance. The applicant shall be entitled to
3 institute a proceeding pursuant to article seventy-eight of the civil
4 practice law and rules to review a decision of the tax appeals tribunal
5 sitting en banc, provided such proceeding is instituted within four
6 months after the giving of the notice of such decision, and provided, in
7 the case of an application by a person liable for the tax, that a final
8 determination of tax due was not previously made. Such a proceeding
9 shall not be instituted by a person liable for the tax unless an under-
10 taking is filed with the commissioner of finance in such amount and with
11 such sureties as a justice of the supreme court shall approve to the
12 effect that if such proceeding be dismissed or the tax confirmed, such
13 person will pay all costs and charges which may accrue in the prose-
14 cution of such proceeding.

15 c. A person shall not be entitled to a revision, refund or credit
16 under this section of a tax, interest or penalty which has been deter-
17 mined to be due pursuant to the provisions of section 11-1206 of this
18 chapter where such person has had a hearing or an opportunity for a
19 hearing, as provided in said section, or has failed to avail himself or
20 herself of the remedies therein provided. No refund or credit shall be
21 made of a tax, interest or penalty paid after a determination by the
22 commissioner of finance made pursuant to section 11-1206 of this chapter
23 unless it be found that such determination was erroneous, illegal or
24 unconstitutional or otherwise improper, by the tax appeals tribunal
25 after a hearing or of the commissioner's own motion, or, if such tax
26 appeals tribunal affirms in whole or in part the determination of the
27 commissioner of finance, in a proceeding under article seventy-eight of
28 the civil practice law and rules, pursuant to the provisions of said
29 section, in which event refund or credit without interest shall be made
30 of the tax, interest or penalty found to have been overpaid.

31 § 11-1208 Reserves. In cases where a person has applied for a
32 refund and has instituted a proceeding under article seventy-eight of
33 the civil practice law and rules to review a determination adverse to
34 such person on his or her application for refund, the comptroller shall
35 set up appropriate reserves to meet any decision adverse to the city.

36 § 11-1209 Remedies exclusive. The remedies provided by sections
37 11-1206 and 11-1207 of this chapter shall be exclusive remedies avail-
38 able to any person for the review of tax liability imposed by this chap-
39 ter, and no determination or proposed determination of tax or determi-
40 nation on any application for refund by the commissioner of finance, nor
41 any decision by the tax appeals tribunal or any of its administrative
42 law judges, shall be enjoined or reviewed by an action for declaratory
43 judgment, an action for money had and received or by any action or
44 proceeding other than, in the case of a decision by the tax appeals
45 tribunal sitting en banc, a proceeding in the nature of a certiorari
46 proceeding under article seventy-eight of the civil practice law and
47 rules; provided, however, that such person may proceed by declaratory
48 judgment if such person institutes suit within ninety days after a defi-
49 ciency assessment is made and pays the amount of the deficiency assess-
50 ment to the commissioner of finance prior to the institution of such
51 suit and posts a bond for costs as provided in section 11-1206 of this
52 chapter.

53 § 11-1210 Proceedings to recover tax. a. Whenever any racing
54 corporation or association or any of its officers or any other person
55 shall fail to collect and pay over any tax or to pay any tax, penalty or
56 interest imposed by this chapter as therein provided, the corporation

1 counsel shall, upon the request of the commissioner of finance bring or
2 cause to be brought an action to enforce the payment of the same on
3 behalf of the city of Staten Island in any court of the state of New
4 York or of any other state or of the United States. If, however, the
5 commissioner of finance in his or her discretion believes that a person
6 subject to the provisions of this chapter is about to cease business,
7 leave the state or remove or dissipate the assets out of which the tax
8 or penalties might be satisfied, and that any such tax or penalty will
9 not be paid when due, the commissioner of finance may declare such tax
10 or penalty to be immediately due and payable and may issue a warrant
11 immediately.

12 b. As an additional or alternate remedy, the commissioner of finance
13 may issue a warrant, directed to the city sheriff commanding the sheriff
14 to levy upon and sell the real and personal property of the racing
15 corporation or association or its officers or any other person which may
16 be found within the city, for the payment of the amount thereof, with
17 any penalties and interest, and the cost of executing the warrant, and
18 to return such warrant to the commissioner of finance and to pay to the
19 commissioner of finance the money collected by virtue thereof within
20 sixty days after the receipt of such warrant. The city sheriff shall
21 within five days after the receipt of the warrant file with the county
22 clerk a copy thereof, and thereupon such clerk shall enter in the judg-
23 ment docket the name of the person mentioned in the warrant and the
24 amount of the tax, penalties and interest for which the warrant is
25 issued and the date when such copy is filed. Thereupon the amount of
26 such warrant so docketed shall become a lien upon the title to and
27 interest in real and personal property of the person against whom the
28 warrant is issued. The city sheriff shall then proceed upon the warrant
29 in the same manner, and with like effect, as that provided by law in
30 respect to executions issued against property upon judgments of a court
31 of record and for services in executing the warrants the city sheriff
32 shall be entitled to the same fees, which the city sheriff may collect
33 in the same manner. In the discretion of the commissioner of finance a
34 warrant of like terms, force and effect may be issued and directed to
35 any officer or employee of the department of finance, and in the
36 execution thereof such officer or employee shall have all the powers
37 conferred by law upon sheriffs, but shall be entitled to no fee or
38 compensation in excess of the actual expenses paid in the performance of
39 such duty. If a warrant is returned not satisfied in full, the commis-
40 sioner of finance may from time to time issue new warrants and shall
41 also have the same remedies to enforce the amount due thereunder as if
42 the city had recovered judgment therefor and execution thereon had been
43 returned unsatisfied.

44 c. Whenever a corporation or association shall make a sale, transfer
45 or assignment in bulk or any part or the whole of its race meeting
46 grounds or enclosures and the building and structures thereon, or its
47 lease, license or other agreement or right to possess or operate such
48 race meeting grounds or enclosures or of the equipment, machinery,
49 fixtures or supplies, or of the said race meeting grounds or enclosures
50 and the building and structures thereon, or lease, license or other
51 agreement or right to possess or operate such race meeting grounds or
52 enclosures, and the equipment, machinery, fixtures or supplies pertain-
53 ing to the conduct or the operation of the said race meeting grounds or
54 enclosures, otherwise than in the ordinary course of trade and in the
55 regular prosecution of said business, the purchaser, transferee or
56 assignee shall at least ten days before taking possession of such race

1 meeting grounds or enclosures and the building and structures thereon,
2 or lease, license or other agreement or right to possess or operate such
3 race meeting grounds or enclosures or the equipment, machinery, fixtures
4 or supplies, or of the said race meeting grounds or enclosures and the
5 building and structures thereon, or lease, license or other agreement or
6 right to possess or operate such race meeting grounds or enclosures, and
7 the equipment, machinery, fixtures or supplies or paying thereof, notify
8 the commissioner of finance by registered mail of the proposed sale and
9 of the price, terms and conditions thereof whether or not the seller,
10 transferor or assignor, has represented to, or informed the purchaser,
11 transferee or assignee that it owes any tax pursuant to this chapter and
12 whether or not the purchaser, transferee or assignee has knowledge that
13 such taxes are owing, and whether any such taxes are in fact owing.

14 Whenever the purchaser, transferee or assignee shall fail to give
15 notice to the commissioner of finance as required by the opening para-
16 graph of this subdivision, or whenever the commissioner of finance shall
17 inform the purchaser, transferee or assignee that a possible claim for
18 such tax or taxes exists, any sums of money, property or choses in
19 action, or other consideration, which the purchaser, transferee or
20 assignee is required to transfer over to the seller, transferor or
21 assignor shall be subject to a first priority right and lien for any
22 such taxes theretofore or thereafter determined to be due from the sell-
23 er, transferor or assignor to the city, and the purchaser, transferee or
24 assignee is forbidden to transfer to the seller, transferor or assignor
25 any such sums of money, property or choses in action to the extent of
26 the amount of the city's claim. For failure to comply with the
27 provisions of this subdivision, the purchaser, transferee or assignee,
28 in addition to being subject to the liabilities and remedies imposed
29 under the provisions of former article six of the uniform commercial
30 code, shall be personally liable for the payment to the city of any such
31 taxes theretofore or thereafter determined to be due to the city from
32 the seller, transferor or assignor, and such liability may be assessed
33 and enforced in the same manner as the liability for tax under this
34 chapter.

35 d. The commissioner of finance, if he or she finds that the interests
36 of the city will not thereby be jeopardized, and upon such conditions as
37 the commissioner of finance may require, may release any property from
38 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
39 tions to tax, penalties and interest filed pursuant to subdivision b of
40 this section, and such release or vacating of the warrant may be
41 recorded in the office of any recording officer in which such warrant
42 has been filed. The clerk shall thereupon cancel and discharge as of the
43 original date of docketing the vacated warrant.

44 § 11-1211 General powers of the commissioner of finance. In addition
45 to the powers granted to the commissioner of finance in this chapter,
46 such commissioner is hereby authorized and empowered:

47 1. To make, adopt and amend rules and regulations appropriate to the
48 carrying out of this chapter and the purposes thereof;

49 2. To extend, for cause shown, the time for filing any return for a
50 period not exceeding thirty days; and to compromise disputed claims in
51 connection with the taxes hereby imposed;

52 3. To request information from the racing commission and the tax
53 commission of the state of New York, or any other state or the treasury
54 department of the United States relative to any person; and to afford
55 information to such commission or such treasury department relative to

1 any person, any other provision of this chapter to the contrary notwith-
2 standing;

3 4. To delegate his or her functions under this section to a deputy
4 commissioner of finance or any employee or employees of the department
5 of finance;

6 5. To prescribe methods for determining the amount of the admissions
7 and for determining the tax;

8 6. To require racing corporations or associations to keep detailed
9 records of all race meetings and all attendance thereat, and to furnish
10 such information upon request to the commissioner of finance;

11 7. To require that the amount of the tax be printed, separate from
12 the price of admission, on tickets of admission.

13 § 11-1212 Administration of oaths and compelling testimony. a. The
14 commissioner of finance, his or her employees or agents duly designated
15 and authorized by the commissioner of finance, the tax appeals tribunal
16 and any of its duly designated and authorized employees or agents shall
17 have power to administer oaths and take affidavits in relation to any
18 matter or proceeding in the exercise of their powers and duties under
19 this chapter. The commissioner of finance and the tax appeals tribunal
20 shall have power to subpoena and require the attendance of witnesses and
21 the production of books, papers and documents to secure information
22 pertinent to the performance of the duties of the commissioner or of the
23 tax appeals tribunal under this section and of the enforcement of this
24 chapter and to examine them in relation thereto, and to issue commis-
25 sions for the examination of witnesses who are out of the state or
26 unable to attend before the commissioner of finance or the tax appeals
27 tribunal or excused from attendance.

28 b. A justice of the supreme court either in court or at chambers shall
29 have power summarily to enforce by proper proceedings the attendance and
30 testimony of witnesses and the production and examination of books,
31 papers and documents called for by the subpoena of the commissioner of
32 finance or the tax appeals tribunal under this chapter.

33 c. Cross-reference; criminal penalties. For failure to obey subpoenas
34 or for testifying falsely, see section 11-4007 of this title; for
35 supplying false or fraudulent information, see section 11-4009 of this
36 title.

37 d. The officers who serve the summons or subpoena of the commissioner
38 of finance or the tax appeals tribunal and witnesses attending in
39 response thereto shall be entitled to the same fees as are allowed to
40 officers and witnesses in civil cases in courts of record, except as
41 herein otherwise provided. Such officers shall be the city sheriff and
42 his or her duly appointed deputies, or any officers or employees of the
43 department of finance or the tax appeals tribunal, designated to serve
44 such process.

45 § 11-1213 Interest and penalties. (a) Interest on underpayments. If
46 any amount of tax is not paid over or paid on or before the last date
47 prescribed for payment, without regard to any extension of time granted
48 for payment, interest on such amount at the rate set by the commissioner
49 of finance pursuant to subdivision (g) of this section, or, if no rate
50 is set, at the rate of seven and one-half percent per annum, shall be
51 paid for the period from such last date to the date of payment. In
52 computing the amount of interest to be paid, such interest shall be
53 compounded daily. Interest under this subdivision shall not be paid if
54 the amount thereof is less than one dollar.

55 (b) (1) Failure to file return. (A) In case of failure to file a
56 return under this chapter on or before the prescribed date, determined

1 with regard to any extension of time for filing, unless it is shown that
2 such failure is due to reasonable cause and not due to willful neglect,
3 there shall be added to the amount required to be shown as tax on such
4 return five percent of the amount of such tax if the failure is for not
5 more than one month, with an additional five percent for each additional
6 month or fraction thereof during which such failure continues, not
7 exceeding twenty-five percent in the aggregate.

8 (B) In the case of a failure to file a return of tax within sixty days
9 of the date prescribed for filing of such return, determined with regard
10 to any extension of time for filing, unless it is shown that such fail-
11 ure is due to reasonable cause and not due to willful neglect, the addi-
12 tion to tax under subparagraph (A) of this paragraph shall not be less
13 than the lesser of one hundred dollars or one hundred percent of the
14 amount required to be shown as tax on such return.

15 (C) For purposes of this paragraph, the amount of tax required to be
16 shown on the return shall be reduced by the amount of any part of the
17 tax which is paid on or before the date prescribed for payment of the
18 tax and by the amount of any credit against the tax which may be claimed
19 upon the return.

20 (2) Failure to pay tax shown on return. In case of failure to pay the
21 amount shown as tax on a return required to be filed under this chapter
22 on or before the prescribed date, determined with regard to any exten-
23 sion of time for payment, unless it is shown that such failure is due to
24 reasonable cause and not due to willful neglect, there shall be added to
25 the amount shown as tax on such return one-half of one percent of the
26 amount of such tax if the failure is not for more than one month, with
27 an additional one-half of one percent for each additional month or frac-
28 tion thereof during which such failure continues, not exceeding twenty-
29 five percent in the aggregate. For the purpose of computing the addition
30 for any month the amount of tax shown on the return shall be reduced by
31 the amount of any part of the tax which is paid on or before the begin-
32 ning of such month and by the amount of any credit against the tax which
33 may be claimed upon the return. If the amount of tax required to be
34 shown on a return is less than the amount shown as tax on such return,
35 this paragraph shall be applied by substituting such lower amount.

36 (3) Failure to pay tax required to be shown on return. In case of
37 failure to pay any amount in respect of any tax required to be shown on
38 a return required to be filed under this chapter which is not so shown,
39 including a determination made pursuant to section 11-1206 of this chap-
40 ter, within ten days of the date of a notice and demand therefor, unless
41 it is shown that such failure is due to reasonable cause and not due to
42 willful neglect, there shall be added to the amount of tax stated in
43 such notice and demand one-half of one percent of such tax if the fail-
44 ure is not for more than one month, with an additional one-half of one
45 percent for each additional month or fraction thereof during which such
46 failure continues, not exceeding twenty-five percent in the aggregate.
47 For the purpose of computing the addition for any month, the amount of
48 tax stated in the notice and demand shall be reduced by the amount of
49 any part of the tax which is paid before the beginning of such month.

50 (4) Limitations on additions. (A) With respect to any return, the
51 amount of the addition under paragraph one of this subdivision shall be
52 reduced by the amount of the addition under paragraph two of this subdivi-
53 sion for any month to which an addition applies under both paragraphs
54 one and two. In any case described in subparagraph (B) of paragraph one
55 of this subdivision, the amount of the addition under such paragraph one
56 shall not be reduced below the amount provided in such subparagraph.

1 (B) With respect to any return, the maximum amount of the addition
2 permitted under paragraph three of this subdivision shall be reduced by
3 the amount of the addition under paragraph one of this subdivision,
4 determined without regard to subparagraph (B) of such paragraph one,
5 which is attributable to the tax for which the notice and demand is made
6 and which is not paid within ten days of such notice and demand.

7 (c) Underpayment due to negligence. (1) If any part of an underpay-
8 ment of tax is due to negligence or intentional disregard of this chap-
9 ter or any rules or regulations hereunder, but without intent to
10 defraud, there shall be added to the tax a penalty equal to five percent
11 of the underpayment.

12 (2) There shall be added to the tax, in addition to the amount deter-
13 mined under paragraph one of this subdivision, an amount equal to fifty
14 percent of the interest payable under subdivision (a) of this section
15 with respect to the portion of the underpayment described in such para-
16 graph one which is attributable to the negligence or intentional disre-
17 gard referred to in such paragraph one, for the period beginning on the
18 last date prescribed by law for payment of such underpayment, determined
19 without regard to any extension, and ending on the date of the assess-
20 ment of the tax, or, if earlier, the date of the payment of the tax.

21 (d) Underpayment due to fraud. (1) If any part of an underpayment of
22 tax is due to fraud, there shall be added to the tax a penalty equal to
23 fifty percent of the underpayment.

24 (2) There shall be added to the tax, in addition to the penalty deter-
25 mined under paragraph one of this subdivision, an amount equal to fifty
26 percent of the interest payable under subdivision (a) of this section
27 with respect to the portion of the underpayment described in such para-
28 graph one which is attributable to fraud, for the period beginning on
29 the last day prescribed by law for payment of such underpayment, deter-
30 mined without regard to any extension, and ending on the date of the
31 assessment of the tax, or, if earlier, the date of the payment of the
32 tax.

33 (3) The penalty under this subdivision shall be in lieu of any other
34 addition to tax imposed by subdivision (b) or (c) of this section.

35 (e) Additional penalty. Any person who, with fraudulent intent, shall
36 fail to pay any tax imposed by this chapter, or to make, render, sign or
37 certify any return, or to supply any information within the time
38 required by or under this chapter, shall be liable for a penalty of not
39 more than one thousand dollars, in addition to any other amounts
40 required under this chapter to be imposed, assessed and collected by the
41 commissioner of finance. The commissioner of finance shall have the
42 power, in his or her discretion, to waive, reduce or compromise any
43 penalty under this subdivision.

44 (f) The interest and penalties imposed by this section shall be paid
45 and disposed of in the same manner as other revenues from this chapter.
46 Unpaid interest and penalties may be enforced in the same manner as the
47 tax imposed by this chapter.

48 (g)(1) Authority to set interest rates. The commissioner of finance
49 shall set the rate of interest to be paid pursuant to subdivision (a) of
50 this section, but if no such rate of interest is set, such rate shall be
51 deemed to be set at seven and one-half percent per annum. Such rate
52 shall be the rate prescribed in paragraph two of this subdivision but
53 shall not be less than seven and one-half percent per annum. Any such
54 rate set by the commissioner of finance shall apply to taxes, or any
55 portion thereof, which remain or become due on or after the date on
56 which such rate becomes effective and shall apply only with respect to

1 interest computed or computable for periods or portions of periods
2 occurring in the period in which such rate is in effect.

3 (2) General rule. The rate of interest set under this subdivision
4 shall be the sum of (i) the federal short-term rate as provided under
5 paragraph three of this subdivision, plus (ii) seven percentage points.

6 (3) Federal short-term rate. For purposes of this subdivision:

7 (A) The federal short-term rate for any month shall be the federal
8 short-term rate determined by the United States secretary of the treas-
9 ury during such month in accordance with subsection (d) of section
10 twelve hundred seventy-four of the internal revenue code for use in
11 connection with section six thousand six hundred twenty-one of the
12 internal revenue code. Any such rate shall be rounded to the nearest
13 full percent, or, if a multiple of one-half of one percent, such rate
14 shall be increased to the next highest full percent.

15 (B) Period during which rate applies.

16 (i) In general. Except as provided in clause (ii) of this subpara-
17 graph, the federal short-term rate for the first month in each calendar
18 quarter shall apply during the first calendar quarter beginning after
19 such month.

20 (ii) Special rule for the month of September, nineteen hundred eight-
21 y-nine. The federal short-term rate for the month of April, nineteen
22 hundred eighty-nine shall apply with respect to setting the rate of
23 interest for the month of September, nineteen hundred eighty-nine.

24 (4) Publication of interest rate. The commissioner of finance shall
25 cause to be published in the City Record, and give other appropriate
26 general notice of, the interest rate to be set under this subdivision no
27 later than twenty days preceding the first day of the calendar quarter
28 during which such interest rate applies. The setting and publication of
29 such interest rate shall not be included within paragraph (a) of subdi-
30 vision five of section one thousand forty-one of the city charter of the
31 preceding municipality as it existed January first, nineteen hundred
32 ninety-four relating to the definition of a rule.

33 (h) Miscellaneous. (1) Officers of a racing corporation or association
34 shall be personally liable for the tax collected or required to be
35 collected under this chapter, and subject to the penalties imposed by
36 this section.

37 (2) The certificate of the commissioner of finance to the effect that
38 a tax has not been paid, that a return or bond has not been filed, or
39 that information has not been supplied pursuant to the provisions of
40 this chapter, shall be presumptive evidence thereof.

41 (3) Cross-reference: For criminal penalties, see chapter forty of this
42 title.

43 § 11-1214 Returns to be secret. a. Except in accordance with proper
44 judicial order, or as otherwise provided by law, it shall be unlawful
45 for the commissioner of finance or the tax appeals tribunal or any offi-
46 cer or employee of the department of finance to divulge or make known in
47 any manner any of the information relating to the business of any person
48 contained in any return required under this chapter. The officers
49 charged with the custody of such returns shall not be required to
50 produce any of them or evidence of anything contained in them in any
51 action or proceeding in any court, except on behalf of the commissioner
52 of finance in an action or proceeding under the provisions of this chap-
53 ter, or on behalf of any party to any action or proceeding under the
54 provisions of this chapter, when the returns or facts shown thereby are
55 directly involved in such action or proceeding, in either of which
56 events the courts may require the production of, and may admit in

1 evidence, so much of said returns or of the facts shown thereby, as are
2 pertinent to the action or proceeding and no more. The commissioner of
3 finance may, nevertheless, publish a copy or a summary of any determi-
4 nation or decision rendered after a formal hearing held pursuant to
5 section 11-1206 or 11-1207 of this chapter. Nothing in this section
6 shall be construed to prohibit the delivery to a person or such person's
7 duly authorized representative of a certified copy of any return filed
8 by such person nor to prohibit the publication of statistics so classi-
9 fied as to prevent the identification of particular returns and the
10 items thereof, or the inspection by the corporation counsel or other
11 legal representatives of the city, or by the district attorney of Rich-
12 mond county, of the return of any person who shall bring action to set
13 aside or review the tax based thereon, or against whom an action or
14 proceeding has been instituted for the collection of a tax or penalty.
15 Returns shall be preserved for three years and thereafter until the
16 commissioner of finance permits them to be destroyed.

17 b. (1) Any officer or employee of the city who willfully violates the
18 provisions of subdivision a of this section shall be dismissed from
19 office and be incapable of holding any public office in this city for a
20 period of five years thereafter.

21 (2) Cross-reference: For criminal penalties, see chapter forty of this
22 title.

23 c. This section shall be deemed a state statute for purposes of para-
24 graph (a) of subdivision two of section eighty-seven of the public offi-
25 cers law.

26 d. Notwithstanding anything in subdivision a of this section to the
27 contrary, if a taxpayer has petitioned the tax appeals tribunal for
28 administrative review as provided in section one hundred seventy of the
29 charter of the preceding municipality as it existed January first, nine-
30 teen hundred ninety-four, the commissioner of finance shall be author-
31 ized to present to the tribunal any report or return of such taxpayer,
32 or any information contained therein or relating thereto, which may be
33 material or relevant to the proceeding before the tribunal. The tax
34 appeals tribunal shall be authorized to publish a copy or a summary of
35 any decision rendered pursuant to section one hundred seventy-one of the
36 charter of the preceding municipality as it existed January first, nine-
37 teen hundred ninety-four.

38 § 11-1215 Notices and limitations of time. a. Any notice author-
39 ized or required under the provisions of this chapter may be given by
40 mailing the same to the person for whom it is intended in a postpaid
41 envelope addressed to such person at the address given in the last
42 return filed by such person pursuant to the provisions of this chapter
43 or in any application made by such person or if no return has been filed
44 or application made, then to such address as may be obtainable. The
45 mailing of such notice shall be presumptive evidence of the receipt of
46 the same by the person to whom addressed. Any period of time which is
47 determined according to the provisions of this chapter by the giving of
48 notice shall commence to run from the date of mailing of such notice.

49 b. The provisions of the civil practice law and rules or any other
50 law relative to limitations of time for the enforcement of a civil reme-
51 dy shall not apply to any proceeding or action taken by the city to
52 levy, appraise, assess, determine or enforce the collection of any tax
53 or penalty provided by this chapter. However, except in the case of a
54 wilfully false or fraudulent return with intent to evade the tax, no
55 assessment of additional tax shall be made after the expiration of more
56 than three years from the date of the filing of a return, provided, that

1 where no return has been filed as provided by law the tax may be
2 assessed at any time.

3 c. Where, before the expiration of the period prescribed under this
4 section for the assessment of an additional tax, a person has consented
5 in writing that such period be extended, the amount of such additional
6 tax due may be determined at any time within such extended period. The
7 period so extended may be further extended by subsequent consents in
8 writing made before the expiration of the extended period.

9 d. If any return, claim, statement, notice, application, or other
10 document required to be filed, or any payment required to be made, with-
11 in a prescribed period or on or before a prescribed date under authority
12 of any provision of this chapter is, after such period or such date,
13 delivered by United States mail to the commissioner of finance, the tax
14 appeals tribunal, bureau, office, officer or person with which or with
15 whom such document is required to be filed, or to which or to whom such
16 payment is required to be made, the date of the United States postmark
17 stamped on the envelope shall be deemed to be the date of delivery. This
18 subdivision shall apply only if the postmark date falls within the
19 prescribed period or on or before the prescribed date for the filing of
20 such document, or for making the payment, including any extension grant-
21 ed for such filing or payment, and only if such document or payment was
22 deposited in the mail, postage prepaid, properly addressed to the
23 commissioner of finance, bureau, office, officer or person with which or
24 with whom the document is required to be filed or to which or to whom
25 such payment is required to be made. If any document is sent by United
26 States registered mail, such registration shall be prima facie evidence
27 that such document was delivered to the commissioner of finance, the tax
28 appeals tribunal, bureau, office, officer or person to which or to whom
29 addressed, and the date of registration shall be deemed the postmark
30 date. The commissioner of finance or, where relevant, the tax appeals
31 tribunal is authorized to provide by regulation the extent to which the
32 provisions of the preceding sentence with respect to prima facie
33 evidence of delivery and the postmark date shall apply to certified
34 mail. Except as provided in subdivision f of this section, this subdivi-
35 sion shall apply in the case of postmarks not made by the United States
36 postal service only if and to the extent provided by regulation of the
37 commissioner of finance or, where relevant, the tax appeals tribunal.

38 e. When the last day prescribed under authority of this chapter,
39 including any extension of time, for performing any act falls on a
40 Saturday, Sunday or legal holiday in the state, the performance of such
41 act shall be considered timely if it is performed on the next succeeding
42 day which is not a Saturday, Sunday or legal holiday.

43 f. (1) Any reference in subdivision d of this section to the United
44 States mail shall be treated as including a reference to any delivery
45 service designated by the secretary of the treasury of the United States
46 pursuant to section seventy-five hundred two of the internal revenue
47 code and any reference in subdivision d of this section to a United
48 States postmark shall be treated as including a reference to any date
49 recorded or marked in the manner described in section seventy-five
50 hundred two of the internal revenue code by a designated delivery
51 service. If the commissioner of finance finds that any delivery service
52 designated by such secretary is inadequate for the needs of the city,
53 the commissioner of finance may withdraw such designation for purposes
54 of this title. The commissioner of finance may also designate additional
55 delivery services meeting the criteria of section seventy-five hundred
56 two of the internal revenue code for purposes of this title, or may

1 withdraw any such designation if the commissioner of finance finds that
2 a delivery service so designated is inadequate for the needs of the
3 city. Any reference in subdivision d of this section to the United
4 States mail shall be treated as including a reference to any delivery
5 service designated by the commissioner of finance and any reference in
6 subdivision d of this section to a United States postmark shall be
7 treated as including a reference to any date recorded or marked in the
8 manner described in section seventy-five hundred two of the internal
9 revenue code by a delivery service designated by the commissioner of
10 finance. Notwithstanding the provisions of this paragraph, any with-
11 drawal of designation or additional designation by the commissioner of
12 finance shall not be effective for purposes of service upon the tax
13 appeals tribunal, unless and until such withdrawal of designation or
14 additional designation is ratified by the president of the tax appeals
15 tribunal.

16 (2) Any equivalent of registered or certified mail designated by the
17 United States secretary of the treasury, or as may be designated by the
18 commissioner of finance pursuant to the same criteria used by such
19 secretary for such designations pursuant to section seventy-five hundred
20 two of the internal revenue code, shall be included within the meaning
21 of registered or certified mail as used in subdivision d of this
22 section. If the commissioner of finance finds that any equivalent of
23 registered or certified mail designated by such secretary or the commis-
24 sioner of finance is inadequate for the needs of the city, the commis-
25 sioner of finance may withdraw such designation for purposes of this
26 title. Notwithstanding the foregoing, any withdrawal of designation or
27 additional designation by the commissioner of finance shall not be
28 effective for purposes of service upon the tax appeals tribunal, unless
29 and until such withdrawal of designation or additional designation is
30 ratified by the president of the tax appeals tribunal.

31 § 11-1216 Disposition of revenues. All revenues resulting from the
32 imposition of the tax under this chapter at race meeting grounds or
33 enclosures located wholly within the city of Staten Island shall be
34 credited and deposited in the general fund of the city.

35 CHAPTER 13

36 CIGARETTE TAX

37 § 11-1301 Definitions. When used in this chapter the following words
38 shall have the meanings herein indicated:

39 1. "Cigarette." (a) Any roll for smoking made wholly or in part of
40 tobacco or any other substance wrapped in paper or in any other
41 substance not containing tobacco, and (b) any roll for smoking made
42 wholly or in part of tobacco wrapped in any substance containing tobacco
43 which, because of its appearance, the type of tobacco used in the
44 filler, or its packaging and labeling, is likely to be offered to, or
45 purchased by, consumers as a cigarette described in paragraph (a) of
46 this subdivision. However, a roll will not be considered to be a ciga-
47 rette for purposes of paragraph (b) of this subdivision if it is not
48 treated as a cigarette for federal excise tax purposes under the appli-
49 cable federal statute in effect on April first, two thousand eight.
50 "Cigarette" shall not include a research tobacco product.

51 2. "Person." Any individual, partnership, society, association, joint-
52 stock company, corporation, estate, receiver, trustee, assignee, referee
53 or any other person acting in a fiduciary or representative capacity,

- 1 whether appointed by a court or otherwise, and any combination of indi-
2 viduals.
- 3 3. "Sale or purchase." Any transfer of title or possession or both,
4 exchange or barter, conditional or otherwise, in any manner or by any
5 means whatsoever or any agreement therefor.
- 6 4. "Use." Any exercise of a right or power, actual or constructive,
7 and shall include but is not limited to the receipt, storage, or any
8 keeping or retention for any length of time, but shall not include
9 possession for sale by a dealer.
- 10 5. "Dealer." Any wholesale dealer or retail dealer as defined in
11 subdivisions six and seven of this section.
- 12 6. "Wholesale dealer." Any person who sells cigarettes or tobacco
13 products to retail dealers or other persons for purposes of resale only,
14 and any person who owns, operates or maintains one or more cigarette
15 vending machines in, at or upon premises owned or occupied by any other
16 person.
- 17 7. "Retail dealer." Any person other than a wholesale dealer engaged
18 in selling cigarettes or tobacco products. For the purposes of this
19 chapter, the possession or transportation at any one time of five thou-
20 sand or more cigarettes or little cigars, or more than fifty cigars, or
21 more than one pound of loose tobacco, smokeless tobacco, snus or shisha,
22 or any combination thereof, by any person other than a manufacturer, an
23 agent, a licensed wholesale dealer or a person delivering cigarettes or
24 tobacco products in the regular course of business for a manufacturer,
25 an agent or a licensed wholesale or retail dealer, shall be presumptive
26 evidence that such person is a retail dealer.
- 27 8. "Package." The individual package, box or other container in or
28 from which retail sales of cigarettes are normally made or intended to
29 be made.
- 30 9. "Agent." Any person authorized to purchase and affix adhesive or
31 meter stamps under this chapter who is designated as an agent by the
32 commissioner of finance.
- 33 10. "Comptroller." The comptroller of the city.
- 34 11. "Commissioner of finance." The commissioner of finance of the
35 city.
- 36 12. "City." The city of Staten Island.
- 37 13. "Tax appeals tribunal." The tax appeals tribunal established by
38 section one hundred sixty-eight of the charter of the preceding munici-
39 pality as it existed January first, nineteen hundred ninety-four.
- 40 14. "Cigar." Any roll of tobacco for smoking that is wrapped in leaf
41 tobacco or in any substance containing tobacco, with or without a tip or
42 mouthpiece. Cigar does not include a little cigar as defined in this
43 section.
- 44 15. "Little cigar." Any roll of tobacco for smoking that is wrapped in
45 leaf tobacco or in any substance containing tobacco and that weighs no
46 more than four pounds per thousand or has a cellulose acetate or other
47 integrated filter.
- 48 16. "Loose tobacco." Any product that consists of loose leaves or
49 pieces of tobacco that is intended for use by consumers in a pipe, roll-
50 your-own cigarette, or similar product or device.
- 51 17. "Smokeless tobacco." Any tobacco product that consists of cut,
52 ground, powdered, or leaf tobacco and that is intended to be placed in
53 the oral or nasal cavity.
- 54 18. "Snus." Any smokeless tobacco product marketed and sold as snus,
55 and sold in ready-to-use pouches or loose as a moist powder.

1 19. "Tobacco product." Any product which contains tobacco that is
2 intended for human consumption, including any component, part, or acces-
3 sory of such product. Tobacco product shall include, but not be limited
4 to, any cigar, little cigar, chewing tobacco, pipe tobacco, roll-your-
5 own tobacco, snus, bidi, snuff, shisha, or dissolvable tobacco product.
6 Tobacco product shall not include cigarettes or any product that has
7 been approved by the United States food and drug administration for sale
8 as a tobacco use cessation product or for other medical purposes and
9 that is being marketed and sold solely for such purposes. "Tobacco
10 products" shall not include research tobacco products.

11 20. "Shisha." Any product that contains tobacco and is smoked or
12 intended to be smoked in a hookah or water pipe.

13 21. "Research tobacco product." A tobacco product or cigarette that is
14 labeled as a research tobacco product, is manufactured for use in
15 research for health, scientific, or similar experimental purposes, is
16 exclusively used for such purposes by an accredited college, university
17 or hospital, or a researcher affiliated with an accredited college,
18 university or hospital, and is not offered for sale or sold to consumers
19 for any purpose.

20 § 11-1302 Imposition of tax. a. There is hereby imposed and shall
21 be paid a tax on:

22 1. All cigarettes possessed in the city for sale except as provided
23 in this section;

24 2. The use of all cigarettes in the city except as provided in this
25 section;

26 3. It is intended that the ultimate incidence of and liability for the
27 tax shall be upon the consumer, and that any agent, distributor or deal-
28 er who shall pay the tax to the commissioner of finance shall collect
29 the tax from the purchaser or consumer. Such tax shall be at the rate of
30 four cents for each ten cigarettes or fraction thereof, provided, howev-
31 er, that if a package of cigarettes contains more than twenty ciga-
32 rettes, the rate of tax on the cigarettes in such package in excess of
33 twenty shall be two cents for each five cigarettes or fraction thereof.
34 Provided further, however, that on and after July second, two thousand
35 two, such tax shall be at the rate of seventy-five cents for each ten
36 cigarettes or fraction thereof, provided, however, that if a package of
37 cigarettes contains more than twenty cigarettes, the rate of tax on the
38 cigarettes in such package in excess of twenty shall be thirty-eight
39 cents for each five cigarettes or fraction thereof. Such tax shall be
40 imposed only once on the same package of cigarettes.

41 b. The tax imposed by this section shall not apply to:

42 1. The use, otherwise than for sale, of four hundred cigarettes or
43 less brought into the city, on or in possession of, any person;

44 2. Cigarettes sold to the United States;

45 3. Cigarettes sold to or by a voluntary unincorporated organization
46 of the armed forces of the United States operating a place for the sale
47 of goods pursuant to regulations promulgated by the appropriate execu-
48 tive agency of the United States;

49 4. Cigarettes possessed in the city by any agent or wholesale dealer
50 for sale to a dealer outside the city or for sale and shipment to any
51 person in another state for use there, provided such agent or wholesale
52 dealer complies with the regulations relating thereto.

53 c. The tax imposed under this section shall be in addition to any and
54 all other taxes.

55 d. It shall be presumed that all sales or uses mentioned in this
56 section are subject to tax until the contrary is established, and the

1 burden of proof that a sale or use is not taxable under this section
2 shall be upon the vendor or the purchaser.

3 e. Except as provided in this section, the tax shall be advanced and
4 paid by the agent or distributor. The agent shall be liable for the
5 collection and payment of the tax to the commissioner of finance by
6 purchasing from the commissioner of finance adhesive stamps of such
7 design and denomination as may be prescribed by such commissioner,
8 subject to the approval of the state commissioner of taxation and
9 finance. The tax may also be paid by the use of such metering machines
10 as are prescribed by the commissioner of finance subject to the approval
11 of the state commissioner of taxation and finance.

12 f. Within twenty-four hours after liability for the tax on the use of
13 cigarettes accrues each person liable for the tax shall file with the
14 commissioner of finance a return in such form as the commissioner of
15 finance may prescribe, together with a remittance of the tax shown to be
16 due thereon.

17 g. Agents located within or without the city shall purchase stamps
18 and affix them in the manner prescribed to packages of cigarettes to be
19 sold within the city.

20 h. The amount of taxes advanced and paid by the agent or distributor
21 as provided in this section shall be added to and collected as part of
22 the sales price of the cigarettes.

23 i. The commissioner of finance, notwithstanding any other provision
24 of this chapter, may, subject to the approval of the state commissioner
25 of taxation and finance, provide by regulation that the tax imposed by
26 this section shall be collected without the use of stamps.

27 § 11-1302.1. Imposition of tax on tobacco products. a. In accordance
28 with section one hundred ten of the public housing law, an excise tax on
29 the sale of tobacco products is hereby imposed and shall be paid on all
30 tobacco products possessed in the city for sale, except as provided
31 under this section. It is intended that the ultimate incidence of and
32 liability for the tax shall be upon the consumer. Any dealer or distrib-
33 utor who pays the tax to the commissioner of finance shall collect the
34 tax from the purchaser or consumer. Such tax shall be at the rate of ten
35 percent of the price floor for a package of the specified category of
36 tobacco product, exclusive of sales tax, set forth in the following
37 table, which shall be consistent with the price floors described in
38 subdivision d of section 17-176.1 of the code of the preceding munici-
39 pality:

40 Tobacco Product	41 Price floor 42 (excluding OTP and sales taxes)	43 Amount of OTP tax 44 (excluding sales tax)
45 Cigar	46 \$8.00 per cigar sold 47 individually; for a package, number of cigars multiplied by \$1.75 plus \$6.25	\$0.80 per cigar; for a package, \$0.80 for first cigar, plus \$0.175 for each additional cigar
48 Little cigar	49 \$10.95 per pack of 20 little cigars	\$1.09 per pack
50 Smokeless tobacco	51 \$8.00 per 1.2 oz. pack- 52 age plus \$2.00 for each additional 0.3 oz. or	\$0.80 per 1.2 oz. plus an additional \$0.20 for each 0.3 oz. or any

1		any fraction thereof in	fraction thereof in
2		excess of 1.2 oz.	excess of 1.2 oz.
3	Snus	\$8.00 per 0.32 oz. pack-	\$0.80 per 0.32 oz.
4		age plus \$2.00 for each	plus an additional
5		additional 0.08 oz. or	\$0.20 for each 0.08 oz.
6		any fraction thereof in	or any fraction thereof
7		excess of 0.32 oz.	in excess of 0.32 oz.
8	Shisha	\$17.00 per 3.5 oz. pack-	\$1.70 per 3.5 oz. plus
9		age plus \$3.40 for each	an additional \$0.34 for
10		additional 0.7 oz. or	for each 0.7 oz. or any
11		any fraction thereof in	fraction thereof in
12		excess of 3.5 oz.	excess of 3.5 oz.
13	Loose tobacco	\$2.55 per 1.5 oz. pack-	\$0.25 per 1.5 oz. pack-
14		age plus \$0.51 for each	age plus an additional
15		additional 0.3 oz. or	\$0.05 for each 0.3 oz.
16		any fraction thereof	or any fraction thereof
17		in excess of 1.5 oz.	in excess of 1.5 oz.

18 b. The tax imposed hereunder shall not apply to:

19 1. The state of New York, or any public corporation, including a
20 public corporation created pursuant to agreement or compact with another
21 state or the Dominion of Canada, improvement district or other political
22 subdivision of the state where it is the purchaser, user or consumer;

23 2. The United States of America, in so far as it is immune from taxa-
24 tion;

25 3. The United Nations or other world-wide international organizations
26 of which the United States of America is a member;

27 4. Any corporation, or association, or trust, or community chest, fund
28 or foundation, organized and operated exclusively for religious, chari-
29 table, or educational purposes, or for the prevention of cruelty to
30 children or animals, no part of the net earnings of which inures to the
31 benefit of any private shareholder or individual, and no substantial
32 part of the activities of which is carrying on propaganda, or otherwise
33 attempting to influence legislation; provided, however, that nothing in
34 this paragraph shall include an organization operated for the primary
35 purpose of carrying on a trade or business for profit, whether or not
36 all of its profits are payable to one or more organizations described in
37 this paragraph; and

38 5. Tobacco products possessed in the city by any dealer for sale
39 outside the city or for sale and shipment to any person in another state
40 for use there, provided such dealer complies with the regulations relat-
41 ing thereto.

42 c. Nothing in subdivision b of this section shall exempt sales by any
43 shop or store operated by any college, university or other public or
44 private institution for higher education from the taxes described in
45 this section.

46 d. The tax imposed under this section shall be in addition to any and
47 all other taxes.

48 e. It shall be presumed that all sales mentioned in this section are
49 subject to tax until the contrary is established, and the burden of
50 proof that a sale is not taxable under this section shall be upon the
51 dealer or the purchaser.

1 f. 1. Except as provided in this subdivision, the tax shall be
2 advanced and paid by the wholesale dealer. The wholesale dealer shall be
3 liable for the collection and payment of the tax to the commissioner of
4 finance as required under subdivision g of this section. The commission-
5 er may require the wholesale dealer to keep tobacco products for which
6 the tax has not yet been paid separately from tobacco products for which
7 the tax has been paid. For purposes of this chapter, retention by the
8 wholesale dealer of any tobacco products beyond the time prescribed for
9 payment under this section, without having made the requisite payment,
10 or storing any such products in violation of any separation requirements
11 prescribed by the commissioner, shall be presumptive evidence that such
12 tobacco products are possessed in violation of the provisions of this
13 chapter.

14 2. Every retail dealer shall be liable for the tax on all tobacco
15 products in his or her possession at any time, upon which tax has not
16 been paid, and the failure of any retail dealer to produce and exhibit
17 to the commissioner of finance or such commissioner's duly authorized
18 representatives upon demand, an invoice by a licensed wholesale dealer
19 for any tobacco products in his or her possession, shall be presumptive
20 evidence the tax thereon has not been paid, that such retail dealer is
21 liable for the tax thereon, and the tobacco products are possessed in
22 violation of this chapter, unless evidence of such invoice or payment
23 shall later be produced.

24 g. 1. Each wholesale dealer shall file with the commissioner of
25 finance a return, on a form required by such commissioner, indicating
26 the amount of tax due pursuant to this section and any other information
27 the commissioner may require, on a monthly basis, or on such other regu-
28 lar interval as such commissioner may prescribe. Each wholesale dealer
29 shall file the return on the twentieth day of the month following the
30 end of the month or other interval covered by the return, unless the
31 commissioner of finance prescribes a greater number of days following
32 the end of the month or a different reporting interval. Each wholesale
33 dealer shall pay the amount of tax due upon filing the return unless the
34 commissioner prescribes a different date or time for such payment.

35 2. The commissioner of finance may:

36 (A) Authorize another person, including a distributor as defined in
37 subdivision twelve of section four hundred seventy of the tax law, who
38 is not a wholesale dealer, to advance and pay the tax imposed under this
39 section;

40 (B) Exempt wholesale dealers from the requirements of this subdivi-
41 sion, upon such conditions as may be imposed by such commissioner, if he
42 or she is satisfied the tax on the tobacco products has been or is being
43 advanced and paid by another wholesale dealer or a distributor author-
44 ized under this subdivision.

45 h. The amount of taxes advanced and paid by the wholesale dealer
46 pursuant to this section shall be added to and collected as part of the
47 sales price of the tobacco products.

48 § 11-1303 License. a. License required of wholesale and retail deal-
49 ers. 1. It shall be unlawful for a person to engage in business as a
50 wholesale or retail dealer without a license as prescribed in this
51 section or subchapter one of chapter two of title twenty of the code of
52 the preceding municipality, whichever is applicable.

53 2. It shall be unlawful for a person to permit any premises under such
54 person's control to be used by any other person in violation of para-
55 graph one of subdivision a of this section.

1 b. Application for license. 1. Wholesale tobacco license. In order to
2 obtain a license to engage in business as a wholesale dealer, a person
3 shall file application with the commissioner of finance for one license
4 for each place of business that he or she desires to have for the sale
5 of cigarettes or tobacco products in the city. Every application for a
6 wholesale tobacco license shall be made upon a form prescribed and
7 prepared by the commissioner of finance and shall set forth such infor-
8 mation as the commissioner shall require. The commissioner of finance
9 may, for cause, refuse to issue a wholesale tobacco license. Upon
10 approval of the application, the commissioner of finance shall grant and
11 issue to the applicant a wholesale tobacco license for each place of
12 business within the city set forth in the application. Wholesale tobacco
13 licenses shall not be assignable and shall be valid only for the persons
14 in whose names such licenses have been issued and for the transaction of
15 business in the places designated therein and shall at all times be
16 conspicuously displayed at the places for which issued.

17 2. Retail tobacco license. In order to obtain a license to engage in
18 business as a retail dealer, a person shall file application with the
19 commissioner of consumer affairs and worker protection in accordance
20 with the provisions of section 20-202 of the code of the preceding muni-
21 cipality.

22 c. Duplicate licenses. Whenever any license issued by the commissioner
23 of finance under the provisions of this section is defaced, destroyed or
24 lost, the commissioner of finance shall issue a duplicate license to the
25 holder of the defaced, destroyed or lost license upon the payment of a
26 fee of fifteen dollars. A duplicate retail dealer license may be
27 obtained from the commissioner of consumer and worker protection as
28 provided in section 20-204 of the code of the preceding municipality.

29 d. Suspension or revocation of licenses. (1) After a hearing, the
30 commissioner of finance may suspend or revoke a wholesale tobacco
31 license and the commissioner of consumer and worker protection, upon
32 notice from the commissioner of finance, may suspend or revoke a retail
33 tobacco license whenever the commissioner of finance finds that the
34 holder thereof has failed to comply with any of the provisions of this
35 chapter or any rules of the commissioner of finance prescribed, adopted
36 and promulgated under this chapter.

37 (2) The commissioner of finance may also suspend or revoke a wholesale
38 tobacco license in accordance with the requirements of any other
39 sections of this code or any rules promulgated thereunder which author-
40 izes the suspension or revocation of a wholesale tobacco license.

41 (3) The commissioner of consumer and worker protection may also
42 suspend or revoke a retail tobacco license in accordance with the
43 requirements of any other section of this code or any rules promulgated
44 thereunder which authorize suspension or revocation of a retail tobacco
45 license.

46 (4) Upon suspending or revoking any wholesale tobacco license, the
47 commissioner of finance shall direct the holder thereof to surrender to
48 the commissioner of finance immediately all wholesale tobacco licenses
49 or duplicates thereof issued to such holder and the holder shall surren-
50 der promptly all such licenses to the commissioner of finance as
51 directed. Before the commissioner of finance suspends or revokes a
52 wholesale tobacco license or notifies the commissioner of consumer and
53 worker protection of a finding of a violation of this chapter with
54 respect to a retail tobacco license pursuant to paragraph one of this
55 subdivision, the commissioner of finance shall notify the holder and the
56 holder shall be entitled to a hearing, if desired, if the holder, within

1 ninety days from the date of such notification, or, if the commissioner
2 of finance has established a conciliation procedure pursuant to section
3 11-124 of this title and the taxpayer has requested a conciliation
4 conference in accordance therewith, within ninety days from the mailing
5 of a conciliation decision or the date of the commissioner's confirma-
6 tion of the discontinuance of the conciliation proceeding, both (A)
7 serves a petition upon the commissioner of finance and (B) files a peti-
8 tion with the tax appeals tribunal for a hearing. After such hearing,
9 the commissioner of finance, good cause appearing therefor, may suspend
10 or revoke the wholesale tobacco license, and, in the case of a retail
11 tobacco license, notify the commissioner of consumer and worker
12 protection of a violation of this chapter or any rules promulgated ther-
13 eunder. Upon such notification, the commissioner of consumer and worker
14 protection may suspend or revoke a retail cigarette license as provided
15 in subdivision b of section 20-206 of the code of the preceding munici-
16 pality. The commissioner of finance may, by rule, provide for granting a
17 similar hearing to an applicant who has been refused a wholesale ciga-
18 rette license by the commissioner of finance.

19 e. Prohibited sales and purchases. No agent or dealer shall sell ciga-
20 rettes or tobacco products to an unlicensed wholesale or retail dealer,
21 or to a wholesale or retail dealer whose license has been suspended or
22 revoked.

23 No dealer shall purchase cigarettes or tobacco products from any
24 person other than a manufacturer or a licensed wholesale dealer.

25 f. Retail dealers. The commissioner of finance may, after hearing,
26 issue an order prohibiting a retail dealer from selling cigarettes, for
27 such period as the order shall specify, for failure to comply with any
28 of the provisions of this chapter or any rules or regulations of the
29 commissioner of finance prescribed, adopted and promulgated under this
30 chapter.

31 g. License fees; numbering and registering of licenses; term. 1. The
32 annual fee for a wholesale dealer's license shall be six hundred
33 dollars, and the annual fee for a retail dealer's license shall be as
34 provided in subdivision c of section 20-202 of the code of the preceding
35 municipality.

36 2. Wholesale tobacco licenses shall be regularly numbered and duly
37 registered.

38 3. Wholesale tobacco licenses shall expire on January thirty-first
39 next succeeding the date of issuance unless sooner suspended or revoked.

40 § 11-1304 Preparation and sale of stamps; commissions. a. The
41 commissioner of finance shall, subject to the approval of the state tax
42 commission, prescribe, prepare and furnish stamps of such denominations
43 and quantities as may be necessary for the payment of the tax imposed by
44 this chapter, and may, from time to time, provide for the issuance and
45 exclusive use of stamps of a new design and forbid the use of stamps of
46 any other design. Such stamps shall be in the form of a single stamp
47 for the payment of the tax imposed by this chapter or, in lieu thereof,
48 a joint single stamp to be prepared and issued by the state of New York
49 and the city for the payment of the tax imposed by this chapter and the
50 taxes imposed by article twenty of the tax law. The commissioner of
51 finance may make such arrangements with the state tax commission for the
52 method of acquiring and the manner of sharing the costs of such joint
53 single stamps as he or she deems appropriate. The commissioner of
54 finance, subject to the approval of the state commissioner of taxation
55 and finance, shall make provisions for the sale of such stamps at such

1 places as he or she may deem necessary, and may appoint fiscal agents
2 for such purpose.

3 b. The commissioner of finance may appoint wholesale dealers of ciga-
4 rettes and any other person within or without the city as agents to
5 affix stamps to be used in paying the tax hereby imposed, but an agent
6 shall at all times have the right to appoint the person in his or her
7 employ who is to affix the stamps to any cigarettes under the agent's
8 control. Whenever the commissioner of finance shall sell, consign or
9 deliver to any such agent any such stamps, such agent shall be entitled
10 to receive as compensation for his or her services and expenses in
11 affixing such stamps, and to retain out of the moneys to be paid by the
12 agent for such stamps, a commission on the par value thereof. The
13 commissioner of finance is hereby authorized to prescribe a schedule of
14 commissions not exceeding five per centum, allowable to such agent for
15 affixing such stamps; provided, however, that the commissioner of
16 finance may authorize commissions to agents and temporary agents not
17 exceeding ten per centum for a special period not exceeding fifteen days
18 immediately following the enactment of this chapter to cover the initial
19 stamping of packages of cigarettes. Such schedule shall be uniform for
20 each type and denomination of stamp used, and may be on a graduated
21 scale with respect to the number of stamps purchased. In the event that
22 a joint stamp is issued, the commissions allowed shall be determined
23 jointly by the state commissioner of taxation and finance and the
24 commissioner of finance and shall be based on the full par value of such
25 stamp. The extent to which the city and the state of New York shall
26 bear the expense of such commissions shall be determined by agreement
27 between the commissioner of taxation and finance and the commissioner
28 of finance. The commissioner of finance may in his or her discretion
29 permit an agent to pay for such stamps within thirty days after the date
30 of sale, consignment or delivery of such stamps to such agents, and may
31 require any such agent to file with the commissioner of finance a bond,
32 issued by a surety company approved by the superintendent of insurance
33 as to solvency and responsibility and authorized to transact business in
34 the state, in such amounts as the commissioner of finance may fix, to
35 secure the payment of any sums from such agent pursuant to this chapter.

36 c. The commissioner of finance may redeem unused stamps lawfully in
37 the possession of any person. No person shall sell or offer for sale
38 any stamp issued under this chapter, except by written permission of the
39 commissioner of finance. The commissioner of finance may prescribe
40 rules and regulations concerning refunds, sales of stamps and redemp-
41 tions under the provisions of this chapter.

42 d. (1) Except as provided in this subdivision, it shall be unlawful
43 for any person to sell, offer for sale, possess or transport any affixed
44 or unaffixed false, altered or counterfeit cigarette tax stamps,
45 imprints or impressions.

46 (2) Paragraph one of this subdivision shall not apply to:

47 (A) a person, other than a retail dealer, in possession of twenty or
48 fewer affixed tax stamps;

49 (B) public officers or employees in the performance of their official
50 duties requiring possession or control of affixed or unaffixed false,
51 altered or counterfeit cigarette tax stamps, imprints or impressions; or

52 (C) any person authorized by the commissioner of finance or the
53 commissioner of the department of taxation and finance of the state of
54 New York to perform law enforcement functions.

55 § 11-1305 Affixation and cancellation of stamps; presumptions. a.
56 Each agent shall affix to each package of cigarettes stamps evidencing

1 the payment of tax imposed by this chapter and shall cancel such stamps
2 prior to delivery of such cigarettes to any dealer in the city, unless
3 stamps have been affixed to such packages of cigarettes and cancelled
4 before such agent received them.

5 b. Each dealer, other than an agent, in the city shall immediately
6 upon the receipt of any cigarettes at his or her place of business mark
7 in ink on each unopened box, carton or other container of such ciga-
8 rettes the word "received" and the year, month, day and hour of such
9 receipt and shall affix his or her signature thereto or shall mark them
10 in any other manner prescribed by the commissioner of finance. In addi-
11 tion, each retail dealer shall, within twenty-four hours after receipt
12 of any cigarettes at his or her place of business and prior to exposing
13 for sale or sale by such retail dealer of such cigarettes, open such
14 box, carton or other container and, unless such stamps have been previ-
15 ously affixed, immediately notify the dealer from whom he or she
16 purchased such cigarettes and arrange for the replacement by the dealer
17 of such cigarettes by cigarettes with such stamps affixed within twen-
18 ty-four hours.

19 c. Stamps shall be cancelled in the manner prescribed by regulation.

20 d. Whenever any cigarettes are found in the place of business of a
21 dealer without the stamps affixed and cancelled, or not marked as having
22 been received within the preceding twenty-four hours, the prima facie
23 presumption shall arise that such cigarettes are kept therein in
24 violation of the provisions of this chapter.

25 e. Stamps shall be affixed to each package of cigarettes of an aggre-
26 gate denomination not less than the amount of the tax upon the contents
27 therein, and shall be affixed in such manner as to be visible to the
28 purchaser.

29 § 11-1306 Possession and transportation of unstamped cigarettes.
30 Every person who shall possess or transport upon the public highways,
31 roads or streets of this city more than four hundred cigarettes in
32 unstamped packages, shall be required to have in his or her actual
33 possession invoices or delivery tickets for such cigarettes. All such
34 invoices or delivery tickets shall show the true name and address of the
35 consignor or seller, the true name and address of the consignee or
36 purchaser and the quantity and brands of the cigarettes transported.
37 The absence of such invoices or delivery tickets shall be prima facie
38 evidence that such person is a dealer in cigarettes in the city and
39 subject to the provisions of this chapter.

40 § 11-1307 Records to be kept; examination. a. 1. At the time of
41 delivering cigarettes to any person in the city, each agent or wholesale
42 dealer shall make a true duplicate invoice showing the date of delivery,
43 the number of packages and the number of cigarettes contained therein in
44 each shipment of cigarettes delivered, and the name of the purchaser to
45 whom delivery is made, and shall retain the same for a period of three
46 years subject to the use and inspection of the commissioner of finance.
47 Each dealer shall procure and retain invoices showing the number of
48 packages and the number of cigarettes contained therein in each shipment
49 of cigarettes received by such dealer, the date thereof, and the name of
50 the shipper, and shall retain the same for a period of three years
51 subject to the use and inspection of the commissioner of finance.

52 2. At the time of delivering tobacco products to any person in the
53 city, each wholesale dealer shall make a true duplicate invoice showing
54 the date of delivery, the number of packages and the number of tobacco
55 products contained therein as well as any tobacco products not in pack-
56 ages in each shipment of tobacco products delivered, and the name of the

1 purchaser to whom delivery is made and shall retain the same for a peri-
2 od of three years subject to the use and inspection of the commissioner
3 of finance. Each dealer shall procure and retain invoices showing the
4 number of packages and the number of tobacco products contained therein
5 as well as any tobacco products not in packages in each shipment of
6 tobacco products received by such dealer, the date thereof, and the name
7 of the shipper, and shall retain the same for a period of three years
8 subject to the use and inspection of the commissioner of finance.

9 3. Each dealer shall retain any other records and in such form as may
10 be required by the commissioner of finance indicating proof of the
11 payment of the tax imposed under section 11-1302.1 of this chapter. Any
12 failure to provide such records upon request by the commissioner of
13 finance or such commissioner's duly authorized representatives shall be
14 presumptive evidence that the dealer has violated the provisions of this
15 chapter.

16 b. The commissioner of finance by regulation may provide that whenever
17 cigarettes or tobacco products are shipped into the city, the railroad
18 company, express company, trucking company, or carrier transporting any
19 shipment thereof shall file with the commissioner of finance a copy of
20 the freight bill within ten days after the delivery in the city of each
21 shipment.

22 c. All dealers shall maintain and keep for a period of three years
23 such other records of cigarettes or tobacco products received or sold
24 within the city as may be required by the commissioner of finance. All
25 wholesale dealers shall maintain and keep for a period of three years
26 such other records of cigarettes or tobacco products delivered within
27 the city.

28 d. Without limiting the powers granted the commissioner of consumer
29 and worker protection pursuant to title twenty of the code of the
30 preceding municipality and any rules promulgated thereunder, the commis-
31 sioner of finance or the commissioner's duly authorized representatives
32 are hereby authorized to examine the books, papers, invoices and other
33 records, and stock of cigarettes or tobacco products in and upon any
34 premises where the same are placed, stored and sold, and equipment of
35 any such agent or dealer pertaining to the sale and delivery of ciga-
36 rettes or tobacco products taxable under this chapter. To verify the
37 accuracy of the tax imposed and assessed by this chapter, each such
38 person is hereby directed and required to give to the commissioner of
39 finance or the commissioner's duly authorized representatives, the
40 means, facilities and opportunity for such examinations as are herein
41 provided for and required.

42 e. The commissioner of finance shall investigate any failure to pay
43 the tax required by this chapter or any other failure to comply with
44 this chapter or the rules or regulations promulgated thereunder, and
45 shall take the necessary steps to enforce compliance therewith.

46 § 11-1308 General powers of the commissioner of finance. In addition
47 to the powers granted to the commissioner of finance in this chapter, he
48 or she is hereby authorized and empowered:

49 1. To make, adopt and amend rules and regulations appropriate to the
50 carrying out of this chapter and the purposes thereof; and to require
51 the filing of reports by agents and/or dealers;

52 2. To prescribe the method and the means to be used in the cancella-
53 tion of stamps;

54 3. To fix the denominations and the method of sale of stamps;

55 4. To delegate his or her powers to a deputy or other employee or
56 employees of the department of finance;

1 5. To extend, for cause shown, the time for filing any return or
2 reports for a period not exceeding thirty days; and to compromise
3 disputed claims in connection with the taxes hereby imposed;

4 6. To assess, determine, revise and adjust the taxes imposed under
5 this chapter;

6 7. To request information from the state commissioner of taxation and
7 finance, the treasury department of the United States or the taxing
8 officials of any other state or city that imposes a similar tax to any
9 tax imposed by this chapter, and to afford information to such commis-
10 sion, department or other taxing official, any other provision of this
11 chapter to the contrary notwithstanding;

12 8. To enter into an arrangement with the state commissioner of taxa-
13 tion and finance with respect to cooperative collection, auditing or
14 administration of the taxes imposed by this chapter and the taxes
15 imposed by article twenty of the tax law of the state of New York.

16 9. To prescribe forms to be filled out by the vendor or purchaser, or
17 both, in each instance in which a sale is made by an agent or wholesale
18 dealer to a person outside the state or the city or to a dealer in the
19 city for purposes of resale outside the state or the city.

20 10. To appoint any dealer as a temporary agent to buy and affix
21 stamps for a period not in excess of fifteen days.

22 11. In furtherance of the purposes of paragraph three of subdivision
23 a of section 11-1302 of this chapter, to provide by appropriate regu-
24 lation for the maintenance of such differentials in wholesale and retail
25 prices of cigarettes sold by any vendor, other than the manufacturer, so
26 as to reflect the amounts of tax attributable to the tar and nicotine
27 content of cigarettes sold. In so doing he or she may use and consider
28 the factory price of various brands of cigarettes. In addition, the
29 commissioner may consider the mode or method by which retail sales are
30 effected and limit his or her regulations so as to affect any one or
31 more or all of such modes or methods.

32 § 11-1309 Notifying taxpayers of assessments. a. The owner of any
33 lot, piece or parcel of land in the city of Staten Island or any person
34 interested in such lot, piece or parcel, may file with the bureau of
35 city collections a statement containing a brief description of such
36 land, together with the section, block and lot number thereof, or such
37 other designation as at the time is established by the department of
38 finance, and a statement of the applicant's interest therein, together
39 with a written request that such lot, piece or parcel of land be regis-
40 tered in such bureau, in the name of the applicant. In such statement
41 the applicant shall designate a post office address to which notifica-
42 tions addressed to such applicant shall be sent. A brief description of
43 such lot, piece or parcel of land corresponding to the description ther-
44 eof in the statement so filed, together with the name of the applicant
45 and his or her post office address and the date of such application,
46 shall thereupon be registered in the offices of such bureau as herein-
47 after provided.

48 b. As soon as any assessment for a local improvement shall have been
49 confirmed, including assessments confirmed by a court of record, and the
50 list thereof shall have been entered and filed in the bureau of city
51 collections, such assessment list shall be examined and thereupon, with-
52 in twenty days after such entry there shall be mailed a notice addressed
53 to each person in whose name any lot, piece or parcel of land, affected
54 by such assessment, is registered, at the post office address registered
55 in the records of such bureau, which notice shall contain the brief
56 description of the lot, piece or parcel of land registered in the name

1 of the person to whom such notice is addressed, together with the amount
2 assessed thereon, date of entry, and title of the improvement for which
3 such assessment is made, and a statement of the rate of interest or
4 penalty imposed for the nonpayment of such assessment, and the date from
5 which the interest or penalty will be computed. Failure to comply with
6 the provisions of this section, however, shall in no manner affect the
7 validity or collectibility of any assessment heretofore or hereafter
8 confirmed, nor shall any claim arise or exist against the comptroller,
9 the commissioner of finance, the city collector or any officer of the
10 city by reason of such failure.

11 c. The city collector shall for the purpose of this section provide
12 appropriate records for each section of the city as the same shall
13 appear upon the tax maps of the city.

14 § 11-1310 Determination of tax. If any person fails to pay the tax, or
15 to file a return required by this chapter or if a return, when filed, is
16 insufficient and the maker fails to file a corrected or sufficient
17 return within ten days after the same may be required by notice from the
18 commissioner of finance, the commissioner of finance shall determine the
19 amount of tax due from such information as may be obtainable or on the
20 basis of external indices, such as number of cigarettes purchased or
21 sold, number of tobacco products purchased or sold, stock on hand,
22 volume of sales by similar dealers or other factors. Notice of such
23 determination shall be given to the person liable for the payment of the
24 tax. Such determination shall finally and irrevocably fix the tax unless
25 the person against whom it is assessed shall, within ninety days of the
26 giving of such notice, or, if the commissioner of finance has estab-
27 lished a conciliation procedure pursuant to section 11-124 of this title
28 and the person liable for the tax has requested a conciliation confer-
29 ence in accordance therewith, within ninety days from the mailing of a
30 conciliation decision or the date of the commissioner's confirmation of
31 the discontinuance of the conciliation proceeding, both (1) serves a
32 petition upon the commissioner of finance and (2) files a petition with
33 the tax appeals tribunal for a hearing, or unless the commissioner of
34 finance shall of his or her own motion redetermine such tax. Such hear-
35 ing and any appeal to the tax appeals tribunal sitting en banc from the
36 decision rendered in such hearing shall be conducted in the manner and
37 subject to the requirements prescribed by the tax appeals tribunal
38 pursuant to sections one hundred sixty-eight through one hundred seven-
39 ty-two of the charter of the preceding municipality as it existed Janu-
40 ary first, nineteen hundred ninety-four. After such hearing the tax
41 appeals tribunal shall give notice of its decision to the person liable
42 for the tax and to the commissioner of finance. A decision of the tax
43 appeals tribunal sitting en banc shall be reviewable for error, illegal-
44 ity, unconstitutionality or any other reason whatsoever by a proceeding
45 under article seventy-eight of the civil practice law and rules if
46 instituted by the person against whom the tax was assessed within four
47 months after the giving of the notice of such tax appeals tribunal deci-
48 sion; provided however, that if such decision regards the tax imposed
49 under section 11-1302.1 of this chapter, such proceeding must be insti-
50 tuted by the person against whom the tax was assessed within thirty days
51 after the giving of the notice of such tax appeals tribunal decision.
52 Such proceeding shall not be instituted by a person liable for the tax
53 unless the amount of any tax sought to be reviewed with interest and
54 penalties thereon, if any, shall have first been deposited with the
55 commissioner of finance and an undertaking filed with the commissioner
56 of finance in such amount and with such sureties as a justice of the

1 supreme court shall approve, to the effect that if such proceeding be
2 dismissed or the tax confirmed, such person will pay all costs and
3 charges which may accrue in the prosecution of the proceeding.

4 § 11-1311 Refunds. a. In the manner provided in this subdivision the
5 commissioner of finance shall refund, without interest, any tax, inter-
6 est or penalty erroneously, illegally or unconstitutionally collected or
7 paid. In addition, whenever any cigarettes upon which stamps have been
8 affixed have been sold and shipped to a dealer outside the city for sale
9 there or to any person in another state for use there, or have become
10 unfit for use and consumption or unsalable, or have been destroyed, the
11 dealer shall be entitled to a refund of the amount of tax paid, less the
12 applicable commission, with respect to such cigarettes.

13 In any event no refund shall be granted unless application to the
14 commissioner of finance therefor is made within two years after the
15 stamps were affixed to such cigarettes or the tax was paid, except if a
16 person has consented in writing to an extension of the period for
17 assessment of additional tax pursuant to subdivision c of section
18 11-1315 of this chapter, and such consent is given within the two-year
19 period for making a refund application provided in this subdivision, the
20 period for making a refund application shall not expire prior to six
21 months after the expiration of the period within which an assessment
22 could be made pursuant to such consent or any extension thereof.

23 Whenever a refund is made or denied by the commissioner of finance,
24 the commissioner shall state his or her reasons therefor and give notice
25 thereof to the applicant in writing. A person shall not be entitled to a
26 hearing in connection with such application for a refund if such person
27 has already had a hearing or had been given the opportunity of a hearing
28 as provided in section 11-1310 of this chapter or has failed to avail
29 himself or herself of the remedies therein provided. No refund shall be
30 made of a tax, interest or penalty paid pursuant to a determination of
31 the commissioner of finance as provided in section 11-1310 of this chap-
32 ter, unless the tax appeals tribunal, after a hearing as in said section
33 provided or the commissioner of finance, of his or her own motion, shall
34 have reduced the tax or penalty, or it shall have been established in a
35 proceeding, pursuant to article seventy-eight of the civil practice law
36 and rules that such determination was erroneous, illegal, unconstitu-
37 tional or otherwise improper, in which event a refund without interest
38 shall be made as provided upon the determination of such proceeding. Any
39 determination of the commissioner of finance denying a refund pursuant
40 to this subdivision shall be final and irrevocable unless the applicant
41 for such refund, within ninety days from the mailing of notice of such
42 determination, or, if the commissioner of finance has established a
43 conciliation procedure pursuant to section 11-124 of this title and the
44 applicant has requested a conciliation conference in accordance there-
45 with, within ninety days from the mailing of a conciliation decision or
46 the date of the commissioner's confirmation of the discontinuance of the
47 conciliation proceeding, both (1) serves a petition upon the commission-
48 er of finance and (2) files a petition with the tax appeals tribunal for
49 a hearing.

50 Such petition for a refund made as provided in this subdivision shall
51 be deemed an application for a revision of any tax, penalty or interest
52 complained of. Such hearing and any appeal to the tax appeals tribunal
53 sitting en banc from the decision rendered in such hearing shall be
54 conducted in the manner and subject to the requirements prescribed by
55 the tax appeals tribunal pursuant to sections one hundred sixty-eight
56 through one hundred seventy-two of the charter of the preceding municipi-

1 pality. After such hearing, the tax appeals tribunal shall give notice
2 of its decision to the applicant and to the commissioner of finance.
3 The applicant shall be entitled to maintain a proceeding under article
4 seventy-eight of the civil practice law and rules to review a decision
5 of the tax appeals tribunal sitting en banc, provided, however, that
6 such proceeding is instituted within four months after such decision,
7 provided however, that if such decision regards the tax imposed under
8 section 11-1302.1 of this chapter, such proceeding must be instituted
9 within thirty days after such decision, and provided, further, in the
10 case of an application by a person liable for the tax, that a final
11 determination of tax due was not previously made, and that an undertak-
12 ing shall first be filed by such person with the commissioner of finance
13 in such amount and with such sureties as a justice of the supreme court
14 shall approve, to the effect that if such proceeding be dismissed or the
15 tax confirmed such person will pay all costs and charges which may
16 accrue in the prosecution of such proceeding.

17 b. If the commissioner of finance is satisfied that any dealer is
18 entitled to a refund the commissioner shall issue to such dealer stamps
19 of sufficient value to cover the refund or to make such refund.

20 § 11-1312 Reserves. In cases where the taxpayer has applied for a
21 refund and has instituted proceedings under article seventy-eight of the
22 civil practice law and rules to review a determination adverse to the
23 taxpayer on his or her application for refund or has deposited the
24 amount of tax assessed in connection with proceedings under section
25 11-1310 of this chapter, the comptroller shall set up appropriate
26 reserves to meet any decision adverse to the city.

27 § 11-1313 Remedies exclusive. The remedies provided by sections
28 11-1310 and 11-1311 of this chapter shall be the exclusive remedies
29 available to any person for the review of tax liability imposed by this
30 chapter; and no determination or proposed determination of tax or deter-
31 mination on an application for refund by the commissioner of finance,
32 nor any decision by the tax appeals tribunal or any of its administra-
33 tive law judges, shall be enjoined or reviewed by an action for declara-
34 tory judgment, an action for money had and received, or by any legal or
35 equitable action or proceeding other than, in the case of a decision by
36 the tax appeals tribunal sitting en banc, a proceeding under article
37 seventy-eight of the civil practice law and rules; provided, however,
38 that a taxpayer may proceed by declaratory judgment if the taxpayer
39 institutes suit within thirty days after a deficiency assessment is made
40 and pays the amount of the deficiency assessment to the commissioner of
41 finance prior to the institution of such suit and posts a bond for costs
42 as provided in section 11-1310 of this chapter.

43 § 11-1314 Proceedings to recover tax. a. Whenever any person shall
44 fail to pay any tax, penalty or interest imposed by this chapter as
45 herein provided, the corporation counsel shall, upon the request of the
46 commissioner of finance, bring or cause to be brought an action to
47 enforce the payment of the same on behalf of the city in any court of
48 the state of New York or of any other state or of the United States.
49 If, however, the commissioner of finance in his or her discretion
50 believes that a taxpayer subject to the provisions of this chapter is
51 about to cease business, leave the state or remove or dissipate the
52 assets out of which the tax, interest or penalties might be satisfied
53 and that any such tax, interest or penalty will not be paid when due, he
54 or she may declare such tax, interest or penalty to be immediately due
55 and payable and may issue a warrant immediately.

1 b. In addition to all other remedies for the collection of any taxes,
2 penalties or interest due under the provisions of this chapter, the
3 commissioner of finance may with respect to any tax imposed under
4 section 11-1302 of this chapter or any penalties or interest related
5 thereto issue a warrant, directed to the city sheriff commanding the
6 sheriff to levy upon and sell the real and personal property of the
7 person liable for the tax which may be found within the city, for the
8 payment of the amount thereof, with any penalties and interest and the
9 cost of executing the warrant, and to return such warrant to the commis-
10 sioner of finance and to pay to the commissioner the money collected by
11 virtue thereof within sixty days after the receipt of such warrant. The
12 city sheriff shall within five days after the receipt of the warrant
13 file with the county clerk a copy thereof, and thereupon such clerk
14 shall enter in the judgment docket the name of the person mentioned in
15 the warrant and the amount of the taxes, penalty and interest for which
16 the warrant is issued and the date when such copy is filed. Thereupon
17 the amount of such warrant shall become a lien upon the title to and
18 interest in real and personal property of the person against whom the
19 warrant is issued. The city sheriff shall then proceed upon the warrant
20 in the same manner and with like effect as that provided by law in
21 respect to executions issued against property upon judgments of a court
22 of record, and for services in executing the warrant the city sheriff
23 shall be entitled to the same fees which he or she may collect in the
24 same manner. In the discretion of the commissioner of finance a warrant
25 of like terms, force and effect may be issued and directed to any offi-
26 cer or employee of the department of finance, and in the execution ther-
27 eof such officer or employee shall have all the powers conferred by law
28 upon sheriffs, but shall be entitled to no fee or compensation in excess
29 of the actual expenses paid in the performance of such duty. If a
30 warrant is returned not satisfied in full, the commissioner of finance
31 may from time to time issue new warrants and shall have the same reme-
32 dies to enforce the amount due thereunder as if the city had recovered
33 judgment therefor and execution thereon had been returned unsatisfied.

34 c. The commissioner of finance, if he or she finds that the interests
35 of the city will not thereby be jeopardized, and upon such conditions as
36 the commissioner of finance may require, may release any property from
37 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
38 tions to tax, penalties and interest filed pursuant to subdivision b of
39 this section, and such release or vacating of the warrant may be
40 recorded in the office of any recording officer in which such warrant
41 has been filed. The clerk shall thereupon cancel and discharge as of the
42 original date of docketing the vacated warrant.

43 § 11-1315 Notices and limitations of time. a. Any notice author-
44 ized or required under the provisions of this chapter may be given by
45 mailing the same to the person for whom it is intended in a postpaid
46 envelope addressed to such person at the address given in the last
47 return filed by such person pursuant to the provisions of this chapter
48 or in any application made by such person or, if no return has been
49 filed or application made, then to such address as may be obtainable.
50 The mailing of such notice shall be presumptive evidence of the receipt
51 of the same by the person to whom addressed. Any period of time which
52 is determined according to the provisions of this chapter by the giving
53 of notice shall commence to run from the date of mailing of such notice.

54 b. The provisions of the civil practice law and rules or any other
55 law relative to limitations of time for the enforcement of a civil reme-
56 dy shall not apply to any proceeding or action taken by the city to

1 levy, appraise, assess, determine or enforce the collection of any tax,
2 interest or penalty provided by this chapter. However, except in the
3 case of a wilfully false or fraudulent return with intent to evade the
4 tax, no assessment of additional tax shall be made after the expiration
5 of more than three years from the date of the filing of a return,
6 provided, that where no return has been filed as provided by law the tax
7 may be assessed at any time.

8 c. Where, before the expiration of the period prescribed herein for
9 the assessment of an additional tax, a person has consented in writing
10 that such period be extended, the amount of such additional tax due may
11 be determined at any time within such extended period. The period so
12 extended may be further extended by subsequent consents in writing made
13 before the expiration of the extended period.

14 d. If any return, claim, statement, notice, application, or other
15 document required to be filed, or any payment required to be made, with-
16 in a prescribed period or on or before a prescribed date under authority
17 of any provision of this chapter is, after such period or such date,
18 delivered by United States mail to the commissioner of finance, the tax
19 appeals tribunal, bureau, office, officer or person with which or with
20 whom such document is required to be filed, or to which or to whom such
21 payment is required to be made, the date of the United States postmark
22 stamped on the envelope shall be deemed to be the date of delivery. This
23 subdivision shall apply only if the postmark date falls within the
24 prescribed period or on or before the prescribed date for the filing of
25 such document, or for making the payment, including any extension grant-
26 ed for such filing or payment, and only if such document or payment was
27 deposited in the mail, postage prepaid, properly addressed to the
28 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
29 cer or person with which or with whom the document is required to be
30 filed or to which or to whom such payment is required to be made. If any
31 document is sent by United States registered mail, such registration
32 shall be prima facie evidence that such document was delivered to the
33 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
34 cer or person to which or to whom addressed, and the date of registra-
35 tion shall be deemed the postmark date. The commissioner of finance or,
36 where relevant, the tax appeals tribunal is authorized to provide by
37 regulation the extent to which the provisions of this subdivision with
38 respect to prima facie evidence of delivery and the postmark date shall
39 apply to certified mail. Except as provided in subdivision f of this
40 section, this subdivision shall apply in the case of postmarks not made
41 by the United States postal service only if and to the extent provided
42 by regulation of the commissioner of finance or, where relevant, the tax
43 appeals tribunal.

44 e. When the last day prescribed under authority of this chapter,
45 including any extension of time, for performing any act falls on a
46 Saturday, Sunday or legal holiday in the state, the performance of such
47 act shall be considered timely if it is performed on the next succeeding
48 day which is not a Saturday, Sunday or legal holiday.

49 f. (1) Any reference in subdivision d of this section to the United
50 States mail shall be treated as including a reference to any delivery
51 service designated by the secretary of the treasury of the United States
52 pursuant to section seventy-five hundred two of the internal revenue
53 code and any reference in subdivision d of this section to a United
54 States postmark shall be treated as including a reference to any date
55 recorded or marked in the manner described in section seventy-five
56 hundred two of the internal revenue code by a designated delivery

1 service. If the commissioner of finance finds that any delivery service
2 designated by such secretary is inadequate for the needs of the city,
3 the commissioner of finance may withdraw such designation for purposes
4 of this title. The commissioner of finance may also designate additional
5 delivery services meeting the criteria of section seventy-five hundred
6 two of the internal revenue code for purposes of this title, or may
7 withdraw any such designation if the commissioner of finance finds that
8 a delivery service so designated is inadequate for the needs of the
9 city. Any reference in subdivision d of this section to the United
10 States mail shall be treated as including a reference to any delivery
11 service designated by the commissioner of finance and any reference in
12 subdivision d of this section to a United States postmark shall be
13 treated as including a reference to any date recorded or marked in the
14 manner described in section seventy-five hundred two of the internal
15 revenue code by a delivery service designated by the commissioner of
16 finance, provided, however, any withdrawal of designation or additional
17 designation by the commissioner of finance shall not be effective for
18 purposes of service upon the tax appeals tribunal, unless and until such
19 withdrawal of designation or additional designation is ratified by the
20 president of the tax appeals tribunal.

21 (2) Any equivalent of registered or certified mail designated by the
22 United States secretary of the treasury, or as may be designated by the
23 commissioner of finance pursuant to the same criteria used by such
24 secretary for such designations pursuant to section seventy-five hundred
25 two of the internal revenue code, shall be included within the meaning
26 of registered or certified mail as used in subdivision d of this
27 section. If the commissioner of finance finds that any equivalent of
28 registered or certified mail designated by such secretary or the commis-
29 sioner of finance is inadequate for the needs of the city, the commis-
30 sioner of finance may withdraw such designation for purposes of this
31 title, provided, however, any withdrawal of designation or additional
32 designation by the commissioner of finance shall not be effective for
33 purposes of service upon the tax appeals tribunal, unless and until such
34 withdrawal of designation or additional designation is ratified by the
35 president of the tax appeals tribunal.

36 § 11-1317 Penalties and interest. a. (1) Any person failing to pay a
37 tax payable under section 11-1302 of this chapter when due shall be
38 subject to a penalty of fifty per centum of the amount of tax due, but
39 the commissioner of finance, if satisfied that the delay was excusable,
40 may remit all or any part of such penalty. Such penalty shall be paid
41 and disposed of in the same manner as other revenues under this chapter.
42 Unpaid penalties may be enforced in the same manner as the tax imposed
43 by section 11-1302 of this chapter.

44 (2) Any person failing to pay a tax payable under section 11-1302.1 of
45 this chapter when due shall be subject to a penalty of three hundred per
46 centum of the amount of tax due, but the commissioner of finance, if
47 satisfied that the delay was excusable, may remit all or any part of
48 such penalty. Such penalty shall be paid and disposed of in the same
49 manner as other revenues from the tax imposed under section 11-1302.1 of
50 this chapter. Unpaid penalties may be enforced in the same manner as the
51 tax imposed by section 11-1302.1 of this chapter.

52 b. (1) In addition to any other penalty imposed by this section, the
53 commissioner of finance may (a) impose a penalty of not more than one
54 hundred dollars for each two hundred cigarettes or fraction thereof in
55 excess of one thousand cigarettes in unstamped or unlawfully stamped
56 packages in the possession or under the control of any person and (b)

1 impose a penalty of not more than two hundred dollars for each ten
2 affixed or unaffixed false, altered or counterfeit cigarette tax stamps,
3 imprints or impressions, or fraction thereof, in excess of one hundred
4 affixed or unaffixed false, altered or counterfeit cigarette tax stamps,
5 imprints or impressions in the possession or under the control of any
6 person. Such penalty shall be determined as provided in section 11-1310
7 of this chapter, and may be reviewed only pursuant to such section. Such
8 penalty may be enforced in the same manner as the tax imposed by this
9 chapter. The commissioner of finance, in his or her discretion, may
10 remit all or part of such penalty. Such penalty shall be paid and
11 disposed of in the same manner as other revenues under this chapter.

12 (2) The penalties imposed by this paragraph may be imposed by the
13 commissioner of finance in addition to any other penalty imposed by this
14 section, but in lieu of the penalties imposed by subparagraph (a) of
15 paragraph one of this subdivision: (a) not less than thirty dollars but
16 not more than two hundred dollars for each two hundred cigarettes, or
17 fraction thereof, in excess of one thousand cigarettes but less than or
18 equal to five thousand cigarettes in unstamped or unlawfully stamped
19 packages knowingly in the possession or knowingly under the control of
20 any person; (b) not less than seventy-five dollars but not more than two
21 hundred dollars for each two hundred cigarettes, or fraction thereof, in
22 excess of five thousand cigarettes but less than or equal to twenty
23 thousand cigarettes in unstamped or unlawfully stamped packages know-
24 ingly in the possession or knowingly under the control of any person; and
25 (c) not less than one hundred dollars but not more than two hundred
26 dollars for each two hundred cigarettes, or fraction thereof, in excess
27 of twenty thousand cigarettes in unstamped or unlawfully stamped pack-
28 ages, knowingly in the possession or knowingly under the control of any
29 person. Such penalty shall be determined as provided in section 11-1310
30 of this chapter, and may be reviewed only pursuant to such section. Such
31 penalty may be enforced in the same manner as the tax imposed by this
32 chapter. The commissioner of finance, in his or her discretion, may
33 remit all or part of such penalty. Such penalty shall be paid and
34 disposed of in the same manner as other revenues under this chapter.

35 c. (1) The possession within the city of more than four hundred ciga-
36 rettes in unstamped or unlawfully stamped packages shall be presumptive
37 evidence that such cigarettes are subject to tax as provided by this
38 chapter.

39 (2) Nothing in this section shall apply to common or contract carriers
40 or warehousemen while engaged in lawfully transporting or storing
41 unstamped packages of cigarettes as merchandise, nor to any employee of
42 such carrier or warehouseman acting within the scope of his or her
43 employment, nor to public officers or employees in the performance of
44 their official duties requiring possession or control of unstamped or
45 unlawfully stamped packages of cigarettes, nor to temporary incidental
46 possession by employees or agents of persons lawfully entitled to
47 possession, nor to persons whose possession is for the purpose of aiding
48 police officers in performing their duties.

49 d. (1) If any amount of tax is not paid on or before the last date
50 prescribed for payment, without regard to any extension of time granted
51 for payment, interest on such amount at the rate set by the commissioner
52 of finance pursuant to paragraph two of this subdivision, or, if no rate
53 is set, at the rate of seven and one-half percent per annum, shall be
54 paid for the period from such last date to the date of payment. In
55 computing the amount of interest to be paid, such interest shall be
56 compounded daily. Interest under this subdivision shall not be paid if

1 the amount thereof is less than one dollar. The interest imposed by this
2 subdivision shall be paid and disposed of in the same manner as other
3 revenues from this chapter. Unpaid interest may be enforced in the same
4 manner as the tax imposed by this chapter.

5 (2) (A) The commissioner of finance shall set the rate of interest to
6 be paid pursuant to paragraph one of this subdivision, but if no such
7 rate of interest is set, such rate shall be deemed to be set at seven
8 and one-half percent per annum. Such rate shall be the rate prescribed
9 in subparagraph (B) of this paragraph but shall not be less than seven
10 and one-half percent per annum. Any such rate set by the commissioner of
11 finance shall apply to taxes, or any portion thereof, which remain or
12 become due on or after the date on which such rate becomes effective and
13 shall apply only with respect to interest computed or computable for
14 periods or portions of periods occurring in the period in which such
15 rate is in effect.

16 (B) General rule. The rate of interest set under this subdivision
17 shall be the sum of (i) the federal short-term rate as provided under
18 paragraph three of this subdivision, plus (ii) seven percentage points.

19 (3) Federal short-term rate. For purposes of this subdivision:

20 (A) The federal short-term rate for any month shall be the federal
21 short-term rate determined by the United States secretary of the treas-
22 ury during such month in accordance with subsection (d) of section
23 twelve hundred seventy-four of the internal revenue code for use in
24 connection with section six thousand six hundred twenty-one of the
25 internal revenue code. Any such rate shall be rounded to the nearest
26 full percent, or, if a multiple of one-half of one percent, such rate
27 shall be increased to the next highest full percent.

28 (B) Period during which rate applies.

29 (i) In general. Except as provided in clause (ii) of this subpara-
30 graph, the federal short-term rate for the first month in each calendar
31 quarter shall apply during the first calendar quarter beginning after
32 such month.

33 (ii) Special rule for the month of September, nineteen hundred eight-
34 y-nine. The federal short-term rate for the month of April, nineteen
35 hundred eighty-nine shall apply with respect to setting the rate of
36 interest for the month of September, nineteen hundred eighty-nine.

37 (4) Publication of interest rate. The commissioner of finance shall
38 cause to be published in the City Record, and give other appropriate
39 general notice of, the interest rate to be set under this subdivision no
40 later than twenty days preceding the first day of the calendar quarter
41 during which such interest rate applies. The setting and publication of
42 such interest rate shall not be included within paragraph (a) of subdi-
43 vision five of section one thousand forty-one of the charter of the
44 preceding municipality as it existed January first, nineteen hundred
45 ninety-four relating to the definition of a rule.

46 e. Cross-reference: For criminal penalties, see chapter forty of this
47 title.

48 § 11-1318 Disposition of revenues. a. All revenues resulting from the
49 imposition of the tax under section 11-1302 of this chapter shall be
50 paid into the treasury of the city and shall be credited to and deposit-
51 ed in the general fund of the city, except that, after the payment of
52 refunds with respect to such tax, effective on and after July second,
53 two thousand two, forty-six and one-half percent and, effective on and
54 after April first, two thousand three, forty-six percent of such reven-
55 ues, including taxes, interest and penalties, collected or received
56 shall be paid to the state comptroller.

1 (b) All revenues resulting from the imposition of the tax under
2 section 11-1302.1 of this chapter during a fiscal year, including any
3 interest and penalties, shall be paid into the treasury of the city in
4 accordance with section one hundred twelve of the public housing law,
5 and shall be payable from the city to the New York city housing authori-
6 ty in such fiscal year.

7 § 11-1319 Construction and enforcement. Section 11-1302 and the
8 provisions of this chapter related thereto shall be construed and
9 enforced in conformity with chapter two hundred thirty-five of the laws
10 of nineteen hundred fifty-two. Section 11-1302.1 and the provisions of
11 this chapter related thereto shall be construed and enforced in conform-
12 ity with subdivision e of section one hundred ten and sections one
13 hundred eleven, one hundred twelve and one hundred thirteen of the
14 public housing law.

15 CHAPTER 14

16 TAX ON TRANSFER OF TAXICAB LICENSES

17 § 11-1401 Definitions. When used in this chapter the following terms
18 shall mean or include:

19 1. "City." The city of Staten Island.

20 2. "Commissioner of finance." The commissioner of finance of the
21 city of Staten Island.

22 3. "Comptroller." The comptroller of the city of Staten Island.

23 4. "Consideration." The total price paid or agreed to be paid for
24 the transfer of a taxicab license or interest therein, whether paid or
25 agreed to be paid in money, property, or any other thing of value,
26 including the cancellation or discharge of an indebtedness or obli-
27 gation, without any deduction whatsoever.

28 5. "Person." An individual, partnership, society, association,
29 joint-stock company, corporation, estate, receiver, trustee, assignee,
30 referee or any other person acting in a fiduciary or representative
31 capacity, whether appointed by a court or otherwise, any combination of
32 individuals, and any other form of unincorporated enterprise owned or
33 conducted by two or more persons.

34 6. "Taxi and limousine commission." The city of Staten Island taxi
35 and limousine commission.

36 7. "Taxicab." Any motor vehicle carrying passengers for hire in the
37 city, duly licensed as a taxicab by the taxi and limousine commission,
38 and permitted to accept hails from passengers in the street.

39 8. "Taxicab license." A license issued by the taxi and limousine
40 commission to operate a taxicab.

41 9. "Taxpayer." Any person subject to tax under this chapter.

42 10. "Transfer." Any transfer of interest, whether or not such inter-
43 est constitutes title, or possession, or both, exchange or barter,
44 rental, lease, or license to use, conditional or otherwise, in any
45 manner or by any means whatsoever for a consideration, or any agreement
46 therefor.

47 11. "Transferee." The person to whom a taxicab license or interest
48 therein is transferred, in a transfer as defined in subdivision ten of
49 this section.

50 12. "Transferor." The person who transfers a taxicab license or
51 interest pursuant to this chapter, in a transfer as defined in subdivi-
52 sion ten of this section.

53 13. "Tax appeals tribunal." The tax appeals tribunal established by
54 section one hundred sixty-eight of the charter of the preceding munici-
55 pality as it existed January first, nineteen hundred ninety-four.

1 § 11-1402 Imposition of tax. a. On and after March twenty-first,
2 two thousand seventeen, there is hereby imposed and there shall be paid
3 a tax on each transfer of a taxicab license or interest therein, at the
4 rate of one-half percent of the consideration given for such transfer.

5 b. Where there is a transfer of the economic interest in a taxicab
6 license or interest therein, effected by the transfer of shares of stock
7 of a corporation which hold such taxicab license or interest therein or
8 by the transfer of an interest or interests in a partnership or associ-
9 ation which holds such taxicab license or interest therein, such trans-
10 fer of shares of stock or of an interest or interests in a partnership
11 or association shall be treated as a transfer of the taxicab license or
12 interest therein, and shall be subject to the tax imposed by subdivision
13 a of this section.

14 c. Notwithstanding any other provision of this chapter, the tax
15 imposed hereby shall not apply to a transfer made pursuant to a bona
16 fide written contract or agreement made and executed prior to July
17 first, nineteen hundred eighty, provided such contract or agreement is
18 registered with the taxi and limousine commission prior to July first,
19 nineteen hundred eighty, and provided further that one or more payments
20 were made pursuant to such contract or agreement on or before June twen-
21 tieth, nineteen hundred eighty.

22 d. Where a taxicab or any other property is transferred to a trans-
23 feree in conjunction with the transfer of a taxicab license or interest
24 therein, the tax imposed by this section shall be computed on the total
25 consideration for the transfer of such license or interest therein and
26 the taxicab or other property so transferred, less the fair market value
27 of such taxicab or other property.

28 e. The tax imposed by this chapter shall be in addition to any and
29 all other taxes.

30 § 11-1403 Payment of tax. The tax imposed by this chapter shall be
31 paid by the transferee to the taxi and limousine commission, as agent of
32 the commissioner of finance, at the time of approval of such transfer by
33 the taxi and limousine commission, but in no event later than thirty
34 days following the transfer. The transferor shall also be liable for the
35 payment of such tax at such time in the event that the amount of tax due
36 is not paid by the transferee. Notwithstanding any other provision of
37 law to the contrary, no transfer of a taxicab license or interest there-
38 in shall be approved or effective until the tax imposed by this chapter
39 has been paid. All moneys received as such payments by the taxi and
40 limousine commission during any day shall be transmitted to the commis-
41 sioner of finance at the close of business on such day or at such other
42 time as the commissioner of finance may require.

43 § 11-1404 Returns. a. A joint return shall be filed by both the
44 transferee and the transferor. Such return shall be filed at the time of
45 payment of any tax imposed pursuant to this chapter, and such filing
46 shall be accomplished by delivering the return to the taxi and limousine
47 commission for transmittal to the commissioner of finance. The commis-
48 sioner of finance shall prescribe the form of the return and the infor-
49 mation which it shall contain. The return shall be signed under oath by
50 both the transferee and the transferor. Where either the transferee or
51 the transferor has failed to sign the return, it shall be accepted as a
52 return, but the party who has failed to sign the return or file a sepa-
53 rate return shall be subject to the penalties applicable to a person who
54 has failed to file a return, and the period of limitations for assess-
55 ment of tax or of additional tax shall not apply to such party.

1 b. Returns shall be preserved for three years and thereafter until the
2 commissioner of finance permits them to be destroyed.

3 c. The commissioner of finance may require amended returns to be filed
4 within twenty days after notice and to contain the information specified
5 in the notice.

6 d. If a return required by this chapter is not filed, or if a return,
7 when filed, is incorrect or insufficient on its face, the commissioner
8 of finance shall take the necessary steps to enforce the filing of such
9 a return or of a corrected return.

10 § 11-1405 Exemptions. a. The tax imposed under this chapter shall not
11 be imposed on any transaction by or with the following:

12 1. The state of New York, or any of its agencies, instrumentalities,
13 public corporations, including a public corporation created pursuant to
14 agreement or compact with another state or Canada, or political subdivi-
15 sions where it is the purchaser, user or consumer;

16 2. The United States of America, and any of its agencies and instru-
17 mentalities insofar as it is immune from taxation where it is the
18 purchaser, user or consumer;

19 3. The United Nations or other international organizations of which
20 the United States of America is a member; and

21 4. Any corporation, or association, or trust, or community chest, fund
22 or foundation, organized and operated exclusively for religious, chari-
23 table, or educational purposes, or for the prevention of cruelty to
24 children or animals, and no part of the net earnings of which inures to
25 the benefit of any private shareholder or individual, and no substantial
26 part of the activities of which is carrying on propaganda, or otherwise
27 attempting to influence legislation; provided, however, that nothing in
28 this paragraph shall include an organization operated for the primary
29 purpose of carrying on a trade or business for profit, whether or not
30 all of its profits are payable to one or more organizations described in
31 this subdivision.

32 b. The tax imposed by this chapter shall not apply to the transfer of
33 a taxicab license or interest therein by means of a lease, license or
34 other rental arrangement, where the term of such lease, license or other
35 rental arrangement, including the maximum period for which it can be
36 extended or renewed, does not exceed six months.

37 § 11-1406 Determination of tax. If a return required by this chapter
38 is not filed, or if a return when filed is incorrect or insufficient,
39 the amount of tax due shall be determined by the commissioner of finance
40 from external indices and such other information as may be obtainable.
41 Notice of such determination shall be given to the person liable for the
42 tax. Such determination shall finally and irrevocably fix the tax unless
43 the person against whom it is assessed, within ninety days after the
44 giving of notice of such determination, or, if the commissioner of
45 finance has established a conciliation procedure pursuant to section
46 11-124 of this title and the taxpayer has requested a conciliation
47 conference in accordance therewith, within ninety days from the mailing
48 of a conciliation decision or the date of the commissioner's confirma-
49 tion of the discontinuance of the conciliation proceeding, both (1)
50 serves a petition upon the commissioner of finance and (2) files a peti-
51 tion with the tax appeals tribunal for a hearing, or unless the commis-
52 sioner of finance of his or her own motion shall redetermine the same.
53 Such hearing and any appeal to the tax appeals tribunal sitting en banc
54 from the decision rendered in such hearing shall be conducted in the
55 manner and subject to the requirements prescribed by the tax appeals
56 tribunal pursuant to sections one hundred sixty-eight through one

1 hundred seventy-two of the charter of the preceding municipality as it
2 existed January first, nineteen hundred ninety-four. After such hearing
3 the tax appeals tribunal shall give notice of its decision to the person
4 against whom the tax is assessed and to the commissioner of finance. A
5 decision of the tax appeals tribunal sitting en banc shall be reviewable
6 for error, illegality or unconstitutionality or any other reason whatso-
7 ever by a proceeding under article seventy-eight of the civil practice
8 law and rules if application therefor is made to the supreme court by
9 the person against whom the tax was assessed within four months after
10 the giving of the notice of such tax appeals tribunal decision. A
11 proceeding under article seventy-eight of the civil practice law and
12 rules shall not be instituted by a taxpayer unless: (a) the amount of
13 any tax sought to be reviewed, with penalties and interest thereon, if
14 any, shall be first deposited with the commissioner of finance and there
15 shall be filed with the commissioner of finance an undertaking, issued
16 by a surety company authorized to transact business in this state and
17 approved by the superintendent of insurance of this state as to solvency
18 and responsibility, in such amount and with such sureties as a justice
19 of the supreme court shall approve, to the effect that if such proceed-
20 ing be dismissed or the tax confirmed, the taxpayer will pay all costs
21 and charges which may accrue in the prosecution of the proceeding; or
22 (b) at the option of the taxpayer such undertaking filed with the
23 commissioner of finance may be in a sum sufficient to cover the taxes,
24 penalties and interest thereon stated in such decision plus the costs
25 and charges which may accrue against it in the prosecution of the
26 proceeding, in which event the taxpayer shall not be required to deposit
27 such taxes, penalties and interest as a condition precedent to the
28 application.

29 § 11-1407 Refunds. a. In the manner provided in this section the
30 commissioner of finance shall refund or credit, without interest, any
31 tax, penalty or interest erroneously, illegally or unconstitutionally
32 collected or paid if application to the commissioner of finance for such
33 refund shall be made within one year from the payment thereof. Whenever
34 a refund is made or denied by the commissioner of finance, the commis-
35 sioner shall state his or her reason therefor and give notice thereof to
36 the taxpayer in writing. Such application may be made by the transferee
37 or transferor who has actually paid the tax. The commissioner of
38 finance may, in lieu of any refund required to be made, allow credit
39 therefor on payments due from the applicant.

40 b. Any determination of the commissioner of finance denying a refund
41 or credit pursuant to subdivision a of this section shall be final and
42 irrevocable unless the applicant for such refund or credit, within nine-
43 ty days from the mailing of notice of such determination, or, if the
44 commissioner of finance has established a conciliation procedure pursu-
45 ant to section 11-124 of this title and the applicant has requested a
46 conciliation conference in accordance therewith, within ninety days from
47 the mailing of a conciliation decision or the date of the commissioner's
48 confirmation of the discontinuance of the conciliation proceeding, both
49 (1) serves a petition upon the commissioner of finance and (2) files a
50 petition with the tax appeals tribunal for a hearing. Such petition for
51 a refund or credit, made pursuant to this section, shall be deemed an
52 application for a revision of any tax, penalty or interest complained
53 of. Such hearing and any appeal to the tax appeals tribunal sitting en
54 banc from the decision rendered in such hearing shall be conducted in
55 the manner and subject to the requirements prescribed by the tax appeals
56 tribunal pursuant to sections one hundred sixty-eight through one

1 hundred seventy-two of the charter of the preceding municipality as it
2 existed January first, nineteen hundred ninety-four. After such hearing,
3 the tax appeals tribunal shall give notice of its decision to the appli-
4 cant and to the commissioner of finance. The applicant shall be entitled
5 to review a decision of the tax appeals tribunal sitting en banc by a
6 proceeding pursuant to article seventy-eight of the civil practice law
7 and rules, provided such proceeding is instituted within four months
8 after the giving of notice of such decision, and provided, in the case
9 of an application by a taxpayer, that a final determination of tax due
10 was not previously made. Such a proceeding shall not be instituted by a
11 taxpayer unless an undertaking is filed with the commissioner of finance
12 in such amount and with such sureties as a justice of the supreme court
13 shall approve to the effect that if such proceeding be dismissed or the
14 tax confirmed, the taxpayer will pay all costs and charges which may
15 accrue in the prosecution of such proceeding.

16 c. A person shall not be entitled to a revision, refund or credit
17 under this section of a tax, or penalty which had been determined to be
18 due pursuant to the provisions of section 11-1406 of this chapter where
19 such person has had a hearing or an opportunity for a hearing, as
20 provided in said section, or has failed to avail himself or herself of
21 the remedies therein provided. No refund or credit shall be made of a
22 tax, interest or penalty paid after a determination by the commissioner
23 of finance made pursuant to section 11-1406 of this chapter unless it be
24 found that such determination was erroneous, illegal or unconstitutional
25 or otherwise improper, by the tax appeals tribunal after a hearing, or
26 on the commissioner's own motion, or, is such tax appeals tribunal
27 affirms in whole or in part the determination of the commissioner of
28 finance, in a proceeding under article seventy-eight of the civil prac-
29 tice law and rules, pursuant to the provisions of said section, in which
30 event refund or credit without interest shall be made of the tax, inter-
31 est or penalty found to be overpaid.

32 § 11-1408 Reserves. In cases where the transferee or transferor has
33 applied for a refund and has instituted a proceeding under article
34 seventy-eight of the civil practice law and rules to review a determi-
35 nation adverse to the transferee or transferor on his or her application
36 for refund, the comptroller shall set up appropriate reserves to meet
37 any decisions adverse to the city.

38 § 11-1409 Remedies exclusive. The remedies provided by sections
39 11-1406 and 11-1407 of this chapter shall be the exclusive remedies
40 available to any person for the review of tax liability imposed by this
41 chapter; and no determination or proposed determination of tax or deter-
42 mination on any application for refund by the commissioner of finance,
43 nor any decision by the tax appeals tribunal or any of its administra-
44 tive law judges shall be enjoined or reviewed by an action for declara-
45 tory judgment, an action for money had and received or by any action or
46 proceeding other than, in the case of a decision by the tax appeals
47 tribunal sitting en banc, a proceeding in the nature of a certiorari
48 proceeding under article seventy-eight of the civil practice law and
49 rules; provided, however, that a taxpayer may proceed by declaratory
50 judgment if the taxpayer institutes suit within thirty days after a
51 deficiency assessment is made and pays the amount of the deficiency
52 assessment to the commissioner of finance prior to the institution of
53 such suit and posts a bond for costs as provided in section 11-1406 of
54 this chapter.

55 § 11-1410 Proceedings to recover tax. a. Whenever any transferee or
56 transferor shall fail to pay any tax, penalty or interest imposed by

1 this chapter as herein provided, the corporation counsel shall, upon the
2 request of the commissioner of finance bring or cause to be brought an
3 action to enforce the payment of the same on behalf of the city of
4 Staten Island in any court of the state of New York or of any other
5 state or of the United States. If, however, the commissioner of finance
6 in his or her discretion believes that any such transferee or transferor
7 subject to the provisions of this chapter is about to cease business,
8 leave the state or remove or dissipate the assets out of which the tax
9 or penalty might be satisfied, and that any such tax or penalty will not
10 be paid when due, the commissioner may declare such tax or penalty to be
11 immediately due and payable and may issue a warrant immediately.

12 b. As an additional or alternate remedy, the commissioner of finance
13 may issue a warrant, directed to the city sheriff commanding the sheriff
14 to levy upon and sell the real and personal property of the transferee
15 or transferor or other person liable for the tax which may be found
16 within the city, for the payment of the amount thereof, with any penalty
17 and interest, and the cost of executing the warrant, and to return such
18 warrant to the commissioner of finance and to pay to the commissioner
19 the money collected by virtue thereof within sixty days after the
20 receipt of such warrant. The city sheriff shall within five days after
21 the receipt of the warrant file with the county clerk a copy thereof,
22 and thereupon such clerk shall enter in the judgment docket the name of
23 the person mentioned in the warrant and the amount of the tax, penalty
24 and interest for which the warrant is issued and the date when such copy
25 is filed. Thereupon the amount of such warrant so docketed shall become
26 a lien upon the title to and the interest in real and personal property
27 of the person against whom the warrant is issued. The city sheriff shall
28 then proceed upon the warrant in the same manner, and with like effect,
29 as that provided by law in respect to executions issued against property
30 upon judgments of a court of record and for services in executing the
31 warrant the sheriff shall be entitled to the same fees, which he or she
32 may collect in the same manner. In the discretion of the commissioner of
33 finance a warrant of like terms, force and effect may be issued and
34 directed to an officer or employee of the department of finance, and in
35 the execution thereof such officer or employee shall have all the powers
36 conferred by law upon sheriffs, but shall be entitled to no fee or
37 compensation in excess of the actual expenses paid in the performance of
38 such duty. If a warrant is returned not satisfied in full, the commis-
39 sioner of finance may from time to time issue new warrants and shall
40 also have the same remedies to enforce the amount due thereunder as if
41 the city had recovered judgment therefor and execution thereon had been
42 returned unsatisfied.

43 c. Whenever there is made a sale, transfer or assignment in bulk or
44 any part of the whole of a stock of merchandise or of fixtures, or
45 merchandise and of fixtures pertaining to the conducting of the business
46 of the seller, transferor or assignor, otherwise than in the ordinary
47 course of trade and in the regular prosecution of said business, the
48 purchaser, transferee or assignee shall at least ten days before taking
49 possession of such merchandise, fixtures, or merchandise and fixtures,
50 or paying therefor, notify the commissioner of finance by registered
51 mail of the proposed sale and of the price, terms and conditions thereof
52 whether or not the seller, transferor or assignor, has represented to,
53 or informed the purchaser, transferee or assignee that it owes any tax
54 pursuant to this chapter and whether or not the purchaser, transferee or
55 assignee has knowledge that such taxes are owing, and whether any such
56 taxes are in fact owing.

1 d. Whenever, the purchaser, transferee or assignee shall fail to give
2 notice to the commissioner of finance as required by subdivision c of
3 this section, or whenever the commissioner of finance shall inform the
4 purchaser, transferee or assignee that a possible claim for such tax or
5 taxes exists, any sums of money, property or choses in action, or other
6 consideration, which the purchaser, transferee or assignee is required
7 to transfer over to the seller or assignor shall be subject to a first
8 priority right and lien for any such taxes theretofore or thereafter
9 determined to be due from the seller, transferor or assignor to the
10 city, and the purchaser, transferee or assignee is forbidden to transfer
11 to the seller, transferor or assignor any such sums of money, property
12 or choses in action to the extent of the amount of the city's claim. For
13 failure to comply with the provisions of this subdivision, the purchas-
14 er, transferee or assignee shall be personally liable for the payment to
15 the city of any such taxes theretofore or thereafter determined to be
16 due to the city from the seller, transferor or assignor, and such
17 liability may be assessed and enforced in the same manner as the liabil-
18 ity for tax under this chapter.

19 e. The commissioner of finance, if he or she finds that the interests
20 of the city will not thereby be jeopardized, and upon such conditions as
21 the commissioner of finance may require, may release any property from
22 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
23 tions to tax, penalties and interest filed pursuant to subdivision b of
24 this section, and such release or vacating of the warrant may be
25 recorded in the office of any recording officer in which such warrant
26 has been filed. The clerk shall thereupon cancel and discharge as of the
27 original date of docketing the vacated warrant.

28 § 11-1411 General powers of the commissioner of finance. In addition
29 to the powers granted to the commissioner of finance in this chapter, he
30 or she is hereby authorized and empowered:

31 1. To make, adopt and amend rules and regulations appropriate to the
32 carrying out of this chapter and the purposes thereof;

33 2. To extend, for cause shown, the time for filing any return for a
34 period not exceeding ninety days; and to compromise disputed claims in
35 connection with the taxes imposed under this chapter;

36 3. To request information from the taxi and limousine commission, the
37 tax commission of the state of New York or the treasury department of
38 the United States relative to any person; and to afford returns, reports
39 and other information to such taxi and limousine commission, tax commis-
40 sion or treasury department relative to any person, any other provision
41 of this chapter to the contrary notwithstanding;

42 4. To delegate his or her functions hereunder to a deputy commissioner
43 of finance or any employee or employees of the department of finance;

44 5. To prescribe the methods for determining the consideration subject
45 to the tax, and if there is a transfer of a taxicab or other property in
46 conjunction with the transfer of a taxicab license or interest therein,
47 to prescribe rules and methods for determining the fair market value of
48 such taxicab or other property;

49 6. To require any transferee or transferor to keep such records, and
50 for such lengths of time as may be required for the proper adminis-
51 tration of this chapter and to furnish such records to the commissioner
52 of finance or the taxi and limousine commission upon request;

53 7. To assess, determine, revise and adjust the taxes imposed under
54 this chapter.

55 § 11-1412 Administration of oaths and compelling testimony. a. The
56 commissioner of finance, the employees or agents duly designated by him

1 or her, the tax appeals tribunal and any of its duly designated and
2 authorized employees or agents shall have power to administer oaths and
3 take affidavits in relation to any matter or proceeding in the exercise
4 of their powers and duties under this chapter. The commissioner of
5 finance and the tax appeals tribunal shall have power to subpoena and
6 require the attendance of witnesses and the production of books, papers
7 and documents to secure information pertinent to the performance of the
8 duties of the commissioner or of the tax appeals tribunal hereunder and
9 of the enforcement of this chapter and to examine them in relation ther-
10 eto, and to issue commissions for the examination of witnesses who are
11 out of the state or unable to attend before the commissioner or the tax
12 appeals tribunal or excused from attendance.

13 b. A justice of the supreme court either in court or at chambers shall
14 have power summarily to enforce by proper proceedings the attendance and
15 testimony of witnesses and the production and examination of books,
16 papers and documents called for by the subpoena of the commissioner of
17 finance or the tax appeals tribunal under this chapter.

18 c. Cross-reference; criminal penalties. For failure to obey subpoenas
19 or for testifying falsely, see section 11-4007 of this title; for
20 supplying false or fraudulent information, see section 11-4009 of this
21 title.

22 d. The officers who serve the summons or subpoena of the commissioner
23 of finance or the tax appeals tribunal and witnesses attending in
24 response thereto shall be entitled to the same fees as are allowed to
25 officers and witnesses in civil cases in courts of record, except as
26 herein otherwise provided. Such officers shall be the city sheriff and
27 his or her duly appointed deputies or any officers or employees of the
28 department of finance or the tax appeals tribunal, designated to serve
29 such process.

30 § 11-1413 Interest and penalties. (a) Interest on underpayments. If
31 any amount of tax is not paid on or before the last date prescribed for
32 payment, without regard to any extension of time granted for payment,
33 interest on such amount at the rate set by the commissioner of finance
34 pursuant to subdivision (g) of this section, or, if no rate is set, at
35 the rate of seven and one-half percent per annum, shall be paid for the
36 period from such last date to the date of payment. In computing the
37 amount of interest to be paid, such interest shall be compounded daily.
38 Interest under this subdivision shall not be paid if the amount thereof
39 is less than one dollar.

40 (b) (1) Failure to file return. (A) In case of failure to file a
41 return under this chapter on or before the prescribed date, determined
42 with regard to any extension of time for filing, unless it is shown that
43 such failure is due to reasonable cause and not due to willful neglect,
44 there shall be added to the amount required to be shown as tax on such
45 return five percent of the amount of such tax if the failure is for not
46 more than one month, with an additional five percent for each additional
47 month or fraction thereof during which such failure continues, not
48 exceeding twenty-five percent in the aggregate.

49 (B) In the case of a failure to file a return of tax within sixty days
50 of the date prescribed for filing of such return, determined with regard
51 to any extension of time for filing, unless it is shown that such fail-
52 ure is due to reasonable cause and not due to willful neglect, the addi-
53 tion to tax under subparagraph (A) of this paragraph shall not be less
54 than the lesser of one hundred dollars or one hundred percent of the
55 amount required to be shown as tax on such return.

1 (C) For purposes of this paragraph, the amount of tax required to be
2 shown on the return shall be reduced by the amount of any part of the
3 tax which is paid on or before the date prescribed for payment of the
4 tax and by the amount of any credit against the tax which may be claimed
5 upon the return.

6 (2) Failure to pay tax shown on return. In case of failure to pay the
7 amount shown as tax on a return required to be filed under this chapter
8 on or before the prescribed date, determined with regard to any exten-
9 sion of time for payment, unless it is shown that such failure is due to
10 reasonable cause and not due to willful neglect, there shall be added to
11 the amount shown as tax on such return one-half of one percent of the
12 amount of such tax if the failure is not for more than one month, with
13 an additional one-half of one percent for each additional month or frac-
14 tion thereof during which such failure continues, not exceeding twenty-
15 five percent in the aggregate. For the purpose of computing the addition
16 for any month the amount of tax shown on the return shall be reduced by
17 the amount of any part of the tax which is paid on or before the begin-
18 ning of such month and by the amount of any credit against the tax which
19 may be claimed upon the return. If the amount of tax required to be
20 shown on a return is less than the amount shown as tax on such return,
21 this paragraph shall be applied by substituting such lower amount.

22 (3) Failure to pay tax required to be shown on return. In case of
23 failure to pay any amount in respect of any tax required to be shown on
24 a return required to be filed under this chapter which is not so shown,
25 including a determination made pursuant to section 11-1406 of this chap-
26 ter, within ten days of the date of a notice and demand therefor, unless
27 it is shown that such failure is due to reasonable cause and not due to
28 willful neglect, there shall be added to the amount of tax stated in
29 such notice and demand one-half of one percent of such tax if the fail-
30 ure is not for more than one month, with an additional one-half of one
31 percent for each additional month or fraction thereof during which such
32 failure continues, not exceeding twenty-five percent in the aggregate.
33 For the purpose of computing the addition for any month, the amount of
34 tax stated in the notice and demand shall be reduced by the amount of
35 any part of the tax which is paid before the beginning of such month.

36 (4) Limitations on additions.

37 (A) With respect to any return, the amount of the addition under para-
38 graph one of this subdivision shall be reduced by the amount of the
39 addition under paragraph two of this subdivision for any month to which
40 an addition applies under both paragraphs one and two. In any case
41 described in subparagraph (B) of paragraph one of this subdivision, the
42 amount of the addition under such paragraph one shall not be reduced
43 below the amount provided in such subparagraph.

44 (B) With respect to any return, the maximum amount of the addition
45 permitted under paragraph three of this subdivision shall be reduced by
46 the amount of the addition under paragraph one of this subdivision,
47 determined without regard to subparagraph (B) of such paragraph one,
48 which is attributable to the tax for which the notice and demand is made
49 and which is not paid within ten days of such notice and demand.

50 (c) Underpayment due to negligence. (1) If any part of an underpay-
51 ment of tax is due to negligence or intentional disregard of this chap-
52 ter or any rules or regulations hereunder, but without intent to
53 defraud, there shall be added to the tax a penalty equal to five percent
54 of the underpayment.

55 (2) There shall be added to the tax, in addition to the amount deter-
56 mined under paragraph one of this subdivision, an amount equal to fifty

1 percent of the interest payable under subdivision (a) of this section
2 with respect to the portion of the underpayment described in such para-
3 graph one which is attributable to the negligence or intentional disre-
4 gard referred to in such paragraph one, for the period beginning on the
5 last date prescribed by law for payment of such underpayment, determined
6 without regard to any extension, and ending on the date of the assess-
7 ment of the tax, or, if earlier, the date of the payment of the tax.

8 (d) Underpayment due to fraud. (1) If any part of an underpayment of
9 tax is due to fraud, there shall be added to the tax a penalty equal to
10 fifty percent of the underpayment.

11 (2) There shall be added to the tax, in addition to the penalty deter-
12 mined under paragraph one of this subdivision, an amount equal to fifty
13 percent of the interest payable under subdivision (a) of this section
14 with respect to the portion of the underpayment described in such para-
15 graph one which is attributable to fraud, for the period beginning on
16 the last day prescribed by law for payment of such underpayment, deter-
17 mined without regard to any extension, and ending on the date of the
18 assessment of the tax, or, if earlier, the date of the payment of the
19 tax.

20 (3) The penalty under this subdivision shall be in lieu of any other
21 addition to tax imposed by subdivision (b) or (c) of this section.

22 (e) Additional penalty. Any person who, with fraudulent intent, shall
23 fail to pay any tax imposed by this chapter, or to make, render, sign or
24 certify any return, or to supply any information within the time
25 required by or under this chapter, shall be liable for a penalty of not
26 more than one thousand dollars, in addition to any other amounts
27 required under this chapter to be imposed, assessed and collected by the
28 commissioner of finance. The commissioner of finance shall have the
29 power, in his or her discretion, to waive, reduce or compromise any
30 penalty under this subdivision.

31 (f) The interest and penalties imposed by this section shall be paid
32 and disposed of in the same manner as other revenues from this chapter.
33 Unpaid interest and penalties may be enforced in the same manner as the
34 tax imposed by this chapter.

35 (g)(1) Authority to set interest rates. The commissioner of finance
36 shall set the rate of interest to be paid pursuant to subdivision (a) of
37 this section, but if no such rate of interest is set, such rate shall be
38 deemed to be set at seven and one-half percent per annum. Such rate
39 shall be the rate prescribed in paragraph two of this subdivision but
40 shall not be less than seven and one-half percent per annum. Any such
41 rate set by the commissioner of finance shall apply to taxes, or any
42 portion thereof, which remain or become due on or after the date on
43 which such rate becomes effective and shall apply only with respect to
44 interest computed or computable for periods or portions of periods
45 occurring in the period in which such rate is in effect.

46 (2) General rule. The rate of interest set under this subdivision
47 shall be the sum of (i) the federal short-term rate as provided under
48 paragraph three of this subdivision, plus (ii) seven percentage points.

49 (3) Federal short-term rate. For purposes of this subdivision:

50 (A) The federal short-term rate for any month shall be the federal
51 short-term rate determined by the United States secretary of the treas-
52 ury during such month in accordance with subsection (d) of section
53 twelve hundred seventy-four of the internal revenue code for use in
54 connection with section six thousand six hundred twenty-one of the
55 internal revenue code. Any such rate shall be rounded to the nearest

1 full percent, or, if a multiple of one-half of one percent, such rate
2 shall be increased to the next highest full percent.

3 (B) Period during which rate applies.

4 (i) In general. Except as provided in clause (ii) of this subpara-
5 graph, the federal short-term rate for the first month in each calendar
6 quarter shall apply during the first calendar quarter beginning after
7 such month.

8 (ii) Special rule for the month of September, nineteen hundred eight-
9 y-nine. The federal short-term rate for the month of April, nineteen
10 hundred eighty-nine shall apply with respect to setting the rate of
11 interest for the month of September, nineteen hundred eighty-nine.

12 (4) Publication of interest rate. The commissioner of finance shall
13 cause to be published in the City Record, and give other appropriate
14 general notice of, the interest rate to be set under this subdivision no
15 later than twenty days preceding the first day of the calendar quarter
16 during which such interest rate applies. The setting and publication of
17 such interest rate shall not be included within paragraph (a) of subdi-
18 vision five of section one thousand forty-one of the charter of the
19 preceding municipality as it existed January first, nineteen hundred
20 ninety-four relating to the definition of a rule.

21 (h) Miscellaneous. (1) The certificate of the commissioner of finance
22 to the effect that a tax has not been paid or that information has not
23 been supplied pursuant to the provisions of this chapter shall be
24 presumptive evidence thereof.

25 (2) Cross-reference: For criminal penalties, see chapter forty of this
26 title.

27 § 11-1414 Returns to be secret. a. Except in accordance with proper
28 judicial order or as otherwise provided by law, it shall be unlawful for
29 the commissioner of finance, the chairperson of the taxi and limousine
30 commission, the tax appeals tribunal or any officer or employee of the
31 department of finance or taxi and limousine commission or the tax
32 appeals tribunal, to divulge or make known in any manner any information
33 contained in or relating to any return provided for by this chapter. The
34 officers charged with the custody of such returns shall not be required
35 to produce any of them or evidence of anything contained in them in any
36 action or proceeding in any court, except on behalf of the commissioner
37 of finance in an action or proceeding under the provisions of this chap-
38 ter, or on behalf of any party to an action or proceeding under the
39 provisions of this chapter when the returns or facts shown thereby are
40 directly involved in such action or proceeding, in either of which
41 events the court may require the production of, and may admit in
42 evidence, so much of said returns or of the facts shown thereby, as are
43 pertinent to the action or proceeding and no more. Nothing in this
44 section shall be construed to prohibit the delivery to a transferee or
45 transferor or to the duly authorized representative of either of them of
46 a certified copy of any return filed in connection with the tax imposed
47 by this chapter; nor to prohibit the delivery of such a certified copy
48 of such return or of any information contained in or relating thereto to
49 the United States of America or any department thereof, the state of New
50 York or any department thereof, the city of Staten Island or any depart-
51 ment thereof provided the same is required for official business; nor to
52 prohibit the inspection for official business of such returns by the
53 chairperson of the taxi and limousine commission, the corporation coun-
54 sel or other legal representatives of the city or by the district attor-
55 ney of Richmond county; nor to prohibit the publication of statistics so

1 classified as to prevent the identification of particular returns or
2 items thereof.

3 b. (1) Any officer or employee of the city who willfully violates the
4 provisions of subdivision a of this section shall be dismissed from
5 office and be incapable of holding any public office in this city for a
6 period of five years thereafter.

7 (2) Cross-reference: For criminal penalties, see chapter forty of this
8 title.

9 c. This section shall be deemed a state statute for purposes of para-
10 graph (a) of subdivision two of section eighty-seven of the public offi-
11 cers law.

12 d. Notwithstanding anything in subdivision a of this section to the
13 contrary, if a taxpayer has petitioned the tax appeals tribunal for
14 administrative review as provided in section one hundred seventy of the
15 charter of the preceding municipality as it existed January first, nine-
16 teen hundred ninety-four, the commissioner of finance shall be author-
17 ized to present to the tribunal any report or return of such taxpayer,
18 or any information contained therein or relating thereto, which may be
19 material or relevant to the proceeding before the tribunal. The tax
20 appeals tribunal shall be authorized to publish a copy or a summary of
21 any decision rendered pursuant to section one hundred seventy-one of the
22 charter of the preceding municipality as it existed January first, nine-
23 teen hundred ninety-four.

24 § 11-1415 Notices and limitations of time. a. Any notice authorized
25 or required under the provisions of this chapter may be given by mailing
26 the same to the person for whom it is intended in a postpaid envelope
27 addressed to such person at the address given in the last return filed
28 by such person pursuant to the provisions of this chapter, in any appli-
29 cation made by such person, or in the records maintained by the taxi and
30 limousine commission, or, if no return has been filed or application
31 made or address found in the records of the taxi and limousine commis-
32 sion, then to such address as may be obtainable. The mailing of such
33 notice shall be presumptive evidence of the receipt of the same by the
34 person to whom addressed. Any period of time which is determined accord-
35 ing to the provisions of this chapter by the giving of notice shall
36 commence to run from the date of mailing of such notice.

37 b. The provisions of the civil practice law and rules or any other law
38 relative to limitations of time for the enforcement of a civil remedy
39 shall not apply to any proceeding or action taken by the city to levy,
40 appraise, assess, determine or enforce the collection of any tax or
41 penalty provided by this chapter. However, except in the case of a
42 wilfully false or fraudulent return with intent to evade the tax, no
43 assessment of additional tax shall be made after the expiration of more
44 than three years from the date of the filing of a return; provided,
45 however, that where no return has been filed as provided by law the tax
46 may be assessed at any time.

47 c. Where, before the expiration of the period prescribed herein for
48 the assessment of an additional tax, a taxpayer has consented in writing
49 that such period be extended, the amount of such additional tax due may
50 be determined at any time within such extended period. The period so
51 extended may be further extended by subsequent consents in writing made
52 before the expiration of the extended period.

53 d. If any return, claim, statement, notice, application, or other
54 document required to be filed, or any payment required to be made, with-
55 in a prescribed period or on or before a prescribed date under authority
56 of any provision of this chapter is, after such period or such date,

1 delivered by United States mail to the commissioner of finance, the tax
2 appeals tribunal, bureau, office, officer or person with which or with
3 whom such document is required to be filed, or to which or to whom such
4 payment is required to be made, the date of the United States postmark
5 stamped on the envelope shall be deemed to be the date of delivery. This
6 subdivision shall apply only if the postmark date falls within the
7 prescribed period or on or before the prescribed date for the filing of
8 such document, or for making the payment, including any extension grant-
9 ed for such filing or payment, and only if such document or payment was
10 deposited in the mail, postage prepaid, properly addressed to the
11 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
12 cer or person with which or with whom the document is required to be
13 filed or to which or to whom such payment is required to be made. If any
14 document is sent by United States registered mail, such registration
15 shall be prima facie evidence that such document was delivered to the
16 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
17 cer or person to which or to whom addressed, and the date of registra-
18 tion shall be deemed the postmark date. The commissioner of finance and,
19 where relevant, the tax appeals tribunal are authorized to provide by
20 regulation the extent to which such provisions with respect to prima
21 facie evidence of delivery and the postmark date shall apply to certi-
22 fied mail. Except as provided in subdivision f of this section, this
23 subdivision shall apply in the case of postmarks not made by the United
24 States postal service only if and to the extent provided by regulation
25 of the commissioner of finance or, where relevant, the tax appeals
26 tribunal.

27 e. When the last day prescribed under authority of this chapter,
28 including any extension of time, for performing any act falls on a
29 Saturday, Sunday or legal holiday in the state, the performance of such
30 act shall be considered timely if it is performed on the next succeeding
31 day which is not a Saturday, Sunday or legal holiday.

32 f. (1) Any reference in subdivision d of this section to the United
33 States mail shall be treated as including a reference to any delivery
34 service designated by the secretary of the treasury of the United States
35 pursuant to section seventy-five hundred two of the internal revenue
36 code and any reference in subdivision d of this section to a United
37 States postmark shall be treated as including a reference to any date
38 recorded or marked in the manner described in section seventy-five
39 hundred two of the internal revenue code by a designated delivery
40 service. If the commissioner of finance finds that any delivery service
41 designated by such secretary is inadequate for the needs of the city,
42 the commissioner of finance may withdraw such designation for purposes
43 of this title. The commissioner of finance may also designate additional
44 delivery services meeting the criteria of section seventy-five hundred
45 two of the internal revenue code for purposes of this title, or may
46 withdraw any such designation if the commissioner of finance finds that
47 a delivery service so designated is inadequate for the needs of the
48 city. Any reference in subdivision d of this section to the United
49 States mail shall be treated as including a reference to any delivery
50 service designated by the commissioner of finance and any reference in
51 subdivision d of this section to a United States postmark shall be
52 treated as including a reference to any date recorded or marked in the
53 manner described in section seventy-five hundred two of the internal
54 revenue code by a delivery service designated by the commissioner of
55 finance, provided, however, any withdrawal of designation or additional
56 designation by the commissioner of finance shall not be effective for

1 purposes of service upon the tax appeals tribunal, unless and until such
2 withdrawal of designation or additional designation is ratified by the
3 president of the tax appeals tribunal.

4 (2) Any equivalent of registered or certified mail designated by the
5 United States secretary of the treasury, or as may be designated by the
6 commissioner of finance pursuant to the same criteria used by such
7 secretary for such designations pursuant to section seventy-five hundred
8 two of the internal revenue code, shall be included within the meaning
9 of registered or certified mail as used in subdivision d of this
10 section. If the commissioner of finance finds that any equivalent of
11 registered or certified mail designated by such secretary or the commis-
12 sioner of finance is inadequate for the needs of the city, the commis-
13 sioner of finance may withdraw such designation for purposes of this
14 title, provided, however, any withdrawal of designation or additional
15 designation by the commissioner of finance shall not be effective for
16 purposes of service upon the tax appeals tribunal, unless and until such
17 withdrawal of designation or additional designation is ratified by the
18 president of the tax appeals tribunal.

19 § 11-1416 Construction and enforcement. This chapter shall be
20 construed and enforced in conformity with subdivision (j) of section
21 twelve hundred one of the tax law.

22 § 11-1417 Disposition of revenues. All revenues resulting from the
23 imposition of the tax under this chapter shall be paid into the treasury
24 of the city and shall be credited to and deposited in the general fund
25 of the city, but no part of such revenue may be expended unless appro-
26 priated in the annual budget of the city.

27 CHAPTER 16

28 TAX ON CONTAINERS

29 § 11-1601 Definitions. When used in this chapter, the following terms
30 shall mean and include:

31 1. "Person." An individual, partnership, society, association, joint-
32 stock company, corporation, estate, receiver, trustee, assignee, refer-
33 ee, or any other person acting in a fiduciary or representative capaci-
34 ty, whether appointed by a court or otherwise and any combination
35 thereof.

36 2. "Container." Any article, thing or contrivance made in whole or in
37 part of rigid or semi-rigid plastic, including, but not limited to,
38 barrels, baskets, bottles, boxes, cartons, carrying cases, crates, cups,
39 cylinders, drums, jars, jugs, pails, pots, trays, tubs, tubes, tumblers,
40 and vessels, intended for use in packing or packaging any product
41 intended for sale:

42 (a) Metal containers and paperboard or fiber containers which have
43 been impregnated, lined or coated with plastic or other materials shall
44 be considered to be classified as metal containers and paperboard
45 containers, respectively;

46 (b) Paperboard or fiber containers with fastenings, tops or bottoms
47 made of plastic shall be classified as paperboard or fiber containers;

48 (c) Plastic caps that are easily, readily, usually, and customarily
49 separated from the container before disposal shall not be considered
50 part of the container.

51 3. "Recycled material." Component materials which have been derived
52 from previously used material or from new or old scrap material.

53 4. "Taxable period." Such calendar period prescribed for filing
54 returns by this chapter or by the commissioner of finance.

1 5. "Retail sale" or "sale at retail." A sale to any person for any
2 purpose other than for resale as such or as a physical component part of
3 tangible personal property.

4 6. "Sale." The sale or furnishing of a container by a seller or
5 supplier to a retailer.

6 7. "Seller or supplier." Any person who sells containers to a retail-
7 er.

8 8. "Retailer." Any person who purchases containers, whether filled or
9 unfilled, for the purpose of using them in connection with and as part
10 of sales at retail or who receives them as containers of products
11 intended for sale at retail.

12 9. "City." The city of Staten Island.

13 10. "Commissioner of finance." The commissioner of finance of the
14 city.

15 11. "Comptroller." The comptroller of the city.

16 § 11-1602 General powers of the commissioner of finance. In addi-
17 tion to the powers granted to the commissioner of finance in this chap-
18 ter, the commissioner is hereby authorized and empowered:

19 1. To make, adopt and amend rules and regulations appropriate to the
20 carrying chapter and the purposes thereof;

21 2. To extend, for cause shown, the time of filing any return for a
22 period not exceeding thirty days; and for cause shown, to remit penal-
23 ties but not interest computed at the rate of six per cent per annum;
24 and to compromise disputed claims in connection with the taxes hereby
25 imposed;

26 3. To request information from the tax commission of the state of New
27 York or the treasury department of the United States relative to any
28 person; and to afford information to such tax commission or such treas-
29 ury department relative to any person, any other provision of this chap-
30 ter to the contrary notwithstanding;

31 4. To delegate the commissioner's functions under this section to an
32 assistant commissioner or deputy commissioner in the department of
33 finance or to any employee or employees of the commissioner of finance;

34 5. To prescribe methods for determining the containers sold or
35 supplied or purchased and to determine which are taxable and nontaxable;

36 6. To require sellers and suppliers and retailers within the city to
37 keep detailed records with respect to containers bought, sold, used,
38 manufactured or produced, and stock and production records with respect
39 to such containers whether or not subject to the tax imposed by this
40 chapter, and to furnish any information with respect thereto upon
41 request to the commissioner of finance;

42 7. To assess, determine, revise and readjust the taxes imposed under
43 this chapter.

44 § 11-1603 Administration of oaths and compelling testimony. a. The
45 commissioner of finance or the commissioner's employees or agents duly
46 designated and authorized by the commissioner shall have power to admin-
47 ister oaths and take affidavits in relation to any matter or proceeding
48 in the exercise of their powers and duties under this chapter. The
49 commissioner of finance shall have power to subpoena and require the
50 attendance of witnesses and the production of books, papers and docu-
51 ments to secure information pertinent to the performance of the commis-
52 sioner's duties hereunder and of the enforcement of this chapter and to
53 examine them in relation thereto, and to issue commissions for the exam-
54 ination of witnesses who are out of the state or unable to attend before
55 the commissioner or excused from attendance.

1 b. A justice of the supreme court either in court or at chambers shall
2 have power summarily to enforce by proper proceedings the attendance and
3 testimony of witnesses and the production and examination of books,
4 papers and documents called for by the subpoena of the commissioner of
5 finance under this chapter.

6 c. Any person who shall refuse to testify or to produce books or
7 records or who shall testify falsely in any material matter pending
8 before the commissioner of finance under this chapter shall be guilty of
9 a misdemeanor, punishment for which shall be a fine of not more than one
10 thousand dollars or imprisonment for not more than one year, or both
11 such fine and imprisonment.

12 d. The officers who serve the summons or subpoena of the commissioner
13 of finance and witnesses attending in response thereto shall be entitled
14 to the same fees as are allowed to officers and witnesses in civil cases
15 in courts of record, except as otherwise provided. Such officers shall
16 be the city sheriff and the city sheriff's duly appointed deputies or
17 any officers or employees of the commissioner of finance, designated to
18 serve such process.

19 § 11-1604 Imposition of tax. 1. On and after July first, nineteen
20 hundred seventy-one, there is hereby imposed within the city and there
21 shall be paid a tax upon every sale of a plastic container at the rate
22 of two cents for each container sold.

23 2. A credit shall be allowed against the taxes imposed by this chap-
24 ter of one cent for each taxable container if manufactured with a mini-
25 mum of thirty percent of recycled material.

26 § 11-1605 Presumptions and burden of proof. For the purpose of
27 proper administration of this chapter and to prevent evasion of the tax
28 hereby imposed, it shall be presumed that all sales of plastic contain-
29 ers are taxable, and not entitled to any credit allowed against the
30 taxes imposed. Such presumptions shall prevail until the contrary is
31 established and the burden of proving the contrary shall be upon the
32 taxpayer.

33 § 11-1606 Payment of the tax. The tax imposed pursuant to this
34 chapter shall be paid by the seller or supplier. However, where the tax
35 has not been paid on a sale by such seller or supplier, the retailer
36 shall be liable for tax thereon upon purchasing the container. Should
37 sellers and suppliers having no business situs in the city, who sell
38 containers to retailers within the city, pay the tax, the retailer
39 purchasing the containers shall not be liable for the tax.

40 § 11-1607 Records to be kept. Every seller or supplier and every
41 retailer shall keep records of all plastic containers taxed pursuant to
42 this chapter and of all purchases and sales thereof and of the taxes due
43 and payable on the sale or on the purchase thereof, in such form as the
44 commissioner of finance may by regulation require. Such records shall
45 be available for inspection and examination at any time upon demand by
46 the commissioner of finance or the commissioner's duly authorized agent
47 or employee and shall be preserved for a period of three years, except
48 that the commissioner of finance may consent to their destruction within
49 that period or may require that they be kept longer.

50 § 11-1608 Exemptions. 1. The following shall be exempt from the
51 payment of the tax imposed by this chapter:

52 (a) The state of New York, or any of its agencies, instrumentalities,
53 public corporations, including a public corporation created pursuant to
54 agreement or compact with another state or Canada, or political subdivi-
55 sions where it is the purchaser, user or consumer;

1 (b) The United States of America, and any of its agencies and instru-
2 mentalities insofar as it is immune from taxation where it is the
3 purchaser, user or consumer;

4 (c) The United Nations or other international organizations of which
5 the United States of America is a member; and

6 (d) Any corporation, or association, or trust, or community chest,
7 fund or foundation, organized and operated exclusively for religious,
8 charitable, or educational purposes, or for the prevention of cruelty to
9 children or animals, and no part of the net earnings of which inures to
10 the benefit of any private shareholder or individual, and no substantial
11 part of the activities of which is carrying on propaganda, or otherwise
12 attempting to influence legislation; provided, however, that nothing in
13 this paragraph shall include an organization operated for the primary
14 purpose of carrying on a trade or business for profit, whether or not
15 all of its profits are payable to one or more organizations described in
16 this paragraph.

17 2. The following containers shall be exempt from the tax imposed by
18 this chapter: a. Containers sold or furnished containing products
19 intended for use in manufacturing processes and not for final retail
20 sale.

21 b. Containers used as receptacles for food, food products, beverages,
22 dietary foods and health supplements, sold for human consumption but not
23 including: (i) candy and confectionery, (ii) fruit drinks which contain
24 less than seventy percent of natural fruit juice, (iii) soft drinks,
25 sodas and beverages such as are ordinarily dispensed at soda fountains
26 or in connection therewith, other than coffee, tea and cocoa, and (iv)
27 beer, wine or other alcoholic beverages.

28 § 11-1609 Returns. 1. Every seller or supplier shall file with the
29 commissioner of finance a return of containers sold and of the taxes due
30 and payable thereon for the period from July first, nineteen hundred
31 seventy-one until the last day of September, nineteen hundred seventy-
32 one and thereafter for each of the four-monthly periods ending on the
33 last day of January, May and September of each year.

34 2. Every retailer shall file with the commissioner of finance a
35 return of containers purchased by such retailer from sellers or suppli-
36 ers having no situs within the city and of the taxes due thereon for the
37 same periods provided in subdivision one of this section.

38 3. The returns shall be filed within twenty days after the end of the
39 periods covered thereby. The commissioner of finance may permit or
40 require returns to be made for other periods and upon such dates as the
41 commissioner may specify. If the commissioner of finance deems it
42 necessary in order to insure the payment of the tax imposed by this
43 chapter, the commissioner may require returns to be made for shorter
44 periods than those prescribed pursuant to the provisions of this subdivi-
45 sion and upon such dates as he or she may specify.

46 4. The forms of returns shall be prescribed by the commissioner of
47 finance and shall contain such information as the commissioner may deem
48 necessary for the proper administration of this chapter. The commis-
49 sioner of finance may require amended returns to be filed within twenty
50 days after notice and to contain the information specified in the
51 notice.

52 5. If a return required by this chapter is not filed or if a return
53 when filed is incorrect or insufficient on its face the commissioner of
54 finance shall take the necessary steps to enforce the filing of such a
55 return or a corrected return.

1 § 11-1610 Determination of tax. If a return required by this chapter
2 is not filed, or if a return when filed is incorrect or insufficient,
3 the amount of tax due shall be determined by the commissioner of finance
4 from such information as may be obtainable and, if necessary, the tax
5 may be estimated on the basis of external indices, such as volume of
6 sales, inventories, purchases of containers, or of raw materials,
7 production figures, or other factors. Notice of such determination shall
8 be given to the person liable for the collection or payment of the tax.
9 Such determination shall finally and irrevocably fix the tax unless the
10 person against whom it is assessed, within thirty days after giving
11 notice of such determination, shall apply to the commissioner of finance
12 for a hearing, or unless the commissioner of finance of his or her own
13 motion shall redetermine the same. After such hearing the commissioner
14 of finance shall give notice of his or her determination to the person
15 against whom the tax is assessed. The determination of the commissioner
16 of finance shall be reviewable for error, illegality or unconstitution-
17 ality or any other reason whatsoever by a proceeding under article
18 seventy-eight of the civil practice law and rules if application there-
19 for is made to the supreme court within four months after the giving of
20 the notice of such determination. A proceeding under article seventy-
21 eight of the civil practice law and rules shall not be instituted
22 unless: (a) the amount of any tax sought to be reviewed, with penalties
23 and interest thereon, if any, shall be first deposited with the commis-
24 sioner of finance and there shall be filed with the commissioner of
25 finance an undertaking, issued by a surety company authorized to trans-
26 act business in this state and approved by the superintendent of insur-
27 ance of this state as to solvency and responsibility, in such amount as
28 a justice of the supreme court shall approve to the effect that if such
29 proceeding be dismissed or the tax confirmed, the petitioner will pay
30 all costs and charges which may accrue in the prosecution of the
31 proceeding; or (b) at the option of the applicant such undertaking filed
32 with the commissioner of finance may be in a sum sufficient to cover the
33 taxes, penalties and interest thereon stated in such determination plus
34 the costs and charges which may accrue against it in the prosecution of
35 the proceeding, in which event the applicant shall not be required to
36 deposit such taxes, penalties and interest as a condition precedent to
37 the application.

38 § 11-1611 Refunds. a. In the manner provided in this section the
39 commissioner of finance shall refund or credit, without interest, any
40 tax, penalty or interest erroneously, illegally or unconstitutionally
41 collected or paid if application to the commissioner of finance for such
42 refund shall be made within one year from the payment thereof. Whenever
43 a refund is made by the commissioner of finance, the commissioner shall
44 state his or her reasons therefor in writing. Such application may be
45 made by the seller or supplier or the retailer or other person who has
46 actually paid the tax. The commissioner of finance may, in lieu of any
47 refund required to be made, allow credit therefor on payments due from
48 the applicant.

49 b. An application for a refund or credit made as herein provided shall
50 be deemed an application for revision of any tax, penalty or interest
51 complained of. If the commissioner of finance, prior to any hearing
52 held, initially denies the application for refund, the commissioner
53 shall give notice of such determination of denial to the applicant. Such
54 determination shall be final and irrevocable unless the applicant, with-
55 in thirty days after the giving of notice of such determination, shall
56 apply to the commissioner of finance for a hearing, or unless the

1 commissioner of finance of his or her own motion shall redetermine the
2 same. After such hearing the commissioner of finance shall give notice
3 of his or her determination to the applicant, who shall be entitled to
4 review such determination by a proceeding pursuant to article seventy-
5 eight of the civil practice law and rules, provided such proceeding is
6 instituted within four months after the giving of the notice of such
7 determination, and provided that a final determination of tax was not
8 previously made. Such a proceeding shall not be instituted unless an
9 undertaking is filed with the commissioner of finance in such amount and
10 with such sureties as a justice of the supreme court shall approve to
11 the effect that if such proceeding be dismissed or the tax confirmed,
12 the petitioner shall pay all costs and charges which may accrue in the
13 prosecution of such proceeding.

14 c. A person shall not be entitled to a revision, refund or credit
15 under this section of a tax, interest or penalty which had been deter-
16 mined to be due pursuant to the provisions of section 11-1610 of this
17 chapter where such person has had a hearing or an opportunity for a
18 hearing, as provided in said section, or has failed to avail himself or
19 herself of the remedies therein provided. No refund or credit shall be
20 made of a tax, interest or penalty paid after a determination by the
21 commissioner of finance made pursuant to section 11-1609 of this chapter
22 unless it be found that such determination was erroneous, illegal or
23 unconstitutional or otherwise improper, by the commissioner of finance
24 after a hearing or of the commissioner's own motion, or in a proceeding
25 under article seventy-eight of the civil practice law and rules, pursu-
26 ant to the provisions of said section, in which event refund or credit
27 without interest shall be made of the tax, interest or penalty found to
28 have been overpaid.

29 § 11-1612 Reserves. In cases where the seller or supplier or the
30 retailer has applied for a refund and has instituted a proceeding under
31 article seventy-eight of the civil practice law and rules to review a
32 determination adverse to him or her on his or her application for
33 refund, the comptroller shall set up appropriate reserves to meet any
34 decision adverse to the city.

35 § 11-1613 Remedies exclusive. The remedies provided by sections
36 11-1610 and 11-1611 of this chapter shall be the exclusive remedies
37 available to any person for the review of tax liability imposed by this
38 chapter; and no determination or proposed determination of tax or deter-
39 mination on any application for refund shall be enjoined or reviewed by
40 an action for declaratory judgment, an action for money had and received
41 or by any action or proceeding other than a proceeding in the nature of
42 a certiorari proceeding under article seventy-eight of the civil prac-
43 tice law and rules; provided, however, that a taxpayer may proceed by
44 declaratory judgment if such taxpayer institutes suit within thirty days
45 after a deficiency assessment is made and pays the amount of the defi-
46 ciency assessment to the commissioner of finance prior to the institu-
47 tion of such suit and posts a bond for costs as provided in section
48 11-1610 of this chapter.

49 § 11-1614 Proceedings to recover tax. a. Whenever any seller or
50 supplier or retailer or other person shall fail to pay any tax, penalty
51 or interest imposed by this chapter, the corporation counsel shall, upon
52 the request of the commissioner of finance bring or cause to be brought
53 an action to enforce the payment of the same on behalf of the city of
54 Staten Island in any court of the state of New York or of any other
55 state or of the United States. If, however, the commissioner of finance
56 in his or her discretion believes that any such seller or supplier or

1 retailer or other person is about to cease business, leave the state or
2 remove or dissipate the assets out of which the tax, penalties or inter-
3 est might be satisfied, and that any such tax, penalty or interest will
4 not be paid when due, the commissioner of finance may declare such tax,
5 penalty or interest to be immediately due and payable and may issue a
6 warrant immediately.

7 b. As an additional or alternate remedy, the commissioner of finance
8 may issue a warrant, directed to the city sheriff commanding the city
9 sheriff to levy upon and sell the real and personal property of the
10 seller or supplier or retailer or other person liable for the tax, which
11 may be found within the city, for the payment of the amount thereof,
12 with any penalties and interest, and the cost of executing the warrant,
13 and to return such warrant to the commissioner of finance and to pay to
14 the commissioner of finance the money collected by virtue thereof within
15 sixty days after the receipt of such warrant. The city sheriff shall
16 within five days after the receipt of the warrant file with the county
17 clerk a copy thereof, and thereupon such clerk shall enter in the judg-
18 ment docket the name of the person mentioned in the warrant and the
19 amount of the tax, penalties and interest for which the warrant is
20 issued and the date when such copy is filed. Thereupon the amount of
21 such warrant so docketed shall become a lien upon the title to and
22 interest in real and personal property of the person against whom the
23 warrant is issued. The city sheriff shall then proceed upon the warrant,
24 in the same manner, and with like effect, as that provided by law in
25 respect to executions issued against property upon judgments of a court
26 of record, and for services in executing the warrant the city sheriff
27 shall be entitled to the same fees, which he or she may collect in the
28 same manner. In the discretion of the commissioner of finance a warrant
29 of like terms, force and effect may be issued and directed to any offi-
30 cer or employee of the department of finance, and in the execution ther-
31 eof such officer or employee shall have all the powers conferred by law
32 upon sheriffs, but shall be entitled to no fee or compensation in excess
33 of the actual expenses paid in the performance of such duty. If a
34 warrant is returned not satisfied in full, the commissioner of finance
35 may from time to time issue new warrants and shall also have the same
36 remedies to enforce the amount due thereunder as if the city had recov-
37 ered judgment therefor and execution thereon had been returned unsatis-
38 fied.

39 c. Whenever a seller or supplier or the retailer shall make a sale,
40 transfer, or assignment in bulk of any part of the whole of his or her
41 fixtures, or of his or her stock of merchandise, or of stock or merchan-
42 dise and of fixtures pertaining to the conduct or operation of business
43 of the seller or supplier or the retailer, otherwise than in the ordi-
44 nary course of trade and regular prosecution of business, the purchaser,
45 transferee or assignee shall at least ten days before taking possession
46 of the subject of said sale, transfer or assignment, or paying therefor,
47 notify the commissioner of finance by registered mail of the proposed
48 sale and of the price, terms and conditions thereof whether or not the
49 seller, transferor or assignor, has represented to, or informed the
50 purchaser, transferee or assignee that it owes any tax pursuant to this
51 chapter, and whether or not the purchaser, transferee or assignee has
52 knowledge that such taxes are owing, and whether any such taxes are in
53 fact owing.

54 Whenever the purchaser, transferee or assignee shall fail to give
55 notice to the commissioner of finance as required by the opening para-
56 graph of this subdivision, or whenever the commissioner of finance shall

1 inform the purchaser, transferee or assignee that a possible claim for
2 such tax or taxes exists, any sums of money, property or chooses in
3 action, or other consideration, which the purchaser, transferee or
4 assignee is required to transfer over to the seller, transferor or
5 assignor shall be subject to a first priority right and lien for any
6 such taxes theretofore or thereafter determined to be due from the sell-
7 er, transferor or assignor to the city, and the purchaser, transferee or
8 assignee is forbidden to transfer to the seller, transferor or assignor
9 any such sums of money, property or chooses in action to the extent of
10 the amount of the city's claim. For failure to comply with the
11 provisions of this subdivision, the purchaser, transferee or assignee,
12 in addition to being subject to the liabilities and remedies imposed
13 under the provisions of article six of the uniform commercial code,
14 shall be personally liable for the payment to the city of any such taxes
15 theretofore or thereafter determined to be due to the city from the
16 seller, transferor or assignor, and such liability may be assessed and
17 enforced in the same manner as the liability for tax under this chapter.

18 d. The commissioner of finance, if he or she finds that the interests
19 of the city will not thereby be jeopardized, and upon such conditions as
20 the commissioner of finance may require, may release any property from
21 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
22 tions to tax, penalties and interest filed pursuant to subdivision b of
23 this section, and such release or vacating of the warrant may be
24 recorded in the office of any recording officer in which such warrant
25 has been filed. The clerk shall thereupon cancel and discharge as of the
26 original date of docketing the vacated warrant.

27 § 11-1615 Penalties and interest. a. Any person failing to file a
28 return or to pay any tax to the commissioner of finance within the time
29 required by this chapter shall be subject to a penalty of five percent
30 of the amount of tax due; plus interest at the rate of one percent of
31 such tax for each month of delay excepting the first month after such
32 return was required to be filed or such tax became due; but the commis-
33 sioner of finance if satisfied that the delay was excusable, may remit
34 all or any part of such penalty, but not interest at the rate of six
35 percent per year. Such penalties and interest shall be paid and disposed
36 of in the same manner as other revenues from this chapter. Unpaid penal-
37 ties and interest may be enforced in the same manner as the tax imposed
38 by this chapter.

39 b. Any seller or supplier or any retailer or any officer of a corpo-
40 rate seller or supplier or retailer, failing to file a return as
41 required by this chapter, or filing or causing to be filed or making or
42 causing to be made or given or causing to be given any return, certifi-
43 cate, affidavit, representation, information, testimony or statement
44 required or authorized by this chapter which is willfully false, and any
45 seller or supplier or any retailer or any officer of a corporate seller
46 or supplier or retailer failing to keep the records required by subdivi-
47 sion six of section 11-1602 of this chapter, shall, in addition to the
48 penalties under this subdivision or elsewhere prescribed, be guilty of a
49 misdemeanor, punishment for which shall be a fine of not more than one
50 thousand dollars or imprisonment for not more than one year, or both
51 such fine and imprisonment. It shall not be any defense to a prosecution
52 under this subdivision that the failure to file a return or that the
53 actions or failures to act mentioned in this subdivision was uninten-
54 tional or not willful.

55 c. The certificate of the commissioner of finance to the effect that a
56 tax has not been paid, that a return has not been filed, or that infor-

1 mation has not been supplied pursuant to the provisions of this chapter,
2 shall be presumptive evidence thereof.

3 § 11-1616 Return to be secret. a. Except in accordance with proper
4 judicial order, or as otherwise provided by law, it shall be unlawful
5 for the commissioner of finance, any officer or employee of the depart-
6 ment of finance, any person engaged or retained on an independent
7 contract basis or any person who, pursuant to this section is permitted
8 to inspect any return or to whom a copy, an abstract or a portion of any
9 return is furnished, or to whom any information contained in any return
10 is furnished, to divulge or make known in any manner any information
11 contained in or relating to any return required under this chapter. The
12 officers charged with the custody of such returns shall not be required
13 to produce any of them or evidence of anything contained in them in any
14 action or proceeding in any court, except on behalf of the commissioner
15 of finance in an action or proceeding under the provisions of this chap-
16 ter, or on behalf of any party to any action or proceeding under the
17 provisions of this chapter, when the returns or facts shown thereby are
18 directly involved in such action or proceeding, in either of which
19 events the court may require the production of, and may admit in
20 evidence, so much of said returns or of the facts shown thereby, as are
21 pertinent to the action or proceeding and no more. Nothing under this
22 subdivision shall be construed to prohibit the delivery to a taxpayer or
23 such taxpayer's duly authorized representative of a certified copy of
24 any return filed in connection with such taxpayer's tax; nor to prohibit
25 the delivery of such a certified copy of such return or of any informa-
26 tion contained in or relating thereto, the United States of America or
27 any department thereof, to the state of New York or any department ther-
28 eof, or to any agency or department of the city of Staten Island,
29 provided the same is requested for official business; nor to prohibit
30 the inspection for official business of such returns by the corporation
31 counsel or other legal representatives of the city or by the district
32 attorney of Richmond county; nor to prohibit the publication of statis-
33 tics so classified as to prevent the identification of particular
34 returns and the items thereof. Returns shall be preserved for three
35 years and thereafter until the commissioner of finance permits them to
36 be destroyed.

37 b. Any violation of subdivision a of this section shall be punishable
38 by a fine not exceeding one thousand dollars, or by imprisonment not
39 exceeding one year, or both, in the discretion of the court, and if the
40 offender be an officer or employee of the city he or she shall be
41 dismissed from office and be incapable of holding any public office for
42 a period of five years thereafter.

43 § 11-1617 Notices and limitations of time. a. Any notice author-
44 ized or required under the provisions of this chapter may be given by
45 mailing the same to the person for whom it is intended in a postpaid
46 envelope addressed to such person at the address given in the last
47 return filed by such person pursuant to the provisions of this chapter
48 or in any application made by such person or, if no return has been
49 filed or application made, then to such address as may be obtainable.
50 The mailing of such notice shall be presumptive evidence of the receipt
51 of the same by the person to whom addressed. Any period of time which
52 is determined according to the provisions of this chapter by the giving
53 of notice shall commence to run from the date of mailing of such notice.

54 b. The provisions of the civil practice law and rules or any other
55 law relative to limitations of time for the enforcement of a civil reme-
56 dy shall not apply to any proceeding or action taken by the city to

1 levy, appraise, assess, determine or enforce the collection of any tax
2 or penalty provided by this chapter. However, except in the case of a
3 willfully false or fraudulent return with intent to evade the tax, no
4 assessment of additional tax shall be made after the expiration of more
5 than three years from the date of the filing of a return; provided,
6 however, that where no return has been filed as provided by law the tax
7 may be assessed at any time.

8 c. Where, before the expiration of the period prescribed under this
9 section for assessment of an additional tax, a taxpayer has consented in
10 writing that such period be extended, the amount of such additional tax
11 due may be determined at any time within such extended period. The
12 period so extended may be further extended by subsequent consents in
13 writing made before the expiration of the extended period.

14 § 11-1618 Construction and enforcement. This chapter shall be
15 construed and enforced in conformity with chapter three hundred ninety-
16 nine of the laws of nineteen hundred seventy-one, pursuant to which it
17 is enacted.

18 CHAPTER 17

19 CITY PERSONAL INCOME TAX ON RESIDENTS

20 SUBCHAPTER 1

21 GENERAL

22 § 11-1701 Imposition of tax. General. A tax is hereby imposed on the
23 city taxable income of every city resident individual, estate and trust
24 determined in accordance with the rates set forth in subdivision (a) of
25 this section for taxable years beginning before two thousand twenty-sev-
26 en, and in accordance with the rates set forth in subdivision (b) of
27 this section for taxable years beginning after two thousand twenty-six.
28 Provided, however, that if, for any taxable year beginning after two
29 thousand twenty-six, the rates set forth in such subdivision (b) are
30 rendered inapplicable and the rates set forth in such subdivision (a)
31 are rendered applicable, then the tax for such taxable year shall be at
32 the rates provided under subparagraph (A) of paragraphs one, two and
33 three of such subdivision (a).

34 Notwithstanding the opening paragraph of this section, for taxable
35 years beginning after two thousand two and before two thousand six, a
36 tax is hereby imposed on the city taxable income of every city resident
37 individual, estate and trust determined in accordance with the rates set
38 forth in subdivision (g) of this section and in accordance with the
39 provisions of subdivision (h) of this section. During any taxable year
40 beginning after two thousand two and before two thousand six, in which
41 the tax imposed pursuant to this section is determined in accordance
42 with subdivisions (g) and (h) of this section, the rates set forth in
43 subdivisions (a) and (b) of this section shall be inapplicable, and the
44 tax imposed pursuant to section 11-1704.1 of this chapter shall be
45 suspended.

46 (a) Rate of tax. A tax imposed pursuant to this section shall be
47 determined as follows:

48 (1) Resident married individuals filing joint returns and resident
49 surviving spouses. The tax under this section for each taxable year on
50 the city taxable income of every city resident married individual who
51 makes a single return jointly with his or her spouse under subdivision
52 (b) of section 11-1751 of this chapter and on the city taxable income of

1 every city resident surviving spouse shall be determined in accordance
2 with the following tables:

3 (A) For taxable years beginning after two thousand sixteen:

4	If the city taxable income is:	The tax is:
5	Not over \$21,600	2.7% of the city taxable income
6	Over \$21,600 but not	\$583 plus 3.3% of excess
7	over \$45,000	over \$21,600
8	Over \$45,000 but not	\$1,355 plus 3.35% of excess
9	over \$90,000	over \$45,000
10	Over \$90,000	\$2,863 plus 3.4% of excess
11		over \$90,000

12 (B) For taxable years beginning after two thousand fourteen and before
13 two thousand seventeen:

14	If the city taxable income is:	The tax is:
15	Not over \$21,600	2.55% of the city taxable income
16	Over \$21,600 but not	\$551 plus 3.1% of excess
17	over \$45,000	over \$21,600
18	Over \$45,000 but not	\$1,276 plus 3.15% of excess
19	over \$90,000	over \$45,000
20	Over \$90,000 but not	\$2,694 plus 3.2% of excess
21	over \$500,000	over \$90,000
22	Over \$500,000	\$16,803 plus 3.4% of excess
23		over \$500,000

24 (C) For taxable years beginning after two thousand nine and before two
25 thousand fifteen:

26	If the city taxable income is:	The tax is:
27	Not over \$21,600	2.55% of the city taxable income
28	Over \$21,600 but not	\$551 plus 3.1% of excess
29	over \$45,000	over \$21,600
30	Over \$45,000 but not	\$1,276 plus 3.15% of excess
31	over \$90,000	over \$45,000
32	Over \$90,000 but not	\$2,694 plus 3.2% of excess
33	over \$500,000	over \$90,000
34	Over \$500,000	\$15,814 plus 3.4% of excess
35		over \$500,000

36 (2) Resident heads of households. The tax under this section for each
37 taxable year on the city taxable income of every city resident head of a
38 household shall be determined in accordance with the following tables:

39 (A) For taxable years beginning after two thousand sixteen:

40	If the city taxable income is:	The tax is:
41	Not over \$14,400	2.7% of the city taxable income
42	Over \$14,400 but not	\$389 plus 3.3% of excess
43	over \$30,000	over \$14,400
44	Over \$30,000 but not	\$904 plus 3.35% of excess
45	over \$60,000	over \$30,000
46	Over \$60,000	\$1,909 plus 3.4% of excess
47		over \$60,000

1 (B) For taxable years beginning after two thousand fourteen and before
2 two thousand seventeen:

3	If the city taxable income is:	The tax is:
4	Not over \$14,400	2.55% of the city taxable income
5	Over \$14,400 but not	\$367 plus 3.1% of excess
6	over \$30,000	over \$14,400
7	Over \$30,000 but not	\$851 plus 3.15% of excess
8	over \$60,000	over \$30,000
9	Over \$60,000 but not	\$1,796 plus 3.2% of excess
10	over \$500,000	over \$60,000
11	Over \$500,000	\$16,869 plus 3.4% of excess
12		over \$500,000

13 (C) For taxable years beginning after two thousand nine and before two
14 thousand fifteen:

15	If the city taxable income is:	The tax is:
16	Not over \$14,400	2.55% of the city taxable income
17	Over \$14,400 but not	\$367 plus 3.1% of excess
18	over \$30,000	over \$14,400
19	Over \$30,000 but not	\$851 plus 3.15% of excess
20	over \$60,000	over \$30,000
21	Over \$60,000 but not	\$1,796 plus 3.2% of excess
22	over \$500,000	over \$60,000
23	Over \$500,000	\$15,876 plus 3.4% of excess
24		over \$500,000

25 (3) Resident unmarried individuals, resident married individuals
26 filing separate returns and resident estates and trusts. The tax under
27 this section for each taxable year on the city taxable income of every
28 city resident individual who is not a married individual who makes a
29 single return jointly with his or her spouse under subdivision (b) of
30 section 11-1751 of this chapter or a city resident head of a household
31 or a city resident surviving spouse, and on the city taxable income of
32 every city resident estate and trust shall be determined in accordance
33 with the following tables:

34 (A) For taxable years beginning after two thousand sixteen:

35	If the city taxable income is:	The tax is:
36	Not over \$12,000	2.7% of the city taxable income
37	Over \$12,000 but not	\$324 plus 3.3% of excess
38	over \$25,000	over \$12,000
39	Over \$25,000 but not	\$753 plus 3.35% of excess
40	over \$50,000	over \$25,000
41	Over \$50,000	\$1,591 plus 3.4% of excess
42		over \$50,000

43 (B) For taxable years beginning after two thousand fourteen and before
44 two thousand seventeen:

45	If the city taxable income is:	The tax is:
46	Not over \$12,000	2.55% of the city taxable income
47	Over \$12,000 but not	\$306 plus 3.1% of excess
48	over \$25,000	over \$12,000
49	Over \$25,000 but not	\$709 plus 3.15% of excess

1	over \$50,000	over \$25,000
2	Over \$50,000 but not	\$1,497 plus 3.2% of excess
3	over \$500,000	over \$50,000
4	Over \$500,000	\$16,891 plus 3.4% of excess
5		over \$500,000

6 (C) For taxable years beginning after two thousand nine and before two
7 thousand fifteen:

8	If the city taxable income is:	The tax is:
9	Not over \$12,000	2.55% of the city taxable income
10	Over \$12,000 but not	\$306 plus 3.1% of excess
11	over \$25,000	over \$12,000
12	Over \$25,000 but not	\$709 plus 3.15% of excess
13	over \$50,000	over \$25,000
14	Over \$50,000 but not	\$1,497 plus 3.2% of excess
15	over \$500,000	over \$50,000
16	Over \$500,000	\$15,897 plus 3.4% of excess
17		over \$500,000

18 (b) Rate of tax. A tax imposed pursuant to this section shall be
19 determined as follows:

20 (1) Resident married individuals filing joint returns and resident
21 surviving spouses. The tax under this section for each taxable year on
22 the city taxable income of every city resident married individual who
23 makes a single return jointly with his or her spouse under subdivision
24 (b) of section 11-1751 of this chapter and on the city taxable income of
25 every city resident surviving spouse shall be determined in accordance
26 with the following table:

27 For taxable years beginning after two thousand twenty-six:

28	If the city taxable income is:	The tax is:
29	Not over \$21,600	1.18% of the city taxable income
30	Over \$21,600 but not	\$255 plus 1.435% of excess
31	over \$45,000	over \$21,600
32	Over \$45,000 but not	\$591 plus 1.455% of excess
33	over \$90,000	over \$45,000
34	Over \$90,000	\$1,245 plus 1.48% of excess
35		over \$90,000

36 (2) Resident heads of households. The tax under this section for each
37 taxable year on the city taxable income of every city resident head of a
38 household shall be determined in accordance with the following table:

39 For taxable years beginning after two thousand twenty-six:

40	If the city taxable income is:	The tax is:
41	Not over \$14,400	1.18% of the city taxable income
42	Over \$14,400 but not	\$170 plus 1.435% of excess
43	over \$30,000	over \$14,400
44	Over \$30,000 but not	\$394 plus 1.455% of excess
45	over \$60,000	over \$30,000
46	Over \$60,000	\$830 plus 1.48% of excess
47		over \$60,000

48 (3) Resident unmarried individuals, resident married individuals
49 filing separate returns and resident estates and trusts. The tax under
50 this section for each taxable year on the city taxable income of every

1 city resident individual who is not a married individual who makes a
 2 single return jointly with his or her spouse under subdivision (b) of
 3 section 11-1751 of this chapter or a city resident head of a household
 4 or a city resident surviving spouse, and on the city taxable income of
 5 every city resident estate and trust shall be determined in accordance
 6 with the following table:

7 For taxable years beginning after two thousand twenty-six:

8 If the city taxable income is:	The tax is:
9 Not over \$12,000	1.18% of the city taxable income
10 Over \$12,000 but not	\$142 plus 1.435% of excess
11 over \$25,000	over \$12,000
12 Over \$25,000 but not	\$328 plus 1.455% of excess
13 over \$50,000	over \$25,000
14 Over \$50,000	\$692 plus 1.48% of excess
15	over \$50,000

16 (c) Partners and partnerships. A partnership as such shall not be
 17 subject to tax under this chapter. Persons carrying on business as part-
 18 ners shall be liable for tax under this chapter only in their separate
 19 or individual capacities. As used in this chapter, the term "partner-
 20 ship" shall include, unless a different meaning is clearly required, a
 21 subchapter K limited liability company. The term "subchapter K limited
 22 liability company" shall mean a limited liability company classified as
 23 a partnership for federal income tax purposes. The term "limited liabil-
 24 ity company" means a domestic limited liability company or a foreign
 25 limited liability company, as defined in section one hundred two of the
 26 limited liability company law, a limited liability investment company
 27 formed pursuant to section five hundred seven of the banking law, or a
 28 limited liability company formed pursuant to section one hundred two-a
 29 of the banking law.

30 (d) Associations taxable as corporations. An association, trust or
 31 other unincorporated organization which is taxable as a corporation for
 32 federal income tax purposes shall not be subject to tax under this chap-
 33 ter.

34 (e) Exempt trusts and organizations. A trust or other unincorporated
 35 organization which by reason of its purposes or activities is exempt
 36 from federal income tax shall be exempt from tax under this chapter,
 37 regardless of whether subject to federal and state income tax on unre-
 38 lated business taxable income.

39 (f) Cross references. For definitions of city taxable income of:

40 (1) City resident individual, see section 11-1711 of this chapter.

41 (2) City resident estate or trust, see section 11-1718 of this chap-
 42 ter.

43 (g) Rate of tax. For taxable years beginning after two thousand two
 44 and before two thousand six, the tax imposed pursuant to this section
 45 shall be determined as follows:

46 (1) Resident married individuals filing joint returns and resident
 47 surviving spouses. The tax under this section for each taxable year on
 48 the city taxable income of every city resident married individual who
 49 makes a single return jointly with his or her spouse under subdivision
 50 (b) of section 11-1751 of this chapter and on the city taxable income of
 51 every city resident surviving spouse shall be determined in accordance
 52 with the following tables:

53 (A) For taxable years beginning in two thousand five:

1	If the city taxable income is:	The tax is:
2	Not over \$21,600	2.907% of the city taxable income
3	Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over
4		\$21,600
5	Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over
6		\$45,000
7	Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over
8		\$90,000
9	Over \$150,000 but not over \$500,000	\$5,260 plus 4.05% of excess over
10		\$150,000
11	Over \$500,000	\$19,435 plus 4.45% of excess over
12		\$500,000

13 (B) For taxable years beginning in two thousand four:

14	If the city taxable income is:	The tax is:
15	Not over \$21,600	2.907% of the city taxable income
16	Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over
17		\$21,600
18	Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over
19		\$45,000
20	Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over
21		\$90,000
22	Over \$150,000 but not over \$500,000	\$5,260 plus 4.175% of excess over
23		\$150,000
24	Over \$500,000	\$19,872 plus 4.45% of excess over
25		\$500,000

26 (C) For taxable years beginning in two thousand three:

27	If the city taxable income is:	The tax is:
28	Not over \$21,600	2.907% of the city taxable income
29	Over \$21,600 but not over \$45,000	\$628 plus 3.534% of excess over
30		\$21,600
31	Over \$45,000 but not over \$90,000	\$1,455 plus 3.591% of excess over
32		\$45,000
33	Over \$90,000 but not over \$150,000	\$3,071 plus 3.648% of excess over
34		\$90,000
35	Over \$150,000 but not over \$500,000	\$5,260 plus 4.25% of excess over
36		\$150,000
37	Over \$500,000	\$20,135 plus 4.45% of excess over
38		\$500,000

39 (2) Resident heads of households. The tax under this section for each
 40 taxable year on the city taxable income of every city resident head of a
 41 household shall be determined in accordance with the following tables:

42 (A) For taxable years beginning in two thousand five:

43	If the city taxable income is:	The tax is:
44	Not over \$14,400	2.907% of the city taxable income
45	Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over
46		\$14,400
47	Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over
48		\$30,000
49	Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over

1		\$60,000
2	Over \$125,000 but not over \$500,000	\$4,418 plus 4.05% of excess over
3		\$125,000
4	Over \$500,000	\$19,606 plus 4.45% of excess over
5		\$500,000

6 (B) For taxable years beginning in two thousand four:

7	If the city taxable income is:	The tax is:
8	Not over \$14,400	2.907% of the city taxable income
9	Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over
10		\$14,400
11	Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over
12		\$30,000
13	Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over
14		\$60,000
15	Over \$125,000 but not over \$500,000	\$4,418 plus 4.175% of excess over
16		\$125,000
17	Over \$500,000	\$20,075 plus 4.45% of excess over
18		\$500,000

19 (C) For taxable years beginning in two thousand three:

20	If the city taxable income is:	The tax is:
21	Not over \$14,400	2.907% of the city taxable income
22	Over \$14,400 but not over \$30,000	\$419 plus 3.534% of excess over
23		\$14,400
24	Over \$30,000 but not over \$60,000	\$970 plus 3.591% of excess over
25		\$30,000
26	Over \$60,000 but not over \$125,000	\$2,047 plus 3.648% of excess over
27		\$60,000
28	Over \$125,000 but not over \$500,000	\$4,418 plus 4.25% of excess over
29		\$125,000
30	Over \$500,000	\$20,356 plus 4.45% of excess over
31		\$500,000

32 (3) Resident unmarried individuals, resident married individuals
 33 filing separate returns and resident estates and trusts. The tax under
 34 this section for each taxable year on the city taxable income of every
 35 city resident individual who is not a married individual who makes a
 36 single return jointly with his or her spouse under subdivision (b) of
 37 section 11-1751 of this chapter or a city resident head of household or
 38 a city resident surviving spouse, and on the city taxable income of
 39 every city resident estate and trust shall be determined in accordance
 40 with the following tables:

41 (A) For taxable years beginning in two thousand five:

42	If the city taxable income is:	The tax is:
43	Not over \$12,000	2.907% of the city taxable income
44	Over \$12,000 but not over \$25,000	\$349 plus 3.534% of excess over
45		\$12,000
46	Over \$25,000 but not over \$50,000	\$808 plus 3.591% of excess over
47		\$25,000
48	Over \$50,000 but not over \$100,000	\$1,706 plus 3.648% of excess over

1		\$50,000
2	Over \$100,000 but not over \$500,000	\$3,530 plus 4.05% of excess over
3		\$100,000
4	Over \$500,000	\$19,730 plus 4.45% of excess over
5		\$500,000

6 (B) For taxable years beginning in two thousand four:

7	If the city taxable income is:	The tax is:
8	Not over \$12,000	2.907% of the city taxable income
9	Over \$12,000 but not over \$25,000	\$349 plus 3.534% of excess over
10		\$12,000
11	Over \$25,000 but not over \$50,000	\$808 plus 3.591% of excess over
12		\$25,000
13	Over \$50,000 but not over \$100,000	\$1,706 plus 3.648% of excess over
14		\$50,000
15	Over \$100,000 but not over \$500,000	\$3,530 plus 4.175% of excess over
16		\$100,000
17	Over \$500,000	\$20,230 plus 4.45% of excess over
18		\$500,000

19 (C) For taxable years beginning in two thousand three:

20	If the city taxable income is:	The tax is:
21	Not over \$12,000	2.907% of the city taxable income
22	Over \$12,000 but not over \$25,000	\$349 plus 3.534% of excess over
23		\$12,000
24	Over \$25,000 but not over \$50,000	\$808 plus 3.591% of excess over
25		\$25,000
26	Over \$50,000 but not over \$100,000	\$1,706 plus 3.648% of excess over
27		\$50,000
28	Over \$100,000 but not over \$500,000	\$3,530 plus 4.25% of excess over
29		\$100,000
30	Over \$500,000	\$20,530 plus 4.45% of excess over
31		\$500,000

32 (h) Tax table benefit recapture. For taxable years beginning after two
 33 thousand two and before two thousand six, there is hereby imposed a
 34 supplemental tax, in addition to the tax imposed under the opening para-
 35 graph of this section, for the purpose of recapturing the benefit of the
 36 tax tables contained in subdivision (g) of this section. The supple-
 37 mental tax shall be an amount equal to the sum of the tax table benefits
 38 in paragraphs one and two of this subdivision multiplied by their
 39 respective fractions in such paragraphs provided, however, that para-
 40 graph one of this subdivision shall not apply to taxpayers who are not
 41 subject to the second highest rate of tax.

42 (1) Resident married individuals filing joint returns, surviving
 43 spouses, resident heads of households, resident unmarried individuals,
 44 resident married individuals filing separate returns and resident
 45 estates and trusts. (A) The tax table benefit is the difference between
 46 (i) the amount of taxable income set forth in the tax table in subdivi-
 47 sion (g) of this section not subject to the second highest rate of tax
 48 for the taxable year multiplied by such rate and (ii) the second highest
 49 dollar denominated tax for such amount of taxable income set forth in
 50 the tax table applicable to the taxable year in subdivision (g) of this
 51 section.

1 (B) The fraction is computed as follows: the numerator is the lesser
2 of fifty thousand dollars or the excess of New York adjusted gross
3 income for the taxable year over one hundred fifty thousand dollars and
4 the denominator is fifty thousand dollars.

5 (C) This paragraph shall only apply to taxable years beginning after
6 two thousand two and before two thousand six.

7 (2) Resident married individuals filing joint returns, surviving
8 spouses, resident heads of households, resident unmarried individuals,
9 resident married individuals filing separate returns and resident
10 estates and trusts. (A) The tax table benefit is the difference between
11 (i) the amount of taxable income set forth in the tax table in subdivi-
12 sion (g) of this section not subject to the highest rate of tax for the
13 taxable year multiplied by such rate and (ii) the highest dollar denomi-
14 nated tax for such amount of taxable income set forth in the tax table
15 applicable to the taxable year in subdivision (g) of this section less
16 the sum of the tax table benefits in paragraph one of this subdivision.

17 (B) For such taxpayers with adjusted gross income over five hundred
18 thousand dollars, the fraction is one. Provided, however, that the total
19 tax prior to the application of any tax credits shall not exceed the
20 highest rate of tax set forth in the tax table in subdivision (g) of
21 this section multiplied by the taxpayer's taxable income.

22 (C) This paragraph shall only apply to taxable years beginning after
23 two thousand two and before two thousand six.

24 § 11-1703 Separate tax on the ordinary income portion of lump sum
25 distributions. (a) Imposition of separate tax. In addition to any other
26 tax imposed by this chapter, there is hereby imposed for each taxable
27 year a separate tax on the ordinary income portion of a lump sum
28 distribution of every city resident individual, estate and trust which
29 has made an election of lump sum treatment under subsection (e) of
30 section four hundred two of the internal revenue code. The recipient of
31 a lump sum distribution shall be liable for the tax imposed by this
32 section. The credits against tax under this chapter, except for the
33 credit under section 11-1773, shall not be allowed against the tax
34 imposed by this section.

35 (b) Cross reference. For computation of tax, see section 11-1724 of
36 this chapter.

37 § 11-1704 Tax surcharge. (a) In addition to the taxes imposed by
38 sections 11-1701 and 11-1703 of this subchapter, there is hereby imposed
39 for each taxable year beginning after nineteen hundred eighty-nine but
40 before nineteen hundred ninety-nine, a tax surcharge on the city taxable
41 income of every city resident individual, estate and trust.

42 (b) The tax surcharge imposed pursuant to this section shall be deter-
43 mined as follows:

44 (1) Resident married individuals filing joint returns and resident
45 surviving spouses. The tax surcharge under this section on the city
46 taxable income of every city resident married individual who makes a
47 single return jointly with his or her spouse under subdivision (b) of
48 section 11-1751 of this chapter and on the city taxable income of every
49 city resident surviving spouse shall be determined in accordance with
50 the following tables:

51 (A) For taxable years beginning after nineteen hundred eighty-nine and
52 before nineteen hundred ninety-five:

1	If the city taxable income is:	The tax surcharge is:
2	Not over \$15,500	0
3	Over \$15,500 but not over \$27,000	0.51% of city taxable income in
4		excess of \$15,500
5	Over \$27,000 but not over \$45,000	\$59 plus 0.55% of excess over
6		\$27,000
7	Over \$45,000 but not over \$108,000	\$158 plus 0.51% of excess over
8		\$45,000
9	Over \$108,000	\$479 plus 0.51% of excess over
10		\$108,000

11 (B) For taxable years beginning after nineteen hundred ninety-four but
12 before nineteen hundred ninety-nine:

13	If the city taxable income is:	The tax surcharge is:
14	Not over \$14,400	0
15	Over \$14,400 but not over \$27,000	0.51% of city taxable income in
16		excess of \$14,400
17	Over \$27,000 but not over \$45,000	\$64 plus 0.55% of excess over
18		\$27,000
19	Over \$45,000 but not over \$108,000	\$162 plus 0.51% of excess over
20		\$45,000
21	Over \$108,000	\$484 plus 0.51% of excess over
22		\$108,000

23 (2) Resident heads of households. The tax surcharge under this section
24 on the city taxable income of every city resident head of household
25 shall be determined in accordance with the following tables:

26 (A) For taxable years beginning after nineteen hundred eighty-nine and
27 before nineteen hundred ninety-five:

28	If the city taxable income is:	The tax surcharge is:
29	Not over \$8,800	0
30	Over \$8,800 but not over \$16,500	0.51% of city taxable income in
31		excess of \$8,800
32	Over \$16,500 but not over \$27,500	\$39 plus 0.55% of excess over
33		\$16,500
34	Over \$27,500 but not over \$66,000	\$100 plus 0.51% of excess over
35		\$27,500
36	Over \$66,000	\$296 plus 0.51% of excess over
37		\$66,000

38 (B) For taxable years beginning after nineteen hundred ninety-four but
39 before nineteen hundred ninety-nine:

40	If the city taxable income is:	The tax surcharge is:
41	Not over \$7,350	0
42	Over \$7,350 but not over \$9,200	0.42% of city taxable income in
43		excess of \$7,350
44	Over \$9,200 but not over \$17,250	\$7 plus 0.51% of excess over
45		\$9,200
46	Over \$17,250 but not over \$28,750	\$48 plus 0.55% of excess over
47		\$17,250
48	Over \$28,750 but not over \$69,000	\$111 plus 0.51% of excess over
49		\$28,750
50	Over \$69,000	\$317 plus 0.51% of excess over

1 \$69,000

2 (3) Resident unmarried individuals, resident married individuals
3 filing separate returns and resident estates and trusts. The tax
4 surcharge under this section on the city taxable income of every city
5 resident individual who is not a city resident married individual who
6 makes a single return jointly with his or her spouse under subdivision
7 (b) of section 11-1751 of this chapter or a city resident head of house-
8 hold or a city resident surviving spouse, and on the city taxable income
9 of every city resident estate and trust shall be determined in accord-
10 ance with the following tables:

11 (A) For taxable years beginning after nineteen hundred eighty-nine and
12 before nineteen hundred ninety-five:

13 If the city taxable income is:	The tax surcharge is:
14 Not over \$9,000	0
15 Over \$9,000 but not over \$15,000	0.51% of city taxable income in 16 excess of \$9,000
17 Over \$15,000 but not over \$25,000	\$31 plus 0.55% of excess over 18 \$15,000
19 Over \$25,000 but not over \$60,000	\$86 plus 0.51% of excess over 20 \$25,000
21 Over \$60,000	\$264 plus 0.51% of excess over 22 \$60,000

23 (B) For taxable years beginning after nineteen hundred ninety-four but
24 before nineteen hundred ninety-nine:

25 If the city taxable income is:	The tax surcharge is:
26 Not over \$8,400	0
27 Over \$8,400 but not over \$15,000	0.51% of city taxable income in 28 excess of \$8,400
29 Over \$15,000 but not over \$25,000	\$33 plus 0.55% of excess over 30 \$15,000
31 Over \$25,000 but not over \$60,000	\$88 plus 0.51% of excess over 32 \$25,000
33 Over \$60,000	\$266 plus 0.51% of excess over 34 \$60,000

35 (c) The tax surcharge imposed pursuant to this section shall be admin-
36 istered, collected and distributed by the commissioner of taxation and
37 finance in the same manner as the taxes imposed pursuant to sections
38 11-1701 and 11-1703 of this subchapter, and all of the provisions of
39 this chapter, including sections 11-1706, 11-1721 and 11-1773 of this
40 chapter, shall apply to the tax surcharge imposed by this section.

41 (d) (1) Notwithstanding subdivision (b) of this section, with respect
42 to taxable years beginning in nineteen hundred ninety-three, nineteen
43 hundred ninety-four, nineteen hundred ninety-five and nineteen hundred
44 ninety-six, the mayor shall, by August first of nineteen hundred nine-
45 ty-two, nineteen hundred ninety-four and nineteen hundred ninety-five,
46 and by September fifteenth of nineteen hundred ninety-three, transmit to
47 the commissioner of taxation and finance a certification setting forth
48 the percentage of non-achievement regarding the combined police
49 uniformed staffing level with respect to the fiscal year of the city
50 ending on the immediately preceding June thirtieth, provided, however,
51 that for the city fiscal year ending in nineteen hundred ninety-three

1 the percentage of non-achievement shall be determined by the combined
2 police uniformed staffing level existing on August thirtieth, nineteen
3 hundred ninety-three, and further provided for all such fiscal years
4 that the percentage of non-achievement shall be calculated according to
5 the procedure specified in a memorandum of understanding relating to the
6 New York city safe streets-safe city program and to the enactment of
7 this subdivision dated February eleventh, nineteen hundred ninety-one,
8 as amended, and executed by the governor, the temporary president of the
9 senate, the speaker of the assembly, the minority leader of the senate,
10 the minority leader of the assembly, the mayor and the speaker of the
11 city council, any modification of such memorandum of understanding
12 subsequently agreed upon by all such signatories in a single subsequent
13 memorandum of understanding. If such percentage of non-achievement is
14 equal to or exceeds twenty-five percent with respect to the fiscal year
15 of the city of New York ending in nineteen hundred ninety-two, twenty
16 percent with respect to the city fiscal year ending in nineteen hundred
17 ninety-three or five percent with respect to the city fiscal years
18 ending in nineteen hundred ninety-four and nineteen hundred ninety-five,
19 then the rates of the tax surcharge imposed by this section for taxable
20 years beginning in the calendar year beginning on January first next
21 succeeding such August first or September fifteenth shall be the
22 products of the rates set forth in subdivision (b) of this section and a
23 percentage equal to the difference between one hundred percent and such
24 percentage of non-achievement, such products computed to the nearest
25 hundredth of a percent, and the dollar denominated amounts of the tax
26 surcharge set forth in subdivision (b) of this section shall be reduced
27 conformably.

28 (2) Notwithstanding subdivision (b) of this section, with respect to
29 the taxable year beginning in nineteen hundred ninety-eight, the mayor
30 shall, by August first of nineteen hundred ninety-seven, transmit to the
31 state commissioner of taxation and finance a certification setting forth
32 the percentage of non-achievement regarding the police uniformed staff-
33 ing level with respect to the fiscal year ending on the immediately
34 preceding June thirtieth, provided, however, that such percentage of
35 non-achievement shall be calculated according to the procedure specified
36 in a new memorandum of understanding relating to the enactment of this
37 paragraph dated no later than thirty days after such enactment, as
38 executed by the governor, the temporary president of the senate, the
39 speaker of the assembly, the minority leader of the senate, the minority
40 leader of the assembly, the mayor and the speaker of the city council
41 and any modifications of such new memorandum of understanding subse-
42 quently agreed upon by all such signatories in a single subsequent memo-
43 randum of understanding. If such percentage of non-achievement exceeds
44 two percent with respect to the fiscal year of the city ending in nine-
45 teen hundred ninety-seven, then the rates of the tax surcharge author-
46 ized by this section for the taxable years beginning in the calendar
47 year beginning on January first, nineteen hundred ninety-eight shall be
48 the products of the rates set forth in subdivision (b) of this section
49 and a percentage equal to the difference between one hundred percent and
50 the portion of the percentage of non-achievement that is in excess of
51 two percent, such products computed to the nearest hundredth of a
52 percent, and the dollar denominated amounts of the tax surcharge set
53 forth in subdivision (b) of this section shall be reduced conformably.

54 (3) If the rates of the surcharge imposed by this section are modified
55 pursuant to paragraph one or paragraph two of this subdivision, the

1 state commissioner of taxation and finance shall promulgate regulations
2 stating the modified rates.

3 (e) Notwithstanding anything in this section or section 11-1798 of
4 this chapter to the contrary, of the total revenue, including interest
5 and penalties, from the tax surcharge imposed by this section which the
6 state comptroller is required to pay, after June thirtieth, nineteen
7 hundred ninety-two, to the chief fiscal officer of the city for payment
8 into the treasury of the city, one hundred ten million dollars thereof
9 paid to the chief fiscal officer during the fiscal year of the city
10 commencing July first, nineteen hundred ninety-two, two hundred million
11 dollars thereof paid to the chief fiscal officer during the fiscal year
12 of the city commencing July first, nineteen hundred ninety-three, one
13 hundred sixty-seven million dollars thereof paid to the chief fiscal
14 officer during the fiscal year of the city commencing July first, nine-
15 teen hundred ninety-four, and one hundred eighty-five million dollars
16 thereof paid to the chief fiscal officer during the fiscal year of the
17 city commencing July first, nineteen hundred ninety-five, shall be cred-
18 ited to and deposited in the criminal justice account established within
19 the general fund of the city for the implementation of the safe streets-
20 safe city program. The balance of such revenue shall be credited to the
21 general fund of the city and shall be applied exclusively to or in aid
22 or support of the city's provision of criminal justice and fire
23 protection services.

24 (f) Notwithstanding anything in this article to the contrary, of the
25 total revenue, including interest and penalties, from the tax surcharge
26 imposed pursuant to the authority of this section which the state comp-
27 troller is required to pay to the chief fiscal officer of the city for
28 payment into the treasury of the city, ninety million dollars thereof
29 paid to such chief fiscal officer during the fiscal year of the city
30 commencing during calendar year nineteen hundred ninety-six, and one
31 hundred eighty-five million dollars thereof paid to such chief fiscal
32 officer during the fiscal year of the city commencing during calendar
33 year nineteen hundred ninety-seven, shall be credited to and deposited
34 in a criminal justice account established by the city within its general
35 fund. The balance of such revenue from such tax surcharge which the
36 state comptroller is required to pay to such chief fiscal officer for
37 payment into the treasury of the city for the taxable years beginning in
38 the calendar years beginning on January first, nineteen hundred ninety-
39 seven and January first, nineteen hundred ninety-eight shall be credited
40 to the general fund of the city to be applied exclusively to or in aid
41 or support of the city's provision of criminal justice and fire
42 protection services; provided however, that, notwithstanding the forego-
43 ing, such balance shall be applied to implementation of the capital
44 program for public schools within the city and a supplemental capital
45 rehabilitation program for such schools, to the extent that such appli-
46 cation is necessary for the timely implementation of such programs in
47 accordance with the memorandum of understanding executed pursuant to
48 paragraph two of subdivision (d) of this section and any modifications
49 thereto.

50 § 11-1704.1 Additional tax. (a) (1) In addition to any other taxes
51 imposed by this chapter, there is hereby imposed for each taxable year
52 beginning after nineteen hundred ninety but before two thousand twenty-
53 seven, an additional tax on the city taxable income of every city resi-
54 dent individual, estate and trust, to be calculated for each taxable
55 year as follows: (i) for each taxable year beginning after nineteen
56 hundred ninety but before nineteen hundred ninety-nine, at the rate of

1 fourteen percent of the sum of the taxes for each such taxable year
2 determined pursuant to section 11-1701 and section 11-1704 of this
3 subchapter; and (ii) for each taxable year beginning after nineteen
4 hundred ninety-eight, at the rate of fourteen percent of the tax for
5 such taxable year determined pursuant to such section 11-1701 of this
6 subchapter.

7 (2) Notwithstanding paragraph one of this subdivision, for each taxa-
8 ble year beginning after two thousand but before two thousand two, the
9 additional tax shall be calculated as follows: (i) Resident married
10 individuals filing joint returns and resident surviving spouses. The
11 additional tax under this section for each taxable year on the tax
12 determined pursuant to section 11-1701 of this subchapter of every city
13 resident married individual who makes a single return jointly with his
14 or her spouse under subdivision (b) of section 11-1751 of this chapter
15 and on the tax determined pursuant to section 11-1701 of this subchapter
16 of every city resident surviving spouse shall be determined as follows:
17 (A) If the tax determined pursuant to section 11-1701 of this subchapter
18 is based on city taxable income equal to or less than ninety thousand
19 dollars, then the additional tax shall be 5.25% of such tax; (B) If the
20 tax determined pursuant to section 11-1701 of this subchapter is based
21 on city taxable income over ninety thousand dollars, then the additional
22 tax shall be the sum of 5.25% of such tax on city taxable income up to
23 and including ninety thousand dollars and 12.25% of such tax on city
24 taxable income in excess of ninety thousand dollars.

25 (ii) Resident heads of households. The additional tax under this
26 section for each taxable year on the tax determined pursuant to section
27 11-1701 of this subchapter of every city resident head of a household
28 shall be determined as follows: (A) If the tax determined pursuant to
29 section 11-1701 of this subchapter is based on city taxable income equal
30 to or less than sixty thousand dollars, then the additional tax shall be
31 5.25% of such tax; (B) If the tax determined pursuant to section 11-1701
32 of this subchapter is based on city taxable income over sixty thousand
33 dollars, then the additional tax shall be the sum of 5.25% of such tax
34 on city taxable income up to and including sixty thousand dollars and
35 12.25% of such tax on city taxable income in excess of sixty thousand
36 dollars.

37 (iii) Resident unmarried individuals, resident married individuals
38 filing separate returns and resident estates and trusts. The additional
39 tax under this section for each taxable year on the tax determined
40 pursuant to section 11-1701 of this subchapter of every city resident
41 individual who is not a married individual who makes a single return
42 jointly with his or her spouse under subdivision (b) of section 11-1751
43 of this chapter or a city resident head of a household or a city resi-
44 dent surviving spouse, and on the tax determined pursuant to section
45 11-1701 of this subchapter of every city resident estate and trust shall
46 be determined as follows: (A) If the tax determined pursuant to section
47 11-1701 of this subchapter is based on city taxable income equal to or
48 less than fifty thousand dollars, then the additional tax shall be 5.25%
49 of such tax; (B) If the tax determined pursuant to section 11-1701 of
50 this subchapter is based on city taxable income over fifty thousand
51 dollars, then the additional tax shall be the sum of 5.25% of such tax
52 on city taxable income up to and including fifty thousand dollars and
53 12.25% of such tax on city taxable income in excess of fifty thousand
54 dollars.

55 (b) The additional tax imposed pursuant to this section shall be
56 administered, collected and distributed by the commissioner of taxation

1 and finance in the same manner as the other taxes imposed pursuant to
2 this chapter, and all of the provisions of this chapter, including
3 sections 11-1706, 11-1721 and 11-1773, shall apply to the additional tax
4 imposed by this section.

5 § 11-1705 General provisions and definitions. (a) Accounting periods
6 and methods. (1) Accounting periods. A taxpayer's taxable year under
7 this chapter shall be the same as his or her taxable year for federal
8 income tax purposes.

9 (2) Change of accounting periods. If a taxpayer's taxable year is
10 changed for federal income tax purposes, his or her taxable year for
11 purposes of this chapter shall be similarly changed. If a taxable year
12 of less than twelve months results from a change of taxable year, the
13 city standard deduction and the city exemptions shall be prorated under
14 regulations of the tax commission.

15 (3) Accounting methods. A taxpayer's method of accounting under this
16 chapter shall be the same as his or her method of accounting for federal
17 income tax purposes. In the absence of any method of accounting for
18 federal income tax purposes, city taxable income shall be computed under
19 such method as in the opinion of the tax commission clearly reflects
20 income.

21 (4) Change of accounting methods. (A) If a taxpayer's method of
22 accounting is changed for federal income tax purposes, his or her method
23 of accounting for purposes of this chapter shall be similarly changed.

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

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

38 (b) City resident and city nonresident defined. (1) City resident
39 individual. A city resident individual means an individual:

40 (A) who is domiciled in this city, unless (i) the taxpayer maintains
41 no permanent place of abode in this city, maintains a permanent place of
42 abode elsewhere, and spends in the aggregate not more than thirty days
43 of the taxable year in this city, or (ii) (I) within any period of five
44 hundred forty-eight consecutive days the taxpayer is present in a
45 foreign country or countries for at least four hundred fifty days, and
46 (II) during the period of five hundred forty-eight consecutive days the
47 taxpayer, the taxpayer's spouse, unless such spouse is legally sepa-
48 rated, and the taxpayer's minor children are not present in this city
49 for more than ninety days, and (III) during any period of less than
50 twelve months, which would be treated as a separate taxable period
51 pursuant to section 11-1754 of this chapter, and which period is
52 contained within the period of five hundred forty-eight consecutive
53 days, the taxpayer is present in this city for a number of days which
54 does not exceed an amount which bears the same ratio to ninety as the
55 number of days contained in that period of less than twelve months bears
56 to five hundred forty-eight, or

1 (B) who maintains a permanent place of abode in this city and spends
2 in the aggregate more than one hundred eighty-three days of the taxable
3 year in this city, whether or not domiciled in this city for any portion
4 of the taxable year, unless such individual is in active service in the
5 armed forces of the United States.

6 (2) City nonresident individual. A city nonresident individual means
7 an individual who is not a city resident.

8 (3) City resident estate or trust. A city resident estate or trust
9 means:

10 (A) the estate of a decedent who at his or her death was domiciled in
11 this city,

12 (B) a trust, or a portion of a trust, consisting of property trans-
13 ferred by will of a decedent who at his or her death was domiciled in
14 this city, or

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

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

20 (ii) a person domiciled in this city at the time such trust, or
21 portion of a trust, became irrevocable, if it was revocable when such
22 property was transferred to the trust but has subsequently become irrev-
23 ovable.

24 For the purposes of this paragraph, a trust or portion of a trust is
25 revocable if it is subject to a power, exercisable immediately or at any
26 future time, to revest title in the person whose property constitutes
27 such trust or portion of a trust, and a trust or portion of a trust
28 becomes irrevocable when the possibility that such power may be exer-
29 cised has been terminated.

30 (D) (i) Provided, however, a resident trust is not subject to tax
31 under this article if all of the following conditions are satisfied:

32 (I) all the trustees are domiciled outside the city of New York; (II)
33 the entire corpus of the trusts, including real and tangible property,
34 is located outside the city of New York; and (III) all income and gains
35 of the trust are derived from or connected with sources outside of the
36 city of New York, determined as if the trust were a non-resident trust.

37 (ii) For purposes of item (II) of clause (i) of this subparagraph,
38 intangible property shall be located in this city if one or more of the
39 trustees are domiciled in the city of New York.

40 (iii) Provided further, that for the purposes of item (I) of clause
41 (i) of this subparagraph, a trustee which is a banking corporation as
42 defined in subdivision (a) of section 11-640 of this title and which is
43 domiciled outside the city of New York at the time it becomes a trustee
44 of the trust shall be deemed to continue to be a trustee domiciled
45 outside the city of New York notwithstanding that it thereafter other-
46 wise becomes a trustee domiciled in the city of New York by virtue of
47 being acquired by, or becoming an office or branch of, a corporate trust-
48 tee domiciled within the city of New York.

49 For the purposes of this subparagraph, a trust or portion of a trust
50 is revocable if it is subject to a power, exercisable immediately or at
51 any future time, to revest title in the person whose property consti-
52 tutes such trust or portion of a trust, and a trust or portion of a
53 trust becomes irrevocable when the possibility that such power may be
54 exercised has been terminated.

(4) City nonresident estate or trust. A city nonresident estate or trust means an estate or trust which is not a city resident estate or trust.

(5) Cross reference. For effect of a change of resident status, see section 11-1754 of this chapter.

§ 11-1706 Credits against tax. (a) Credit relating to net capital gain. For taxable years beginning in nineteen hundred eighty-seven, a credit against the tax imposed under section 11-1701 of this subchapter shall be allowed. The amount of the credit shall be one-half of one percent of net capital gain includible in city adjusted gross income for the taxable year. The credit allowed by this subdivision shall not exceed the tax imposed by section 11-1701 of this subchapter reduced by the credits permitted under section 11-1721 of this chapter and subdivision (b) of this section.

(b) Household credit. (1) For taxable years beginning after nineteen hundred eighty-six, a credit against the city personal income tax imposed by section 11-1701 of this subchapter shall be allowed. The credit, computed as described in paragraph two of this subdivision, shall not exceed the tax imposed by section 11-1701 of this subchapter, reduced by the credit permitted under section 11-1721 of this chapter.

(2) (A) For any individual who is not married nor the head of a household nor a surviving spouse, the amount of the credit shall be determined in accordance with the following table:

If household gross income is:	The credit shall be:	
	For taxable years beginning after 1986 and before 1996	For taxable years beginning after 1995
Not over \$7,500	\$15	\$15
Over \$7,500 but not over \$10,000	\$10	\$15
Over \$10,000 but not over \$12,500	\$0	\$10

(B) For any husband and wife, head of household or surviving spouse, the amount of the credit shall be determined by multiplying the number of exemptions for which the taxpayer, or in the case of a husband and wife, taxpayers, is entitled to a deduction for the taxable year for federal income tax purposes under subsections (b) and (c) of section one hundred fifty-one of the internal revenue code by the credit factor for the taxable year as specified in the following table:

If household gross income is:	The credit factor is:	
	For taxable years beginning in 1987 1988 1989 through 1995	For taxable years beginning after 1995

1 -----

2	Not over \$12,500	\$30	\$50	\$50	\$30
3	Over \$12,500 but not				
4	over \$15,000	\$20	\$40	\$50	\$30
5	Over \$15,000 but not				
6	over \$17,500	\$10	\$20	\$25	\$25
7	Over \$17,500 but not				
8	over \$20,000	\$0	\$15	\$15	\$15
9	Over \$20,000 but not				
10	over \$22,500	\$0	\$0	\$0	\$10

11 (3) For purposes of this subdivision:

12 (A) "Household gross income" shall mean the aggregate federal adjusted
13 gross income of a household, as the term household is defined in subpar-
14 agraph (B) of this paragraph, for the taxable year.

15 (B) "Household" means a husband and wife, a head of household, a
16 surviving spouse, or an individual who is not married nor the head of a
17 household nor a surviving spouse nor a taxpayer with respect to whom a
18 deduction under subsection (c) of section one hundred fifty-one of the
19 internal revenue code is allowable to another taxpayer for the taxable
20 year.

21 (C) "Household gross income of a husband and wife" shall be the aggre-
22 gate of their federal adjusted gross incomes for the taxable year irre-
23 spective of whether joint or separate city income tax returns are filed.
24 Provided, however, that a husband or wife who is required to file a
25 separate city income tax return shall be permitted one-half the credit
26 otherwise allowed his or her household, except as limited by paragraph
27 one of this subdivision.

28 (D) "Household gross income" shall be computed in all cases as if each
29 member of the household were a resident for the entire taxable year.

30 (E) If a taxpayer changes his or her status during his or her taxable
31 year from resident to nonresident, or from nonresident to resident, the
32 household credit shall be prorated according to the number of months in
33 the period of residence. In the case of a husband and wife, if either or
34 both changes his or her status from resident to nonresident or from
35 nonresident to resident and separate returns are filed, the credit
36 computed for the entire year shall be divided first as provided in
37 subparagraph (C) of this paragraph and then prorated according to the
38 number of months in the period of residence.

39 (c) State school tax reduction credit.

40 (1) For taxable years beginning after nineteen hundred ninety-seven
41 and ending before two thousand sixteen, a state school tax reduction
42 credit shall be allowed as provided in the following tables. The credit
43 shall be allowed against the taxes authorized by this article reduced by
44 the credits permitted by this article. If the credit exceeds the tax as
45 so reduced, the taxpayer may receive, and the comptroller, subject to a
46 certificate of the commissioner, shall pay as an overpayment, without
47 interest, the amount of such excess. For purposes of this subdivision,
48 no credit shall be granted to an individual with respect to whom a
49 deduction under subsection (c) of section one hundred fifty-one of the
50 internal revenue code is allowable to another taxpayer for the taxable
51 year.

52 (2) The amount of the credit under this paragraph shall be determined
53 based upon the taxpayer's income as defined in subparagraph (ii) of

1 paragraph (b) of subdivision four of section four hundred twenty-five of
 2 the real property tax law. For purposes of this paragraph, any taxpayer
 3 under subparagraphs (A) and (B) of this paragraph with income of more
 4 than two hundred fifty thousand dollars shall not receive a credit.

5 Beginning in the two thousand ten tax year and each tax year thereaft-
 6 er through two thousand fifteen, the "more than two hundred fifty thou-
 7 sand dollar" income limitation shall be adjusted by applying the
 8 inflation factor set forth herein, and rounding each result to the near-
 9 est multiple of one hundred dollars. The department shall establish the
 10 income limitation to be associated with each subsequent tax year by
 11 applying the inflation factor set forth herein to the figures that
 12 define the income limitation that were applicable to the preceding tax
 13 year, as determined pursuant to this subdivision, and rounding each
 14 result to the nearest multiple of one hundred dollars. Such determi-
 15 nation shall be made no later than March first, two thousand ten and
 16 each year thereafter.

17 (A) Married individuals filing joint returns and surviving spouses. In
 18 the case of a husband and wife who make a single return jointly and of a
 19 surviving spouse:

20 For taxable years beginning:	The credit shall be:
21 in 2001-2005	\$125
22 in 2006	\$230
23 in 2007-2008	\$290
24 in 2009-2015	\$125

25 (B) All others. In the case of an unmarried individual, a head of a
 26 household or a married individual filing a separate return:

27 For taxable years beginning:	The credit shall be:
28 in 2001-2005	\$62.50
29 in 2006	\$115
30 in 2007-2008	\$145
31 in 2009-2015	\$62.50

32 (4) Husband and wife who make a joint return. If a husband and wife
 33 make a single return jointly, the credit under this subdivision shall be
 34 determined under paragraph two of this subdivision, if either of them
 35 has attained the age of sixty-five on or before the close of the taxable
 36 year.

37 (5) Part-year residents. If a taxpayer changes status during the taxa-
 38 ble year from resident to nonresident, or from nonresident to resident,
 39 the state school tax reduction credit shall be prorated according to the
 40 number of months in the period of residence.

41 (c) Credit for unincorporated business taxes paid. (1) A city resident
 42 individual, estate or trust whose city adjusted gross income includes
 43 income, gain, loss or deductions from one or more unincorporated busi-
 44 nesses conducted by such city resident individual, estate or trust that
 45 are subject to the tax imposed by chapter five of this title, or a
 46 distributive share of income, gain, loss and deductions of, or guaran-
 47 teed payments from, one or more partnerships that are subject to the tax
 48 imposed by such chapter, shall be allowed a credit as provided in para-
 49 graph two of this subdivision against the tax otherwise due under
 50 sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this subchapter.

51 (2) (A) Subject to the limitation set forth in subparagraph (B) of
 52 this paragraph, the credit allowed to a taxpayer for a taxable year
 53 under this subdivision shall be determined as follows:

54 (i) For taxable years beginning on or after January first, nineteen
 55 hundred ninety-seven and before January first, two thousand seven:

1 (I) If the city taxable income is forty-two thousand dollars or less,
2 the credit shall be sixty-five percent of the amount determined in para-
3 graph three of this subdivision.

4 (II) If the city taxable income is greater than forty-two thousand
5 dollars but not greater than one hundred forty-two thousand dollars, the
6 amount of the credit shall be a percentage of the amount determined in
7 paragraph three of this subdivision, such percentage to be determined by
8 subtracting from sixty-five percent, one-tenth of a percentage point
9 (.001) for every increment of two hundred dollars, or fractional part
10 thereof, of city taxable income in excess of forty-two thousand dollars.

11 (III) If the city taxable income is greater than one hundred forty-two
12 thousand dollars, the credit shall be fifteen percent of the amount
13 determined in paragraph three of this subdivision.

14 (ii) For taxable years beginning on or after January first, two thou-
15 sand seven:

16 (I) If the city taxable income is forty-two thousand dollars or less,
17 the credit shall be one hundred percent of the amount determined in
18 paragraph three of this subdivision.

19 (II) If the city taxable income is greater than forty-two thousand
20 dollars but less than one hundred forty-two thousand dollars, the amount
21 of the credit shall be a percentage of the amount determined in para-
22 graph three of this subdivision, such percentage to be determined by
23 subtracting from one hundred percent, a percentage determined by
24 subtracting forty-two thousand dollars from city taxable income, divid-
25 ing the result by one hundred thousand dollars and multiplying by seven-
26 ty-seven percent.

27 (III) If the city taxable income is one hundred forty-two thousand
28 dollars or greater, the credit shall be twenty-three percent of the
29 amount determined in paragraph three of this subdivision.

30 (B) Notwithstanding anything to the contrary in subparagraph (A) of
31 this paragraph, the credit allowed to a taxpayer for a taxable year
32 under this subdivision shall not exceed the sum of the taxes that would
33 otherwise be imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1
34 of this subchapter on such taxpayer for such taxable year after the
35 allowance of any other credits allowed by this section or section
36 11-1721 of this chapter.

37 (3) Subject to the provisions of subparagraph (C) of this paragraph,
38 the amount determined in this paragraph is the sum of:

39 (A) for each unincorporated business conducted by the taxpayer, the
40 tax imposed by chapter five of this title on such unincorporated busi-
41 ness for its taxable year ending with the taxable year of the taxpayer
42 and paid by the unincorporated business; and

43 (B) for each unincorporated business in which the taxpayer is a part-
44 ner, the product of:

45 (i) the sum of (I) the tax imposed by chapter five of this title on
46 such unincorporated business for its taxable year ending within or with
47 the taxable year of the partner and paid by the unincorporated business
48 and (II) the amount of any credit or credits taken by the unincorporated
49 business under subdivision (j) of section 11-503 of this title for its
50 taxable year ending within or with the taxable year of the partner; and

51 (ii) a fraction, the numerator of which is the net total of the part-
52 ner's distributive share of income, gain, loss and deductions of, and
53 guaranteed payments from, the unincorporated business for such taxable
54 year, and the denominator of which is the sum, for such taxable year, of
55 the net total distributive shares of income, gain, loss and deductions
56 of, and guaranteed payments to, all partners in the unincorporated busi-

1 ness for whom or which such net total, as separately determined for each
2 partner, is greater than zero.

3 (C) For a taxpayer that changes its status from a city resident to a
4 city nonresident or from a city nonresident to a city resident during
5 the taxable year:

6 (i) the amount determined in subparagraph (A) of this paragraph shall
7 be, with respect to each unincorporated business conducted by the
8 taxpayer, the tax imposed by chapter five of this title on such unincor-
9 porated business for its taxable year ending with the taxable year of
10 the taxpayer and paid by the unincorporated business, multiplied by a
11 fraction, the numerator of which is that portion of the income, gain,
12 loss and deductions of the unincorporated business included in the
13 taxpayer's adjusted gross income for the portion of the taxable year
14 during which the taxpayer was a city resident, and the denominator of
15 which is the total, for such taxable year, of the income, gain, loss and
16 deductions of the unincorporated business, and

17 (ii) the amount determined in clause (ii) of subparagraph (B) of this
18 paragraph shall be a fraction, the numerator of which is that portion of
19 the taxpayer's net total distributive share of income, gain, loss and
20 deductions of, and that portion of guaranteed payments from, the unin-
21 corporated business included in the taxpayer's city adjusted gross
22 income for the portion of the taxable year during which the taxpayer was
23 a city resident, and the denominator of which is the sum, for such taxa-
24 ble year, of the net total distributive shares of income, gain, loss and
25 deductions of, and guaranteed payments to, all partners in the unincor-
26 porated business, for whom or which such net total, as separately deter-
27 mined for each partner, is greater than zero.

28 (4) For purposes of subdivision (c) of section 11-1902 of this title,
29 in determining the amount of tax that a nonresident would be required to
30 pay if such nonresident were a resident of the city and subject to the
31 tax on personal income of residents, the credit allowed by this subdivi-
32 sion shall be taken into account.

33 (d) Earned income tax credit. (1) For taxable years beginning after
34 two thousand three, a credit against the city personal income tax shall
35 be allowed, equal to five percent of the earned income credit allowed
36 under section thirty-two of the internal revenue code for the same taxa-
37 ble year, and, for taxable years beginning after two thousand twenty-
38 one, a credit against the city personal income tax shall be allowed,
39 equal to a percentage determined pursuant to subparagraphs (A) through
40 (I) of this paragraph, of the earned income credit allowed under section
41 thirty-two of the internal revenue code for the same taxable year. For
42 purposes of this paragraph, "adjusted gross income" means New York
43 adjusted gross income as determined pursuant to article twenty-two of
44 the tax law. The percentage shall be:

45 (A) thirty percent, where the taxpayer's adjusted gross income for
46 such taxable year is less than five thousand dollars;

47 (B) thirty percent reduced by the product of two-tenths of a percent-
48 age point (0.002) and the amount of the taxpayer's adjusted gross income
49 for such taxable year in excess of four thousand nine hundred ninety-
50 nine dollars, where such taxpayer's adjusted gross income for such taxa-
51 ble year is equal to or greater than five thousand dollars and less than
52 seven thousand five hundred dollars;

53 (C) twenty-five percent, where the taxpayer's adjusted gross income
54 for such taxable year is equal to or greater than seven thousand five
55 hundred dollars and less than fifteen thousand dollars;

1 (D) twenty-five percent reduced by the product of two-tenths of a
2 percentage point (0.002) and the amount of the taxpayer's adjusted gross
3 income for such taxable year in excess of fourteen thousand nine hundred
4 ninety-nine dollars, where such taxpayer's adjusted gross income for
5 such taxable year is equal to or greater than fifteen thousand dollars
6 and less than seventeen thousand five hundred dollars;

7 (E) twenty percent, where the taxpayer's adjusted gross income for
8 such taxable year is equal to or greater than seventeen thousand five
9 hundred dollars and less than twenty thousand dollars;

10 (F) twenty percent reduced by the product of two-tenths of a percent-
11 age point (0.002) and the amount of such taxpayer's adjusted gross
12 income for such taxable year in excess of nineteen thousand nine hundred
13 ninety-nine dollars, where the taxpayer's adjusted gross income for such
14 taxable year is equal to or greater than twenty thousand dollars and
15 less than twenty-two thousand five hundred dollars;

16 (G) fifteen percent, where the taxpayer's adjusted gross income for
17 such taxable year is equal to or greater than twenty-two thousand five
18 hundred dollars and less than forty thousand dollars;

19 (H) fifteen percent reduced by the product of two-tenths of a percent-
20 age point (0.002) and the amount of the taxpayer's adjusted gross income
21 for such taxable year in excess of thirty-nine thousand nine hundred
22 ninety-nine dollars, where such taxpayer's adjusted gross income for
23 such taxable year is equal to or greater than forty thousand dollars and
24 less than forty-two thousand five hundred dollars; and

25 (I) ten percent where the taxpayer's adjusted gross income for such
26 taxable year is equal to or greater than forty-two thousand five hundred
27 dollars.

28 (2) In the case of a resident taxpayer, the credit provided by this
29 subdivision shall be allowed against the taxes authorized by this chap-
30 ter for the taxable year reduced by the credits permitted by this chap-
31 ter. If the credit exceeds the tax as so reduced, the taxpayer may
32 receive, and the state comptroller, subject to a certificate of the
33 commissioner of the state department of taxation and finance, shall pay
34 as an overpayment, without interest, the amount of such excess.

35 (3) If a taxpayer changes his or her status during the taxable year
36 from city resident to city nonresident, or from city nonresident to city
37 resident, the credit determined under this subdivision shall be limited
38 to the amount determined by multiplying the amount of such credit by a
39 fraction, the numerator of which is such taxpayer's city adjusted gross
40 income, for the period of residence, and the denominator of which is
41 such taxpayer's city adjusted gross income determined as if he or she
42 were a city resident for the entire taxable year. City adjusted gross
43 income shall be adjusted as provided in section 11-1754 of this chapter.
44 The credit as so limited shall be applied as provided in paragraph two
45 of this subdivision.

46 (4) Subject to the provisions of paragraph three of this subdivision,
47 in the case of a husband and wife who file a joint return, but who are
48 required to determine their city personal income taxes separately, the
49 credit authorized pursuant to this subdivision may be applied against
50 the tax of either or divided between them as they may elect. In the case
51 of a husband and wife who are not required to file a federal return, the
52 credit under this subsection shall be allowed only if such taxpayers
53 file a joint city personal income tax return.

54 (5) If the state commissioner of taxation and finance determines that
55 the taxpayer is eligible to receive the credit provided under this
56 subdivision but has not claimed such credit on his or her return, the

1 state commissioner of taxation and finance shall compute and issue any
2 refund for the allowable credit amount provided under this subdivision.
3 Any refund paid pursuant to this paragraph shall be deemed to be a
4 refund of an overpayment of tax as provided in section 11-1786 of this
5 chapter, provided, however, that no interest shall be paid thereon.

6 (e) Credit for certain household and dependent care services necessary
7 for gainful employment. (1) For taxable years beginning on or after
8 January first, two thousand seven, a taxpayer shall be allowed a credit
9 as provided herein equal to the applicable percentage of the credit
10 allowed under subsection (c) of section six hundred six of the tax law
11 with respect to qualifying individuals as defined in paragraph one of
12 subsection (b) of section twenty-one of the internal revenue code, with-
13 out regard to whether the taxpayer in fact claimed the credit under such
14 section twenty-one for the taxable year, who are dependents of the
15 taxpayer and who have not attained the age of four as of the end of the
16 taxable year. The applicable percentage shall be determined as follows:

17 (A) If household gross income as defined in subparagraph (A) of para-
18 graph three of subdivision (b) of this section is twenty-five thousand
19 dollars or less, the applicable percentage shall be seventy-five
20 percent.

21 (B) If such household gross income is greater than twenty-five thou-
22 sand dollars but not greater than thirty thousand dollars, the applica-
23 ble percentage shall be seventy-five percent multiplied by one minus a
24 fraction, the numerator of which is such household gross income less
25 twenty-five thousand dollars and the denominator of which is five thou-
26 sand dollars.

27 (C) If such household gross income is greater than thirty thousand
28 dollars, the applicable percentage shall be zero.

29 (2) The credit under this subdivision shall be allowed against the
30 taxes imposed by this chapter reduced by the credits permitted by this
31 chapter. If the credit exceeds the tax as so reduced, the taxpayer may
32 receive, and the state comptroller, subject to the certificate of the
33 state commissioner of taxation and finance, shall pay as an overpayment,
34 without interest, the amount of such excess, provided, however, in the
35 case of a taxpayer who is a part-year resident of New York city any such
36 overpayment under this paragraph shall be limited to the amount of such
37 excess multiplied by a fraction, the numerator of which is federal
38 adjusted gross income for the period of residence, computed as if the
39 taxable year for federal income tax purposes were limited to the period
40 of residence, and the denominator of which is federal adjusted gross
41 income for the taxable year.

42 (3) In the case of a husband and wife who filed a joint federal
43 return, but who are required to determine their New York city taxes
44 separately, the credit allowed pursuant to this subdivision may only be
45 applied against the tax imposed on the spouse with the lower taxable
46 income, computed without regard to such credit, provided, however, if
47 the spouse with the lower taxable income is a nonresident of the city,
48 no credit shall be allowed under this subdivision. In the case of a
49 husband and wife who are not required to file a federal return, the
50 credit under this subdivision shall be allowed only if such taxpayers
51 file a joint New York city income tax return.

52 (f) Credit for general corporation tax paid. (1) A city resident indi-
53 vidual, estate or trust whose city adjusted gross income includes a pro
54 rata share of income, loss and deductions described in paragraph one of
55 subsection (a) of section thirteen hundred sixty-six of the internal
56 revenue code, from one or more New York S corporations as defined in

1 subdivision one-A of section two hundred eight of the tax law, or from
2 one or more QSSSSs as defined in subdivision one-B of section two hundred
3 eight of the tax law, that are exempt QSSSSs by reason of clause (A) of
4 subparagraph one of paragraph (k) of subdivision nine of section two
5 hundred eight of the tax law, on which a tax is imposed by subchapter
6 two of chapter six of this title, shall be allowed a credit as provided
7 in paragraph two of this subdivision against the tax otherwise due under
8 sections 11-1701, 11-1703, 11-1704 and 11-1704.1 of this chapter.

9 (2) (A) Subject to the limitations set forth in subparagraphs (B) and
10 (C) of this paragraph, the credit allowed to a taxpayer for a taxable
11 year under this subdivision shall be determined as follows:

12 (i) For taxable years beginning on or after January first, two thou-
13 sand fourteen and before July first, two thousand nineteen:

14 (I) If the city taxable income is thirty-five thousand dollars or
15 less, the amount of the credit shall be one hundred percent of the
16 amount determined in paragraph three of this subdivision.

17 (II) If the city taxable income is greater than thirty-five thousand
18 dollars but less than one hundred thousand dollars, the amount of the
19 credit shall be a percentage of the amount determined in paragraph three
20 of this subdivision, such percentage to be determined by subtracting
21 from one hundred percent, a percentage determined by subtracting thir-
22 ty-five thousand dollars from city taxable income, dividing the result
23 by sixty-five thousand dollars and multiplying by one hundred percent.

24 (III) If the city taxable income is one hundred thousand dollars or
25 greater, no credit shall be allowed.

26 (IV) Provided further that for any taxable year of a taxpayer for
27 which this credit is effective that encompasses days occurring after
28 June thirtieth, two thousand nineteen, the amount of the credit deter-
29 mined in item (I) or (II) of this clause shall be multiplied by a frac-
30 tion, the numerator of which is the number of days in the taxpayer's
31 taxable year occurring on or before June thirtieth, two thousand nine-
32 teen, and the denominator of which is the number of days in the taxpay-
33 er's taxable year.

34 (B) Notwithstanding anything to the contrary in subparagraph (A) of
35 this paragraph, the credit allowed to a taxpayer for a taxable year
36 under this subdivision shall not exceed the sum of the taxes that would
37 otherwise be imposed by sections 11-1701, 11-1703, 11-1704 and 11-1704.1
38 of this subchapter on such taxpayer for such taxable year after the
39 allowance of any other credits allowed by subdivisions (a), (b) and (c)
40 of this section, and section 11-1721 of this chapter.

41 (C) Notwithstanding anything to the contrary in subparagraph (A) of
42 this paragraph, no credit shall be allowed for any amount of tax
43 imposed, or credit allowed, by subchapter two of chapter six of this
44 title on, or to, a combined group of corporations including a New York S
45 corporation or an exempt QSSS, except where the combined group consists
46 exclusively of one or more New York S corporations and one or more
47 exempt QSSSSs of such corporations as described in paragraph one of this
48 subdivision, provided that each of the New York S corporations included
49 in the group is wholly owned by the same interests and in the same
50 proportions as each other New York S corporation included in the group.

51 (3) Subject to the provisions of subparagraph (B) of this paragraph
52 and subparagraph (C) of paragraph two of this subdivision, the amount
53 determined in this paragraph is the sum of the taxpayer's pro rata share
54 of the amounts determined in subparagraph (A) of this paragraph for each
55 New York S corporation, or exempt QSSS, described in paragraph one of
56 this subdivision, a pro rata share of whose income, loss and deductions

1 described in paragraph one of subsection (a) of section thirteen hundred
2 sixty-six of the internal revenue code, is included in the taxpayer's
3 city adjusted gross income.

4 (A) The amount determined in this subparagraph is the sum of:

5 (i) the taxes imposed by subchapter two of chapter six of this title
6 on such corporation, or a combined group including such corporation, for
7 its taxable year ending within or with the taxable year of the taxpayer
8 and paid by such corporation, or combined group; and

9 (ii) the amount of any credit or credits taken by such corporation, or
10 a combined group including such corporation, under subdivision eighteen
11 of section 11-604 of this title for its taxable year ending within or
12 with the taxable year of the taxpayer.

13 (B) For purposes of this subdivision, the taxpayer's pro rata share of
14 the amount in subparagraph (A) of this paragraph for the taxable year
15 shall be the amount determined with respect to the taxpayer:

16 (i) by assigning an equal portion of the amount in subparagraph (A) of
17 this paragraph to each day of the corporation's taxable year on which
18 the corporation has shares outstanding,

19 (ii) then by dividing that portion pro rata among the shares outstand-
20 ing on that day; provided, however,

21 (iii) if the taxable year of such corporation for purposes of chapter
22 six of this title is different from its New York S year or S short year
23 as defined in subdivision one-A of section two hundred eight of the tax
24 law, only those portions that are assigned to days of the taxable year
25 that are also days of the New York S year or S short year shall be taken
26 into account in determining the shareholder's pro rata share of the
27 amount determined in subparagraph (A) of this paragraph.

28 (g) Credit for city pass-through entity tax. (1) A taxpayer who is a
29 partner or member of an electing city partnership and a taxpayer share-
30 holder of an electing city resident S corporation subject to tax under
31 article twenty-four-B of the tax law shall be entitled to a credit
32 against the tax imposed by such article. For purposes of this subdivi-
33 sion, the terms "electing city partnership," "electing city resident S
34 corporation," "city pass-through entity tax," and "direct share of city
35 pass-through entity tax" shall have the same meanings as used in article
36 twenty-four-B of the tax law.

37 (2) The amount of the credit shall be equal to the partner's, member's
38 or shareholder's direct share of the city pass-through entity tax.

39 (3) If a taxpayer is a partner, member or shareholder in more than one
40 electing city partnership and/or electing city resident S corporation
41 that is subject to tax pursuant to article twenty-four-B of the tax law,
42 the amount of the credit of such taxpayer shall be equal to the sum of
43 the amounts of such credits calculated pursuant to paragraph two of this
44 subdivision with regard to each entity in which such taxpayer has a
45 direct ownership interest.

46 (4) If the amount of the credit allowable pursuant to this subdivision
47 for any taxable year exceeds the tax due for such year pursuant to arti-
48 cle twenty-four-B of the tax law, the excess amount shall be treated as
49 an overpayment, to be credited or refunded, without interest.

50 (5) Limitation on credit. No credit shall be allowed to a taxpayer
51 under this subdivision unless the electing city partnership or electing
52 city resident S corporation provided sufficient information to identify
53 such taxpayer on its city pass-through entity tax return as required
54 under paragraph two of subsection (c) of section eight hundred seventy-
55 two of the tax law for an electing city partnership or paragraph two of
56 subsection (d) of section eight hundred seventy-two of the tax law for

1 an electing city resident S corporation. The credit allowed to a taxpay-
2 er under this subdivision shall not exceed the direct share of city
3 pass-through entity tax reported by such electing city partnership or
4 electing city resident S corporation attributable to such taxpayer on
5 such electing city partnership's or such electing city resident S corpo-
6 ration's return filed pursuant to section eight hundred seventy-two of
7 the tax law.

8 § 11-1707 Meaning of terms. (a) General. Any term used in this chap-
9 ter shall have the same meaning as when used in a comparable context in
10 the laws of the United States relating to federal income taxes, unless a
11 different meaning is clearly required but such meaning shall be subject
12 to the exceptions or modifications prescribed in this chapter or by
13 statute. Any reference in this chapter to the laws of the United States
14 shall mean the provisions of the internal revenue code of nineteen
15 hundred eighty-six, unless a reference to the internal revenue code of
16 nineteen hundred fifty-four is clearly intended, and amendments thereto,
17 and other provisions of the laws of the United States relating to feder-
18 al income taxes, as the same may be or become effective at any time or
19 from time to time for the taxable year, as included and quoted in the
20 appendices, including any supplements and additions thereto, to this
21 chapter. Provided however, for taxable years beginning before January
22 first, two thousand twenty-two, any amendments made to the internal
23 revenue code of nineteen hundred eighty-six after March first, two thou-
24 sand twenty shall not apply to this chapter. Such quotation of the
25 aforesaid laws of the United States is intended to make them a part of
26 this chapter and to avoid constitutional uncertainties which might
27 result if such laws were merely incorporated by reference. The quotation
28 of a provision of the internal revenue code or of any other law of the
29 United States in such appendices shall not necessarily mean that it is
30 applicable or has relevance to this chapter.

31 (b) Marital or other status. An individual's marital or other status
32 under section 11-1701 of this chapter and section 11-1714 of this chap-
33 ter shall be the same as his or her marital or other status for purposes
34 of establishing the applicable federal income tax rates.

35 (c) "City" and "this city" as used in this chapter means the city of
36 Staten Island; "tax commission" as used in this chapter means the tax
37 commission of the state of New York; and "state" or "this state" as used
38 in this chapter means the state of New York.

39 SUBCHAPTER 2
40 RESIDENTS

41 § 11-1711 City taxable income of a city resident individual. (a)
42 General. The city taxable income of a city resident individual shall be
43 his or her city adjusted gross income less his or her city deduction and
44 city exemptions, as determined under this chapter.

45 (b) Husband and wife.

46 (1) If the federal taxable income of husband or wife, both of whom
47 are residents, is determined on a separate federal return, their city
48 taxable incomes shall be separately determined.

49 (2) If the federal taxable income of husband and wife, both of whom
50 are residents, is determined on a joint federal return, their city taxa-
51 ble income shall be determined jointly.

52 (3) If neither husband or wife, both of whom are residents, files a
53 federal return:

1 (A) their tax shall be determined on their joint city taxable income,
2 or

3 (B) separate taxes may be determined on their separate city taxable
4 incomes if they both so elect.

5 (4) If either husband or wife is a resident and the other is a nonres-
6 ident, a separate tax shall be determined on the city taxable income of
7 the resident spouse on a separate form unless such husband and wife
8 determine their federal taxable income jointly and both elect to deter-
9 mine their joint city taxable income as if both were residents.

10 § 11-1712 City adjusted gross income of a city resident individual.

11 (a) General. The city adjusted gross income of a city resident indi-
12 vidual means his or her federal adjusted gross income as defined in the
13 laws of the United States for the taxable year, with the modifications
14 specified in this section.

15 (b) Modifications increasing federal adjusted gross income. There
16 shall be added to federal adjusted gross income: (1) Interest income
17 on obligations of any state other than this state, or of a political
18 subdivision of any other such state unless created by compact or agree-
19 ment to which this state is a party, to the extent not properly includi-
20 ble in federal adjusted gross income;

21 (2) Interest or dividend income on obligations or securities of any
22 authority, commission, or instrumentality of the United States, which
23 the laws of the United States exempt from federal income tax but not
24 from state income taxes;

25 (3) Income taxes. (A) General. Income taxes imposed by this state or
26 any other taxing jurisdiction, to the extent deductible in determining
27 federal adjusted gross income and not credited against federal income
28 tax.

29 (B) Shareholders of S corporations. In the case of a shareholder of an
30 S corporation, with respect to taxes imposed upon or payable by the
31 corporation, the term "income taxes" in subparagraph (A) of this para-
32 graph shall also include the tax imposed under article nine-A of the tax
33 law, regardless of the measure of such tax, but shall not otherwise
34 include taxes imposed by this or any other state of the United States,
35 or any political subdivision of this or any other state, or the District
36 of Columbia.

37 (4) Interest on indebtedness incurred or continued to purchase or
38 carry obligations or securities the interest on which is exempt from tax
39 under this chapter, to the extent deductible in determining federal
40 adjusted gross income.

41 (5) Expenses paid or incurred during the taxable year for: (i) the
42 production or collection of income which is exempt from tax under this
43 chapter, or (ii) the management, conservation or maintenance of property
44 held for the production of such income, and the amortizable bond premium
45 for the taxable year on any bond the interest on which is exempt from
46 tax under this chapter, to the extent that such expenses and premiums
47 are deductible in determining federal adjusted gross income.

48 (6) In the case of a taxpayer who has exercised the election permit-
49 ted by subdivision (g) or (h) of this section, the amount or amounts
50 required by said subdivisions to be added to federal adjusted gross
51 income.

52 (7) In the case of a taxpayer who is a shareholder of a corporation
53 organized under article fifteen or authorized to do business in this
54 state under article fifteen-A of the business corporation law, for the
55 taxpayer's taxable years beginning before nineteen hundred eighty-eight,
56 the amount which is deductible by such corporation under paragraph one,

1 two or three of subsection (a) of section four hundred four of the
2 internal revenue code for its taxable year ending in or with such
3 taxpayer's taxable year for contributions paid on behalf of such taxpay-
4 er minus the lesser of fifteen thousand dollars or fifteen percent of
5 the earned income derived by such taxpayers from such corporation during
6 such taxpayer's taxable year. In the case of a taxpayer on whose behalf
7 contributions are paid under more than one plan to which this paragraph
8 applies or under a plan, contributions to which on his or her behalf are
9 subject to the limitations provided in subsection (e) of section four
10 hundred four of the internal revenue code, this paragraph shall apply
11 with respect to the aggregate of the contributions paid on his or her
12 behalf under all such plans.

13 (8) In the case of a taxpayer who is a shareholder of a corporation
14 organized under article fifteen or authorized to do business in this
15 state under article fifteen-A of the business corporation law, the
16 amount which is required to be paid as a tax by such corporation pursu-
17 ant to subsection (a) of section thirty-one hundred eleven of the inter-
18 nal revenue code with respect to the wages of such taxpayer for the
19 calendar year ending in or with such taxpayer's taxable year.

20 (10) The amount required to be added to federal adjusted gross income
21 pursuant to subdivision (i) of this section.

22 (14) The amount required to be added to federal adjusted gross income
23 pursuant to subdivision (l) of this section.

24 (15) The amount allowed as an exclusion or deduction for the special
25 additional mortgage recording taxes imposed by subdivision one-a of
26 section two hundred fifty-three of the tax law in determining federal
27 adjusted gross income for such taxable year.

28 (16) Unless the credit allowed pursuant to subsection (f) of section
29 six hundred six of the tax law is reflected in the computation of the
30 gain or loss so as to result in an increase in such gain or decrease in
31 such loss, for federal income tax purposes, from the sale or other
32 disposition of the property with respect to which the special additional
33 mortgage recording tax imposed pursuant to subdivision one-a of section
34 two hundred fifty-three of such law was paid, the amount of the special
35 additional mortgage recording tax imposed by subdivision one-a of
36 section two hundred fifty-three of such law which was paid and which is
37 reflected in the computation of the basis of the property so as to
38 result in a decrease in such gain or increase in such loss for federal
39 income tax purposes from the sale or other disposition of the property
40 with respect to which such tax was paid.

41 (17) The amount required to be added to federal adjusted gross income
42 pursuant to subdivision (r) of this section.

43 (18) In the case of a shareholder of an S corporation: (A) where the
44 election provided for in subsection (a) of section six hundred sixty of
45 the tax law is in effect with respect to such corporation, an amount
46 equal to his or her pro rata share of the corporation's reductions for
47 taxes described in paragraphs two and three of subsection (f) of section
48 thirteen hundred sixty-six of the internal revenue code, and

49 (B) in the case of a New York S termination year, subparagraph (A) of
50 this paragraph shall apply to the amount of reductions for taxes deter-
51 mined under subdivision (s) of this section.

52 (19) In the case of a shareholder of an S corporation: (A) where the
53 election provided for in subsection (a) of section six hundred sixty of
54 the tax law has not been made with respect to such corporation, any item
55 of loss or deduction of the corporation included in federal gross income

1 pursuant to section thirteen hundred sixty-six of the internal revenue
2 code, and

3 (B) in the case of a New York S termination year, subparagraph (A) of
4 this paragraph shall apply to the amounts of loss or deduction deter-
5 mined under subdivision (s) of this section.

6 (20) S corporation distributions to the extent not included in federal
7 gross income for the taxable year because of the application of section
8 thirteen hundred sixty-eight, subsection (e) of section thirteen hundred
9 seventy-one or subsection (c) of section thirteen hundred seventy-nine
10 of the internal revenue code which represent income not previously
11 subject to tax under this chapter because the election provided for in
12 subsection (a) of section six hundred sixty of the tax law had not been
13 made. Any such distribution treated in the manner described in paragraph
14 two of subsection (b) of section thirteen hundred sixty-eight of the
15 internal revenue code for federal income tax purposes shall be treated
16 as ordinary income for purposes of this chapter.

17 (21) In relation to the disposition of stock or indebtedness of a
18 corporation which elected under subchapter s of chapter one of the
19 internal revenue code for any taxable year of such corporation begin-
20 ning, in the case of a corporation taxable under article nine-A of the
21 tax law, after December thirty-first, nineteen hundred eighty, the
22 amount required to be added to federal adjusted gross income pursuant to
23 subdivision (n) of this section.

24 (22) The amounts required to be added to federal adjusted gross income
25 pursuant to subdivision (q) of this section.

26 (23) For taxable years beginning after December thirty-first, nineteen
27 hundred eighty-one, except with respect to property which is a qualified
28 mass commuting vehicle described in subparagraph (D) of paragraph eight
29 of subsection (f) of section one hundred sixty-eight of the internal
30 revenue code, relating to qualified mass commuting vehicles, any amount
31 which the taxpayer claimed as a deduction in computing its federal
32 adjusted gross income solely as a result of an election made pursuant to
33 the provisions of such paragraph eight as it was in effect for agree-
34 ments entered into prior to January first, nineteen hundred eighty-four;

35 (24) For taxable years beginning after December thirty-first, nineteen
36 hundred eighty-one, except with respect to property which is a qualified
37 mass commuting vehicle described in subparagraph (D) of paragraph eight
38 of subsection (f) of section one hundred sixty-eight of the internal
39 revenue code, relating to qualified mass commuting vehicles, any amount
40 which the taxpayer would have been required to include in the computa-
41 tion of its federal adjusted gross income had it not made the election
42 permitted pursuant to such paragraph eight as it was in effect for
43 agreements entered into prior to January first, nineteen hundred eight-
44 y-four;

45 (25) For taxable years beginning after December thirty-first, nineteen
46 hundred eighty-one, except with respect to recovery property subject to
47 the provisions of section two hundred eighty-F of the internal revenue
48 code and recovery property placed in service in this state in taxable
49 years beginning after December thirty-first, nineteen hundred eighty-
50 four, the amount allowable as a deduction under section one hundred
51 sixty-eight of the internal revenue code;

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

1 provisions of section one hundred sixty-eight of the internal revenue
2 code which is placed in service in this state in taxable years beginning
3 after December thirty-first, nineteen hundred eighty-four, the amount
4 allowable as a deduction determined under section one hundred sixty-
5 eight of the internal revenue code.

6 (26) The amount of member or employee contributions to a retirement
7 system or pension fund picked up or paid by the employer pursuant to
8 subdivision f of section five hundred seventeen or subdivision d of
9 section six hundred thirteen of the retirement and social security law
10 or section 13-225.1, 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of title
11 thirteen of the code of the preceding municipality or subdivision nine-
12 teen of section twenty-five hundred seventy-five of the education law.

13 (26-a) The amount of member or employee contributions to a retirement
14 system or pension fund picked up or paid by the employer for members of
15 the Manhattan and Bronx surface transportation authority pension plan
16 and treated as employer contributions in determining income tax treat-
17 ment under subdivision (h) of section four hundred fourteen of the
18 Internal Revenue Code.

19 (27) Upon the disposition of recovery property to which paragraph
20 twenty-six of subdivision (c) of this section applies, the amount, if
21 any, by which the aggregate of the modifications described in such para-
22 graph twenty-six attributable to such property exceeds the aggregate of
23 the modifications described in paragraph twenty-five of this subdivision
24 attributable to such property; and

25 (27) Upon the disposition of property to which paragraph twenty-six of
26 subdivision (c) of this section applies, the amount, if any, by which
27 the aggregate of the modifications described in such paragraph twenty-
28 six attributable to such property exceeds the aggregate of the modifica-
29 tions described in paragraph twenty-five of this subdivision attribut-
30 able to such property.

31 (29) When gain from the sale or other disposition of property is
32 included in federal gross income, the amount of reduction in the basis
33 of such property attributable to credit for solar and wind energy
34 systems pursuant to paragraph nine of subsection (g) of section six
35 hundred six of the tax law; but for taxable years beginning before nine-
36 teen hundred eighty-seven, if such gain affects the determination of a
37 net capital gain for federal income tax purposes, forty percent of such
38 amount.

39 (31) The amount deducted or deferred from an employee's salary under a
40 flexible benefits program established pursuant to section twenty-three
41 of the general municipal law or section one thousand two hundred ten-a
42 of the public authorities law.

43 (32) The amount by which an employee's salary is reduced pursuant to
44 the provisions of subdivision b of section 12-126.1 and subdivision b of
45 section 12-126.2 of the code of the preceding municipality.

46 (33) Real property taxes paid on qualified agricultural property and
47 deducted in determining federal adjusted gross income, to the extent of
48 the amount of the agricultural property tax credit allowed under
49 subsection (n) or (i) of section six hundred six of the tax law.

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

52 (35) The amount of any federal deduction for taxes imposed under arti-
53 cle twenty-three of the tax law.

54 (36) In the case of a beneficiary of a trust that, in any tax year
55 after its creation including its first tax year, was not subject to tax
56 pursuant to subparagraph (D) of paragraph three of subdivision (b) of

1 section 11-1705 of this chapter, except for an incomplete gift non-gran-
2 tor trust, as defined by paragraph thirty-seven of this subdivision, the
3 amount described in the first sentence of section six hundred sixty-sev-
4 en of the internal revenue code for the tax year to the extent not
5 already included in federal gross income for the tax year, except that,
6 in computing the amount to be added under this paragraph, such benefici-
7 ary shall disregard (i) subsection (c) of section six hundred sixty-five
8 of the internal revenue code; (ii) the income earned by such trust in
9 any tax year in which the trust was subject to tax under this article;
10 and (iii) the income earned by such trust in a taxable year prior to
11 when the beneficiary first became a resident of the city or in any taxa-
12 ble year starting before January first, two thousand fourteen. Except
13 as otherwise provided in this paragraph, all of the provisions of the
14 internal revenue code that are relevant to computing the amount
15 described in the first sentence of subsection (a) of section six hundred
16 sixty-seven of the internal revenue code shall apply to the provisions
17 of this paragraph with the same force and effect as if the language of
18 those internal revenue code provisions had been incorporated in full
19 into this paragraph, except to the extent that any such provision is
20 either inconsistent with or not relevant to this paragraph.

21 (37) In the case of a taxpayer who transferred property to an incom-
22 plete gift non-grantor trust, the income of the trust, less any
23 deductions of such trust, to the extent such income and deductions of
24 such trust would be taken into account in computing the taxpayer's
25 federal taxable income if such trust in its entirety were treated as a
26 grantor trust for federal tax purposes. For purposes of this paragraph,
27 an "incomplete gift non-grantor trust" means a resident trust that meets
28 the following conditions: (i) the trust does not qualify as a grantor
29 trust under section six hundred seventy-one through six hundred seven-
30 ty-nine of the internal revenue code, and (ii) the grantor's transfer of
31 assets to the trust is treated as an incomplete gift under section twen-
32 ty-five hundred eleven of the internal revenue code, and the regulations
33 thereunder.

34 (38) The amount contributed to any or all of the following accounts
35 within the charitable gifts trust fund set forth in section ninety-two-
36 gg of the state finance law, to the extent the amount is claimed as an
37 itemized deduction pursuant to section six hundred fifteen of the tax
38 law: the health charitable account established by paragraph a of subdi-
39 vision four of section ninety-two-gg of the state finance law, or the
40 elementary and secondary education charitable account established by
41 paragraph b of subdivision four of section ninety-two-gg of the state
42 finance law.

43 (39) The amount of any gain excluded from federal gross income for the
44 taxable year by subparagraph (A) of paragraph (1) of subsection (a) of
45 section one thousand four hundred-Z-two of the internal revenue code.

46 (c) Modifications reducing federal adjusted gross income. There
47 shall be subtracted from federal adjusted gross income:

48 (1) Interest income on obligations of the United States and its
49 possessions to the extent includible in gross income for federal income
50 tax purposes; such interest income shall include the amount received as
51 dividends from a regulated investment company, as defined in section
52 eight hundred fifty-one of the internal revenue code, which has been
53 designated as the amount of such interest income in a written notice to
54 shareholders not later than sixty days following the close of its taxa-
55 ble year; provided that, at the close of each quarter of the taxable
56 year of such regulated investment company, at least fifty percent of the

1 value of its total assets, as defined in subsection (c) of section eight
2 hundred fifty-one of the internal revenue code, consists of obligations
3 of the United States and its possessions. The aggregate amount so desig-
4 nated by the regulated investment company for its taxable year shall not
5 exceed the amount determined by multiplying the total distributions paid
6 by such regulated investment company to its shareholders with respect to
7 that taxable year, attributable to income earned in that year, including
8 any such distributions paid after the close of the taxable year, as
9 described in section eight hundred fifty-five of the internal revenue
10 code, by the ratio that the interest income received in that taxable
11 year on obligations of the United States and its possessions, after
12 reduction for the deductions and expenses directly or indirectly attrib-
13 utable thereto, bears to the investment company taxable income of such
14 regulated investment company for such taxable year, determined without
15 regard to subparagraph (D) of paragraph two of subsection (b) of section
16 eight hundred fifty-two of the internal revenue code;

17 (2) Interest or dividend income on obligations or securities of any
18 authority, commission or instrumentality of the United States to the
19 extent includible in gross income for federal income tax purposes but
20 exempt from state income taxes under the laws of the United States;

21 (3) (i) Pensions to officers and employees of this state, its subdivi-
22 sions and agencies, to the extent includible in gross income for federal
23 income tax purposes;

24 (ii) Pensions to officers and employees of the United States of Ameri-
25 ca, any territory or possession or political subdivision of such terri-
26 tory or possession, the District of Columbia, or any agency or instru-
27 mentality of such, to the extent includible in gross income for federal
28 income tax purposes;

29 (3-a) Pensions and annuities received by an individual who has
30 attained the age of fifty-nine and one-half, not otherwise excluded
31 pursuant to paragraph three of this subdivision, to the extent includi-
32 ble in gross income for federal income tax purposes, but not in excess
33 of twenty thousand dollars, which are periodic payments attributable to
34 personal services performed by such individual prior to his or her
35 retirement from employment, which arise: (i) from an employer-employee
36 relationship or (ii) from contributions to a retirement plan which are
37 deductible for federal income tax purposes. However, the term "pensions
38 and annuities" shall also include distributions received by an individ-
39 ual who has attained the age of fifty-nine and one-half from an individ-
40 ual retirement account or an individual retirement annuity, as defined
41 in section four hundred eight of the internal revenue code, and distrib-
42 utions received by an individual who has attained the age of fifty-nine
43 and one-half from self-employed individual and owner-employee retirement
44 plans which qualify under section four hundred one of the internal
45 revenue code, whether or not the payments are periodic in nature. Never-
46 theless, the term "pensions and annuities" shall not include any lump
47 sum distribution, as defined in subparagraph (A) of paragraph four of
48 subsection (e) of section four hundred two of the internal revenue code
49 and taxed under section six hundred three of the tax law. Where a
50 husband and wife file a joint city personal income tax return, the
51 modification provided for in this paragraph shall be computed as if they
52 were filing separate city personal income tax returns. Where a payment
53 would otherwise come within the meaning of the term "pensions and annui-
54 ties" as set forth in this paragraph except that such individual is
55 deceased, such payment shall, nevertheless, be treated as a pension or

1 annuity for purposes of this paragraph if such payment is received by
2 such individual's beneficiary.

3 (3-b) (i) Disability income included in federal gross income, to the
4 extent that such disability income would have been excluded from federal
5 gross income pursuant to the provisions of subsection (d) of section one
6 hundred five of the internal revenue code of nineteen hundred fifty-four
7 had such provisions continued in effect for taxable years commencing
8 after December thirty-first, nineteen hundred eighty-three as they were
9 in effect immediately prior to the repeal of such subsection. Notwith-
10 standing the provisions of this subparagraph, the sum of disability
11 income excluded pursuant to this paragraph, and pension and annuity
12 income excluded pursuant to paragraph three-a of this subdivision, shall
13 not exceed twenty thousand dollars.

14 (ii) Notwithstanding subdivision (f) of this section, if a husband and
15 wife determine their federal income tax on a joint return but are
16 required to determine their city income taxes separately, the amounts of
17 exclusion allowed under subparagraph (i) of this paragraph shall be
18 determined in the same joint manner as such amounts would have been
19 determined under the provisions of paragraph five of subsection (d) of
20 section one hundred five of the internal revenue code as such provisions
21 were in effect immediately prior to the repeal of such subsection, but
22 shall be attributed for city income tax purposes to the spouse who would
23 have been required to report any such amount as income if the spouses
24 had determined their federal income taxes separately.

25 (iii) Where a husband and wife file a joint city income tax return,
26 the twenty thousand dollar limitation provided in subparagraph (i) of
27 this paragraph shall be applied as if they were filing separate city
28 income tax returns.

29 (3-c) Social security benefits to the extent includible in gross
30 income for federal income tax purposes pursuant to section eighty-six of
31 the internal revenue code.

32 (4) The portion of any gain, from the sale or other disposition of
33 property having a higher adjusted basis for New York state income tax
34 purposes than for federal income tax purposes on the last day of the
35 last taxable year for which article sixteen of the tax law imposes tax,
36 that does not exceed such difference in basis.

37 (5) The amount necessary to prevent the taxation under this chapter
38 of any annuity or other amount of income or gain which was properly
39 included in income or gain and was taxable under article sixteen of the
40 tax law to the taxpayer, or to a decedent by reason of whose death the
41 taxpayer acquired the right to receive the income or gain, or to a trust
42 or estate from which the taxpayer received the income or gain.

43 (6) Interest or dividend income on obligations or securities to the
44 extent exempt from income tax under the laws of this state authorizing
45 the issuance of such obligations on securities but includible in gross
46 income for federal income tax purposes.

47 (7) The amount of any refund or credit for overpayment of income
48 taxes imposed by this city, any other taxing jurisdiction, or any taxes
49 imposed by article twenty-three of the tax law to the extent properly
50 included in gross income for federal income tax purposes.

51 (8) Compensation received for active service in the armed forces of
52 the United States on or after October first, nineteen hundred sixty-one,
53 and prior to September first, nineteen hundred sixty-two; provided,
54 however, that the amount of such compensation to be deducted shall not
55 exceed one hundred dollars for each month of the taxable year, subse-
56 quent to September, nineteen hundred sixty-one, during any part of which

1 month the taxpayer was engaged in such service. For the purposes of
2 this paragraph, the words "active service in the armed forces of the
3 United States" shall mean active duty, other than for training, in the
4 army, navy, including the marine corps, air force or coast guard of the
5 United States as defined in title ten of the United States Code.

6 (8-a) Compensation and bonuses received for active service in the
7 armed forces of the United States while a prisoner of war or missing in
8 action during the hostilities in Vietnam, to the extent includible in
9 gross income for federal income tax purposes.

10 (9) Interest on indebtedness incurred or continued to purchase or
11 carry obligations or securities the interest on which is subject to tax
12 under this chapter but exempt from federal income tax, to the extent
13 that such interest on indebtedness is not deductible in determining
14 federal adjusted gross income and is attributable to a trade or business
15 carried on by the taxpayer.

16 (10) Ordinary and necessary expenses paid or incurred during the
17 taxable year for: (i) the production or collection of income which is
18 subject to tax under this chapter but exempt from federal income tax, or
19 (ii) the management, conservation or maintenance of property held for
20 the production of such income, and the amortizable bond premium for the
21 taxable year on any bond the interest on which is subject to tax under
22 this chapter but exempt from federal income tax, to the extent that such
23 expenses and premiums are not deductible in determining federal adjusted
24 gross income and are attributable to a trade or business carried on by
25 the taxpayer.

26 (11) In the case of a taxpayer who has exercised the election permit-
27 ted by subdivision (g) or (h) of this section, the amount or amounts
28 required by said subdivisions to be subtracted from federal adjusted
29 gross income.

30 (12) The amount necessary to prevent the taxation of amounts properly
31 included in New York adjusted gross income in prior taxable years in
32 accordance with paragraph seven of subdivision (b) of this section.

33 (13) The amount required to be subtracted from federal adjusted gross
34 income pursuant to subdivision (i) of this section.

35 (14) The amount that may be subtracted from federal adjusted gross
36 income pursuant to subdivision (j) of this section.

37 (15) That portion of wages or salaries paid or incurred for the taxa-
38 ble year for which a deduction is not allowed pursuant to the provisions
39 of section two hundred eighty-C of the internal revenue code.

40 (19) The amount which may be subtracted from federal adjusted gross
41 income pursuant to subdivision (r) of this section.

42 (20) The amounts which may be subtracted from federal adjusted gross
43 income pursuant to subdivision (o) of this section.

44 (21) In relation to the disposition of stock or indebtedness of a
45 corporation which elected under subchapter s of chapter one of the
46 internal revenue code for any taxable year of such corporation begin-
47 ning, in the case of a corporation taxable under article nine-A of the
48 tax law, after December thirty-first, nineteen hundred eighty, the
49 amounts required to be subtracted from federal adjusted gross income
50 pursuant to subdivision (n) of this section.

51 (22) In the case of a shareholder of an S corporation: (A) where the
52 election provided for in subsection (a) of section six hundred sixty of
53 the tax law has not been made with respect to such corporation, any item
54 of income of the corporation included in federal gross income pursuant
55 to section thirteen hundred sixty-six of the internal revenue code, and

1 (B) in the case of a New York S termination year, subparagraph (A) of
2 this paragraph shall apply to the amounts of income determined under
3 subdivision (s) of this section.

4 (23) The amounts which may be subtracted from federal adjusted gross
5 income pursuant to subdivision (p) of this section.

6 (24) For taxable years beginning after December thirty-first, nineteen
7 hundred eighty-one, except with respect to property which is a qualified
8 mass commuting vehicle described in subparagraph (D) of paragraph eight
9 of subsection (f) of section one hundred sixty-eight of the internal
10 revenue code, relating to qualified mass commuting vehicles, any amount
11 which is included in the taxpayer's federal adjusted gross income solely
12 as a result of an election made pursuant to the provisions of such para-
13 graph eight as it was in effect for agreements entered into prior to
14 January first, nineteen hundred eighty-four;

15 (25) For taxable years beginning after December thirty-first, nineteen
16 hundred eighty-one, except with respect to property which is a qualified
17 mass commuting vehicle described in subparagraph (D) of paragraph eight
18 of subsection (f) of section one hundred sixty-eight of the internal
19 revenue code, relating to qualified mass commuting vehicles, any amount
20 which the taxpayer could have excluded from federal adjusted gross
21 income had it not made the election provided for in such paragraph eight
22 as it was in effect for agreements entered into prior to January first,
23 nineteen hundred eighty-four;

24 (26) For taxable years beginning after December thirty-first, nineteen
25 hundred eighty-one, except with respect to recovery property subject to
26 the provisions of section two hundred eighty-F of the internal revenue
27 code and recovery property placed in service in this state in taxable
28 years beginning after December thirty-first, nineteen hundred eighty-
29 four, the amount allowable as the depreciation deduction under section
30 one hundred sixty-seven of the internal revenue code as such section
31 would have applied to property placed in service on December thirty-
32 first, nineteen hundred eighty;

33 (26) In the case of property placed in service in taxable years begin-
34 ning before nineteen hundred ninety-four, for taxable years beginning
35 after December thirty-first, nineteen hundred eighty-one, except with
36 respect to property subject to the provisions of section two hundred
37 eighty-F of the internal revenue code and property subject to the
38 provisions of section one hundred sixty-eight of the internal revenue
39 code which is placed in service in this state in taxable years beginning
40 after December thirty-first, nineteen hundred eighty-four, an amount
41 with respect to property which is subject to the provisions of section
42 one hundred sixty-eight of the internal revenue code equal to the amount
43 allowable as the depreciation deduction under section one hundred
44 sixty-seven of the internal revenue code as such section would have
45 applied to property placed in service on December thirty-first, nineteen
46 hundred eighty.

47 (28) Upon the disposition of recovery property to which paragraph
48 twenty-six of this subdivision applies, the amount, if any, by which the
49 aggregate of the modifications described in paragraph twenty-five of
50 subdivision (b) of this section attributable to such property exceeds
51 the aggregate of the modifications described in paragraph twenty-six of
52 this subdivision attributable to such property.

53 (28) Upon the disposition of property to which paragraph twenty-six of
54 this subdivision applies, the amount, if any, by which the aggregate of
55 the modifications described in paragraph twenty-five of subdivision (b)
56 of this section attributable to such property exceeds the aggregate of

1 the modifications described in paragraph twenty-six of this subdivision
2 attributable to such property.

3 (29) Deduction for two-earner married couples. (A) For the taxable
4 year beginning in nineteen hundred eighty-seven, in the case of a
5 husband and wife who each have qualified earned income and who have
6 filed a joint return under subdivision (b) of section 11-1751 of this
7 chapter for the taxable year, an amount equal to ten percent of the
8 lesser of:

9 (i) thirty thousand dollars or

10 (ii) the qualified earned income of the spouse with the lower quali-
11 fied earned income for such taxable year.

12 (B) For purposes of this paragraph, eligibility for the deduction
13 provided for herein and the term qualified earned income shall be deter-
14 mined in the manner such eligibility and such qualified earned income
15 would have been determined pursuant to the provisions of section two
16 hundred twenty-one of the internal revenue code of nineteen hundred
17 fifty-four had such provisions continued in effect for taxable years
18 commencing after December thirty-first, nineteen hundred eighty-six as
19 they were in effect immediately prior to the repeal of such section.
20 Provided, however, the determination of such qualified earned income
21 shall be made with regard only to the items therein included in city
22 adjusted gross income, with such adjusted gross income determined with-
23 out regard to this paragraph, and only with regard to the deductions and
24 exclusions which are of the type properly allowable to or chargeable
25 against such qualified earned income in such taxable year.

26 (30) The amount received by any person as an accelerated payment or
27 payments of part or all of the death benefit or special surrender value
28 under a life insurance policy as a result of any of the diagnoses speci-
29 fied in subparagraph (A) or (B) of paragraph one of subsection (a) of
30 section one thousand one hundred thirteen of the insurance law, and the
31 amount received by any person as a viatical settlement pursuant to the
32 provisions of article seventy-eight of the insurance law, to the extent
33 includible in gross income for federal income tax purposes.

34 (32) The portion of the fees paid during the taxable year by a taxpay-
35 er who is a resident of a continuing care retirement community, issued a
36 certificate of authority pursuant to article forty-six of the public
37 health law, attributable to the cost of providing long term care bene-
38 fits pursuant to a continuing care contract. The portion of the fees so
39 attributable shall be determined in accordance with regulations promul-
40 gated by the superintendent of insurance. The deduction may not exceed
41 the limitation that would be applicable to the taxpayer for the taxable
42 year, with respect to eligible long term care premiums, determined under
43 paragraph ten of subsection (d) of section two hundred thirteen of the
44 internal revenue code.

45 (33) Distributions, to the extent includible in adjusted gross income
46 for federal income tax purposes, made to the taxpayer because of his or
47 her status as a victim of Nazi persecution, as defined in P.L. 103-286,
48 or as a spouse or a descendant in need of such victim.

49 (34) Items of income, to the extent includible in gross income for
50 federal income tax purposes, attributable to, derived from or in any way
51 related to assets stolen from, hidden from or otherwise lost to a victim
52 of Nazi persecution, as defined in P.L. 103-286, immediately prior to,
53 during and immediately after World War II, including, but not limited to
54 interest on the proceeds receivable as insurance under policies issued
55 to a victim of Nazi persecution, as defined in P.L. 103-286, by European
56 insurance companies immediately prior to and during World War II.

1 Provided, however, this subtraction from federal adjusted income does
2 not apply to assets acquired with such assets or with the proceeds from
3 the sale of such assets. Provided, further, this paragraph is only
4 applicable to a taxpayer who was the first recipient of such assets
5 after their recovery and who is a victim of Nazi persecution, as defined
6 in P.L. 103-286, or a spouse or a descendant of such victim.

7 (35) As provided in section thirty-eight of the tax law, any income or
8 gain, to the extent it is included in federal adjusted gross income of
9 an individual who is the sole proprietor of a qualified entity or a
10 member of a limited liability company, a partner in a partnership or a
11 shareholder in a New York subchapter S corporation that is a qualified
12 entity as defined in section sixteen-v of the New York state urban
13 development corporation act attributable to the operations of such qual-
14 ified entity at its location in or as part of a New York state inno-
15 vation hot spot, as defined in paragraph (a) of subdivision one of
16 section sixteen-v of the New York state urban development corporation
17 act.

18 (36) (A) In the case of a taxpayer who is a small business or a
19 taxpayer who is a member, partner, or shareholder of a limited liability
20 company, partnership, or New York S corporation, respectively, that is a
21 small business, who or which has business income and/or farm income as
22 defined in the laws of the United States, an amount equal to fifteen
23 percent of the net items of income, gain, loss and deduction attribut-
24 able to such business or farm entering into federal adjusted gross
25 income, but not less than zero.

26 (B) (i) For the purposes of this paragraph, the term small business
27 shall mean: (I) a sole proprietor who employs one or more persons during
28 the taxable year and who has net business income or net farm income of
29 greater than zero but less than two hundred fifty thousand dollars;

30 (II) a limited liability company, partnership, or New York S corpo-
31 ration that during the taxable year employs one or more persons and has
32 net farm income that is greater than zero but less than two hundred
33 fifty thousand dollars; or

34 (III) a limited liability company, partnership, or New York S corpo-
35 ration that during the taxable year employs one or more persons and has
36 New York gross business income attributable to a non-farm business that
37 is greater than zero but less than one million five hundred thousand
38 dollars.

39 (ii) For purposes of this paragraph, the term New York gross business
40 income shall mean: (I) in the case of a limited liability company or a
41 partnership, New York source gross income as defined in subparagraph (b)
42 or paragraph three of subsection (c) of section six hundred fifty-eight
43 of the tax law, and, (II) in the case of a New York S corporation, New
44 York receipts included in the numerator of the apportionment factor
45 determined under section two hundred ten-A of the tax law for the taxa-
46 ble year.

47 (C) To qualify for this modification in relation to a non-farm small
48 business that is a limited liability company, partnership, or New York S
49 corporation, the taxpayer's income attributable to the net business
50 income from its ownership interests in non-farm limited liability compa-
51 nies, partnerships, or New York S corporations must be less than two
52 hundred fifty thousand dollars.

53 (37) Any wages received by an individual as an employee of a business
54 located within a tax-free NY area during the first five years of such
55 business's ten year taxable period specified in subdivision (a) of
56 section thirty-nine of the tax law to the extent included in federal

1 adjusted gross income and allowed under section thirty-nine of the tax
2 law. During the second five years of such business's ten year taxable
3 period, the first two hundred thousand dollars of such wages in the case
4 of a taxpayer filing as a single individual, the first two hundred fifty
5 thousand dollars of such wages in the case of a taxpayer filing as a
6 head of household, and three hundred thousand dollars of such wages in
7 the case of a taxpayer filing a joint return, to the extent included in
8 federal adjusted gross income and allowed under section thirty-nine of
9 the tax law.

10 (38) The amount of any award paid to a volunteer firefighter or volun-
11 teer ambulance worker from a length of service defined contribution plan
12 or defined benefit plan as provided for in articles eleven-A, eleven-AA,
13 eleven-AAA and eleven-AAAA of the general municipal law, to the extent
14 that such award is includable in gross income for federal income tax
15 purposes; provided, however, that such award is not distributed in the
16 form of a lump sum distribution, as defined in subparagraph (D) of para-
17 graph four of subsection (e) of section four hundred two of the internal
18 revenue code and taxed under section six hundred three of the tax law;
19 and provided, further, that such award is not distributed to a taxpayer
20 who has not attained the age of fifty-nine and one-half years.

21 (39) The amount of any gain added back to federal adjusted gross
22 income in a previous taxable year pursuant to paragraph thirty-nine of
23 subdivision (b) of this section that is included in federal gross income
24 for the taxable year.

25 (d) Modification for city fiduciary adjustment. There shall be added
26 to or subtracted from federal adjusted gross income, as the case may be,
27 the taxpayer's share, as beneficiary of an estate or trust, of the city
28 fiduciary adjustment determined under section 11-1719 of this subchap-
29 ter.

30 (e) Modifications of partners and shareholders of S corporations. (1)
31 Partners and shareholders of S corporations which are not New York C
32 corporations. The amounts of modifications required to be made under
33 this section by a partner or by a shareholder of an S corporation, other
34 than an S corporation which is a New York C corporation, which relate to
35 partnership or S corporation items of income, gain, loss or deduction
36 shall be determined under section 11-1717 of this subchapter and, in the
37 case of a partner of a partnership doing an insurance business as
38 members of the New York insurance exchange described in section six
39 thousand two hundred one of the insurance law, under section 11-1717.1
40 of this subchapter.

41 (2) Shareholders of S corporations which are New York C corporations.
42 In the case of a shareholder of an S corporation which is a New York C
43 corporation, the modifications under this section which relate to the
44 corporation's items of income, loss and deduction shall not apply,
45 except for the modifications provided under paragraph nineteen of subdivi-
46 sion (b) and paragraph twenty-two of subdivision (c) of this section.

47 (3) New York S termination year. In the case of a New York S termi-
48 nation year, the amounts of the modifications required under this
49 section which relate to the S corporation's items of income, loss,
50 deduction and reductions for taxes, as described in paragraphs two and
51 three of subsection (f) of section thirteen hundred sixty-six of the
52 internal revenue code, shall be adjusted in the same manner that the S
53 corporation's items are adjusted under subdivision (s) of this section.

54 (f) Husband and wife. If husband and wife determine their federal
55 income tax on a joint return but are required to determine their city
56 income taxes separately, they shall determine their city adjusted gross

1 incomes separately as if their federal adjusted gross incomes had been
2 determined separately.

3 (g) Optional modifications. Subject to the conditions provided in
4 paragraphs three and four of this subdivision, at the election of the
5 taxpayer there shall also be subtracted from federal adjusted gross
6 income either or both of the items set forth in paragraphs one and two
7 of this subdivision, except that only one of such items shall be
8 subtracted with respect to any one item of property, and except that a
9 subtraction of the item set forth in such paragraph two may not be taken
10 with respect to taxable years commencing on or after January first,
11 nineteen hundred eighty-nine.

12 (1) Depreciation with respect to any property such as described in
13 paragraph three or four of this subdivision, and subject to the condi-
14 tions provided therein, not exceeding twice the depreciation allowed
15 with respect to the same property for federal income tax purposes. Such
16 modification shall be allowed only upon condition that any depreciation
17 or amortization allowed with respect to the same property in determining
18 federal adjusted gross income shall be added to federal adjusted gross
19 income pursuant to paragraph six of subdivision (b) of this section.
20 The total of all deductions allowed pursuant to this paragraph in any
21 taxable year or years with respect to any property described in para-
22 graph three of this subdivision shall not exceed its cost or other basis
23 and, with respect to property described in paragraph four of this subdi-
24 vision, which is used in a business carried on both within and without
25 the state shall not exceed its cost or other basis multiplied by a
26 percentage of the excess of the taxpayer's business income over its
27 business deductions allocated to this state for the first year such
28 depreciation is deducted. Such percentage shall be determined by appor-
29 tionment and allocation under regulations of the tax commission.

30 (2) Expenditures paid or incurred during the taxable year for the
31 construction, reconstruction, erection or acquisition of any property
32 such as described in paragraph three or four of this subdivision, and
33 subject to the conditions provided therein, which is used or to be used
34 for purposes of research and development in the experimental or labora-
35 tory sense. Such purposes shall not be deemed to include the ordinary
36 testing or inspection of materials or products for quality control,
37 efficiency surveys, management studies, consumer surveys, advertising,
38 promotions or research in connection with literary, historical or simi-
39 lar projects. Such modification shall be allowed only on condition
40 that, with respect to property described in paragraph four of this
41 subdivision, which is used in a business carried on both within and
42 without the state the deduction shall not exceed the expenditures multi-
43 plied by a percentage of the excess of the taxpayer's business income
44 over its business deductions allocated to this state for the first year
45 such expenditures are deducted. Such percentage shall be determined by
46 apportionment and allocation under regulations of the tax commission,
47 and for the taxable year and all succeeding taxable years, any
48 deductions allowed for federal income tax purposes on account of such
49 expenditures or on account of depreciation of the same property, except
50 to the extent that its basis may be attributable to factors other than
51 such expenditures, shall be added to federal adjusted gross income
52 pursuant to paragraph six of subdivision (b) of this section, or in case
53 a modification is allowable pursuant to this paragraph for only a part
54 of such expenditures, on condition that a proportionate part of any such
55 deductions allowed for federal income tax purposes be added to federal
56 adjusted gross income. With respect to property which is used or to be

1 used for research and development only in part, or during only part of
2 its useful life, the modification allowable pursuant to this paragraph
3 shall be limited to a proportionate part of the expenditures relating
4 thereto. If a modification shall have been allowed pursuant to this
5 paragraph for all or part of such expenditures with respect to any prop-
6 erty, and such property is used for purposes other than research and
7 development to a greater extent than originally reported, the taxpayer
8 shall report such use in his or her return for the first taxable year
9 during which it occurs, and the tax commission may recompute the tax for
10 the year or years for which such deduction was allowed, and may assess
11 any additional tax resulting from such recomputation within the time
12 fixed by subdivision (c) of section 11-1783 of this chapter.

13 (3) For purposes of this paragraph, such modifications shall be
14 allowed only with respect to tangible property which is depreciable
15 pursuant to section one hundred sixty-seven of the internal revenue
16 code, having a situs in this state and used in the taxpayer's trade or
17 business: (A) constructed, reconstructed or erected after December thir-
18 ty-first, nineteen hundred sixty-three, pursuant to a contract which
19 was, on or before December thirty-first, nineteen hundred sixty-seven,
20 and at all times thereafter, binding on the taxpayer or, property, the
21 physical construction, reconstruction or erection of which began on or
22 before December thirty-first, nineteen hundred sixty-seven or which
23 began after such date pursuant to an order placed on or before December
24 thirty-first, nineteen hundred sixty-seven, and then only with respect
25 to that portion of the basis thereof or the expenditures relating there-
26 to which is properly attributable to such construction, reconstruction
27 or erection after December thirty-first, nineteen hundred sixty-three,
28 or (B) acquired after December thirty-first, nineteen hundred sixty-
29 three, pursuant to a contract which was, on or before December thirty-
30 first, nineteen hundred sixty-seven, and at all times thereafter, bind-
31 ing on the taxpayer or pursuant to an order placed on or before December
32 thirty-first, nineteen hundred sixty-seven, by purchase as defined in
33 subsection (d) of section one hundred seventy-nine of the internal
34 revenue code, if the original use of such property commenced with the
35 taxpayer, commenced in this state and commenced after December thirty-
36 first, nineteen hundred sixty-three, or (C) acquired, constructed,
37 reconstructed, or erected subsequent to December thirty-first, nineteen
38 hundred sixty-seven, if such acquisition, construction, reconstruction
39 or erection is pursuant to a plan of the taxpayer which was in existence
40 December thirty-first, nineteen hundred sixty-seven and not thereafter
41 substantially modified, and such acquisition, construction, recon-
42 struction or erection would qualify under the rules in paragraph four,
43 five or six of subdivision (h) of section forty-eight of the internal
44 revenue code provided all references in such paragraphs four, five and
45 six to the dates October nine, nineteen hundred sixty-six, and October
46 ten, nineteen hundred sixty-six, shall be read as December thirty-first,
47 nineteen hundred sixty-seven. A taxpayer shall be allowed a deduction
48 under clause (A), (B) or (C) of this paragraph only if the tangible
49 property shall be delivered or the construction, reconstruction or
50 erection shall be completed on or before December thirty-first, nineteen
51 hundred sixty-nine, except in the case of tangible property which is
52 acquired, constructed, reconstructed or erected pursuant to a contract
53 which was, on or before December thirty-first, nineteen hundred sixty-
54 seven, and at all times thereafter, binding on the taxpayer. However,
55 for any taxable year beginning on or after January first, nineteen
56 hundred sixty-eight, a taxpayer shall not be allowed a modification

1 under paragraph one of this subdivision with respect to tangible
2 personal property leased to any other person or corporation, provided,
3 any contract or agreement to lease or rent or for a license to use such
4 property shall be considered a lease. With respect to property which a
5 taxpayer uses for purposes other than leasing for part of a taxable year
6 and leases for a part of a taxable year, a modification under paragraph
7 one of this subdivision shall be allowed in proportion to the part of
8 the year such property is used by the taxpayer.

9 (4) For purposes of this paragraph, such modifications shall be
10 allowed only with respect to tangible property which is depreciable
11 pursuant to section one hundred sixty-seven of the internal revenue
12 code, having a situs in this state and used in the taxpayer's trade or
13 business. The modifications provided for in paragraph one of this
14 subdivision shall be allowed only with respect to tangible property
15 which is: (A) constructed, reconstructed or erected after December thir-
16 ty-first, nineteen hundred sixty-seven, pursuant to a contract which
17 was, on or before December thirty-first, nineteen hundred sixty-eight,
18 and at all times thereafter, binding on the taxpayer or, property, the
19 physical construction, reconstruction or erection of which began on or
20 before December thirty-first, nineteen hundred sixty-eight or which
21 began after such date pursuant to an order placed on or before December
22 thirty-first, nineteen hundred sixty-eight, and then only with respect
23 to that portion of the basis thereof or the expenditures relating there-
24 to which is properly attributable to such construction, reconstruction
25 or erection after December thirty-first, nineteen hundred sixty-three,
26 or (B) acquired after December thirty-first, nineteen hundred sixty-sev-
27 en, pursuant to a contract which was, on or before December thirty-
28 first, nineteen hundred sixty-eight, and at all times thereafter, bind-
29 ing on the taxpayer or pursuant to an order placed on or before December
30 thirty-first, nineteen hundred sixty-eight, by purchase as defined in
31 section one hundred seventy-nine (d) of the internal revenue code, if
32 the original use of such property commenced with the taxpayer, commenced
33 in this state and commenced after December thirty-first, nineteen
34 hundred sixty-seven, or (C) acquired, constructed, reconstructed, or
35 erected subsequent to December thirty-first, nineteen hundred sixty-
36 eight, if such acquisition, construction, reconstruction or erection is
37 pursuant to a plan of the taxpayer which was in existence December thir-
38 ty-first, nineteen hundred sixty-eight, and not thereafter substantially
39 modified, and such acquisition, construction, reconstruction or erection
40 would qualify under the rules in paragraph four, five or six of subdivi-
41 sion (h) of section forty-eight of the internal revenue code provided
42 all references in such paragraphs four, five and six to the dates Octo-
43 ber nine, nineteen hundred sixty-six, and October ten, nineteen hundred
44 sixty-six, shall be read as December thirty-first, nineteen hundred
45 sixty-eight. A taxpayer shall be allowed a deduction under clause (A),
46 (B) or (C) of the preceding sentence of this paragraph only if the
47 tangible property shall be delivered or the construction, reconstruction
48 or erection shall be completed on or before December thirty-first, nine-
49 teen hundred seventy, except in the case of tangible property which is
50 acquired, constructed, reconstructed or erected pursuant to a contract
51 which was, on or before December thirty-first, nineteen hundred sixty-
52 eight, and at all times thereafter binding on the taxpayer. The modifi-
53 cation provided for in paragraph two of this subdivision shall be
54 allowed only with respect to tangible property: (A) the construction,
55 reconstruction or erection of which is completed after December thirty-
56 first, nineteen hundred sixty-seven, and then only with respect to that

1 portion of the basis thereof or the expenditures relating thereto which
2 is properly attributable to such construction, reconstruction or
3 erection after December thirty-first, nineteen hundred sixty-three, or
4 (B) acquired after December thirty-first, nineteen hundred sixty-seven,
5 by purchase as defined in section one hundred seventy-nine (d) of the
6 internal revenue code, if the original use of such property commenced
7 with the taxpayer, commenced in this state and commenced after December
8 thirty-first, nineteen hundred sixty-three. Provided, however, a
9 modification under paragraph one of this subdivision shall be allowed
10 with respect to property described in this paragraph only on condition
11 that such property shall be principally used by the taxpayer in the
12 production of goods by manufacturing; processing; assembling; refining;
13 mining; extracting; farming; agriculture; horticulture; floriculture;
14 viticulture; or commercial fishing. Manufacturing shall mean the proc-
15 ess of working raw materials into wares suitable for use or which gives
16 new shapes, new qualities or new combinations to matter which already
17 has gone through some artificial process by the use of machinery, tools,
18 appliances and other similar equipment. Property used in the production
19 of goods shall include machinery, equipment or other tangible property
20 which is principally used in the repair and service of other machinery,
21 equipment or other tangible property used principally in the production
22 of goods and shall include all facilities used in the manufacturing
23 operation, including storage of material to be used in manufacturing and
24 of the products that are manufactured. At the option of the taxpayer,
25 air and water pollution control facilities which qualify for elective
26 deductions under subdivision (h) of this section may be treated, for
27 purposes of this paragraph, as tangible property principally used in the
28 production of goods by manufacturing; processing; assembling; refining;
29 mining; extracting; farming; agriculture; horticulture; floriculture;
30 viticulture; or commercial fishing, in which event, a deduction shall
31 not be allowed under such subdivision (h). However, for any taxable
32 year beginning on or after January first, nineteen hundred sixty-eight,
33 a taxpayer shall not be allowed a modification under paragraph one of
34 this subdivision with respect to tangible personal property leased to
35 any other person or corporation, provided, any contract or agreement to
36 lease or rent or for a license to use such property shall be considered
37 a lease. With respect to property which a taxpayer uses for purposes
38 other than leasing for part of a taxable year and leases for a part of a
39 taxable year, a modification under paragraph one of this subdivision
40 shall be allowed in proportion to the part of the year such property is
41 used by the taxpayer.

42 (5) If the modifications allowable for any taxable year pursuant to
43 this subdivision exceed the taxpayer's city adjusted gross income,
44 determined without the allowance of such modifications, the excess may
45 be carried over to the following taxable year or years and may be
46 subtracted from federal adjusted gross income for such year or years.

47 (6) In any taxable year when property is sold or otherwise disposed
48 of, with respect to which a modification has been allowed pursuant to
49 paragraph one or two of this subdivision, the basis of such property
50 shall be adjusted to reflect the modifications so allowed, and if the
51 basis as so adjusted is lower than the adjusted basis of the same prop-
52 erty for federal income tax purposes, there shall be added to federal
53 adjusted gross income the amount of the difference between such adjusted
54 bases.

55 (h) Optional modification for waste treatment facility expenditures.
56 For taxable years commencing prior to January first, nineteen hundred

1 eighty-nine, at the election of the taxpayer, there shall also be
2 subtracted from federal adjusted gross income expenditures paid or
3 incurred during the taxable year for the construction, reconstruction,
4 erection or improvement of industrial waste treatment facilities and air
5 pollution control facilities.

6 (1)(A) The term "industrial waste treatment facilities" shall mean
7 facilities for the treatment, neutralization, or stabilization of indus-
8 trial waste, as the term "industrial waste" is defined in section
9 17-0105 of the environmental conservation law, from a point immediately
10 preceding the point of such treatment, neutralization or stabilization
11 to the point of disposal, including the necessary pumping and transmit-
12 ting facilities, but excluding such facilities installed for the primary
13 purpose of salvaging materials which are usable in the manufacturing
14 process or are marketable.

15 (B) The term "air pollution control facilities" shall mean facilities
16 which remove, reduce, or render less noxious air contaminants emitted
17 from an air contamination source, as the terms "air contaminant" and
18 "air contamination source" are defined in section 19-0107 of the envi-
19 ronmental conservation law, from a point immediately preceding the point
20 of such removal, reduction or rendering to the point of discharge of
21 air, meeting emission standards as established by the air pollution
22 control board, but excluding such facilities installed for the primary
23 purpose of salvaging materials which are usable in the manufacturing
24 process or are marketable and excluding those facilities which rely for
25 their efficacy on dilution, dispersion or assimilation of air contam-
26 inants in the ambient air after emission.

27 (2) Such modifications shall be allowed only:

28 (A) with respect to tangible property which is depreciable, pursuant
29 to section one hundred sixty-seven of the internal revenue code, having
30 a situs in this state and used in the taxpayer's trade or business, the
31 construction, reconstruction, erection or improvement of which, in the
32 case of industrial waste treatment facilities, is initiated on or after
33 January first, nineteen hundred sixty-five, or which, in the case of air
34 pollution control facilities, is initiated on or after January first,
35 nineteen hundred sixty-six, and

36 (B) on condition that such facilities have been certified by the
37 commissioner of environmental conservation or his or her designated
38 representative, in the same manner as provided for in section 17-0707 or
39 19-0309 of the environmental conservation law, as applicable, as comply-
40 ing with the provisions of such environmental conservation law, the
41 state sanitary code and regulations, permits or orders promulgated
42 pursuant thereto, and

43 (C) on condition that for the taxable year and all succeeding taxable
44 years, any deductions allowed for federal income tax purposes for such
45 expenditures or for depreciation or amortization of the same property,
46 except to the extent that its basis may be attributable to factors other
47 than such expenditures, be added to federal adjusted gross income pursu-
48 ant to paragraph five of subdivision (b) of this section, or in case a
49 modification is allowable pursuant to this paragraph for only a part of
50 such expenditures, on condition that a proportionate amount of any such
51 deductions allowed for federal income tax purposes be added to federal
52 adjusted gross income, and

53 (D) where the election provided for in subdivision (g) of this
54 section has not been exercised in respect to the same property.

55 (3)(A) If expenditures in respect to an industrial waste treatment
56 facility or an air pollution control facility have been allowed as a

1 modification as provided herein and if within ten years from the end of
2 the taxable year in which such modification was allowed such property or
3 any part thereof is used for the primary purpose of salvaging materials
4 which are usable in the manufacturing process or are marketable, the
5 taxpayer shall report such change of use in its return for the first
6 taxable year during which it occurs, and the tax commission may recom-
7 pute the tax for the year or years for which such modification was
8 allowed, and may assess any additional tax resulting from such recompu-
9 tation within the time fixed by paragraph eight of subdivision (c) of
10 section 11-1783 of this chapter.

11 (B) If a modification is allowed as herein provided for expenditures
12 paid or incurred during any taxable year on the basis of a temporary
13 certificate of compliance issued pursuant to the environmental conserva-
14 tion law, and if the taxpayer fails to obtain a permanent certificate of
15 compliance upon completion of the facilities with respect to which such
16 temporary certificate was issued, the taxpayer shall report such failure
17 in its report for the taxable year during which such facilities are
18 completed, and the tax commission may recompute the tax for the year or
19 years for which such modification was allowed, and may assess any addi-
20 tional tax resulting from such recomputation within the time fixed by
21 paragraph eight of subdivision (c) of section 11-1783 of this chapter.

22 (C) If a modification is allowed as herein provided for expenditures
23 paid or incurred during any taxable year in respect to an air pollution
24 control facility on the basis of a certificate of compliance issued
25 pursuant to the environmental conservation law and the certificate is
26 revoked pursuant to section 19-0309 of the environmental conservation
27 law, the tax commission may recompute the tax for the year or years for
28 which the facility is not or was not in compliance with the applicable
29 provisions of the environmental conservation law, the state sanitary
30 code or codes, rules, regulations, permits or orders issued pursuant
31 thereto, and for which a modification was allowed, and may assess any
32 additional tax resulting from such recomputation within the time fixed
33 by paragraph eight of subdivision (c) of section 11-1783 of this chap-
34 ter.

35 (4) In any taxable year when property is sold or otherwise disposed
36 of, with respect to which a modification has been allowed pursuant to
37 this paragraph, such modification shall be disregarded in computing gain
38 or loss, and the gain or loss on the sale or other disposition of such
39 property shall be the gain or loss entering into the computation of
40 federal adjusted gross income for such taxable year.

41 (i) In the case of mines, oil and gas wells and other natural depos-
42 its, any allowance for percentage depletion pursuant to section six
43 hundred thirteen or section six hundred thirteen-A of the internal
44 revenue code, shall be added to federal adjusted gross income. However,
45 with respect to the property as to which such addition to federal
46 adjusted gross income is required, an allowance for depletion shall be
47 subtracted from federal adjusted gross income in the amount that would
48 be deductible under section six hundred eleven of such code if the
49 deduction for an allowance for depletion were computed without reference
50 to such section six hundred thirteen or section six hundred thirteen-A.
51 With respect to the computation of depletion pursuant to this subdivi-
52 sion, the basis for such computation shall be the basis for state income
53 tax purposes provided for in subsection (i) of section six hundred
54 twelve of the tax law. The portion of any gain from the sale or other
55 disposition of such property having a higher adjusted basis for city
56 income tax purposes than for federal income tax purposes, that does not

1 exceed such difference in basis, shall be subtracted from federal
 2 adjusted gross income.

3 (j) Modification for nonpublic school tuition. (1) General. An indi-
 4 vidual shall be entitled to subtract from his or her federal adjusted
 5 gross income an amount shown in the table set forth in this paragraph
 6 for his or her city adjusted gross income for the taxable year, computed
 7 without the benefit of this modification, multiplied by the number of
 8 his or her dependents, not exceeding three, attending a nonpublic school
 9 on a full-time basis for at least four months during the regular school
 10 year for the education of such dependent in grades one through twelve,
 11 provided such individual is allowed an exemption under section 11-1716
 12 of this chapter for such dependent. Provided, further, that the modifi-
 13 cation under this paragraph may be taken only if such individual has
 14 paid at least fifty dollars for each such dependent in tuition to such
 15 nonpublic school for such education of such dependent. No taxpayer
 16 shall be entitled to the modification provided for in this paragraph if
 17 he or she claims a tuition reimbursement payment pursuant to article
 18 twelve-A of the education law.

19 If city adjusted	The amount allowable
20 gross income is:	for each dependent is:
21 Less than \$9,000	\$1,000
22 9,000 -- 10,999	850
23 11,000 -- 12,999	700
24 13,000 -- 14,999	550
25 15,000 -- 16,999	400
26 17,000 -- 18,999	250
27 19,000 -- 20,999	150
28 21,000 -- 22,999	125
29 23,000 -- 24,999	100
30 25,000 and over	-0-

31 (2) Husband and wife. In determining the applicable city adjusted
 32 gross income of a husband and wife for purposes of the table set forth
 33 in paragraph one of this subdivision, the city adjusted gross income of
 34 a husband and wife shall be the aggregate of their city adjusted gross
 35 incomes for the taxable year, determined without the benefit of the
 36 modification provided for in this subdivision, and the number of depen-
 37 dents with respect to which this modification may be claimed shall be no
 38 more than three in the aggregate.

39 (3) Definitions. (A) "Tuition", as used in this subdivision, shall
 40 mean the amount actually paid during the taxable year by the taxpayer
 41 for the enrollment of a dependent during the regular school year at a
 42 nonpublic school.

43 (B) "Nonpublic school", as used in this subdivision, shall mean any
 44 non-profit elementary or secondary school in the state of New York,
 45 other than a public school, which: (i) is providing instruction in
 46 accordance with article seventeen and section thirty-two hundred four of
 47 the education law, (ii) has not been found to be in violation of title
 48 VI of the civil rights act of nineteen hundred sixty-four, 78 Stat. 252,
 49 42 U.S.C. § 2000(d) and (iii) which is entitled to a tax exemption under
 50 sections five hundred one (a) and five hundred one (c) (3) of the feder-
 51 al internal revenue code of nineteen hundred fifty-four, as amended.
 52 The commissioner of education shall furnish to the tax commission by
 53 February first of each year, a certified list of nonpublic schools which
 54 comply with clause (i) of this subparagraph for the preceding calendar

1 year and shall provide such other assistance with respect to whether
2 nonpublic schools come within clause (i) as the tax commission may
3 require.

4 (C) "Regular school year", as used in this subdivision, shall mean the
5 months of the taxable year exclusive of July and August.

6 (4) Additional information. Any claim for a modification under this
7 subdivision shall be accompanied by such information as the tax commis-
8 sion may require.

9 (k) Modification for contributions to a qualified higher education
10 fund. (1) A taxpayer may subtract from his or her federal adjusted
11 gross income amounts which during the taxable year are contributed by
12 him or her to a qualified higher education fund, as defined in paragraph
13 three of this subdivision, established by him or her, limited to the
14 product of seven hundred fifty dollars and the number of eligible bene-
15 ficiaries, as defined in subparagraph (C) of paragraph three of this
16 subdivision, as of the first or last day of the taxable year, whichever
17 yields the higher limit. Provided, however, that a taxpayer whose taxa-
18 ble year began on January first, nineteen hundred seventy-eight may
19 subtract from his or her federal adjusted gross income for such taxable
20 year, amounts contributed by him or her to a qualified higher education
21 fund during the fifteen month period beginning January first, nineteen
22 hundred seventy-eight and ending April fifteenth, nineteen hundred
23 seventy-nine. Contributions to a qualified higher education fund made
24 during the period beginning January first, nineteen hundred seventy-nine
25 and ending April fifteenth, nineteen hundred seventy-nine and subtracted
26 from a taxpayer's federal adjusted gross income for the taxable year
27 beginning January first, nineteen hundred seventy-eight shall be deemed
28 to have been made during such taxable year. However, such number of
29 eligible beneficiaries shall not include any individual who was a
30 student at an institution of higher education during the previous taxa-
31 ble year. For purposes of this paragraph, the term "student" shall have
32 the same meaning as that ascribed to it by paragraph four of subsection
33 (e) of section one hundred fifty-one of the internal revenue code,
34 except that the reference therein to "5 calendar months" shall be deemed
35 to be a reference to "3 calendar months."

36 (2) A taxpayer who establishes a qualified higher education fund may
37 subtract from his or her federal adjusted gross income amounts included
38 in gross income for federal income tax purposes by reason of any income
39 realized by the fund or because of any payment by the fund to, or on
40 behalf of, an eligible beneficiary for the purpose specified in clause
41 (i) of subparagraph (A) of paragraph three of this subdivision.

42 (3) For purposes of this subdivision, a qualified higher education
43 fund is a fund established pursuant to a written plan described in
44 subparagraph (A) of this paragraph, but only if the fund meets the
45 requirements of subparagraph (B) of this paragraph.

46 (A) For purposes of this subdivision a "plan" means a plan estab-
47 lished:

48 (i) solely for the purpose of defraying costs associated with attend-
49 ance subsequent to graduation or separation from secondary school at an
50 institution of higher education, as defined in subparagraph (F) of this
51 paragraph, of one or more eligible beneficiaries, as defined in subpara-
52 graph (C) of this paragraph, such costs to include: (I) applicable
53 tuition and fees, exclusive of fees levied as a penalty for laboratory
54 breakage, dormitory damage and similar fees, (II) room and board as
55 charged by the institution pursuant to a contract entered into by the
56 institution and a student or, if no such contract is entered into, an

1 amount not exceeding one thousand five hundred dollars per year, which
2 amount shall include any expenses of transportation, and (III) books,
3 supplies and equipment,

4 (ii) which provides that no distribution shall be made by the fund,
5 except upon termination thereof, other than to, or on behalf of, eligi-
6 ble beneficiaries for the purpose specified in clause (i) of this
7 subparagraph,

8 (iii) which provides that upon termination of the fund all assets of
9 the fund shall be distributed to the creator of the fund, to his or her
10 estate or to a trust established for the purpose of making contributions
11 to the fund, and

12 (iv) which prohibits contributions to the fund in excess of amounts
13 which may be subtracted from federal adjusted gross income under para-
14 graph one of this subdivision.

15 (B) A fund meets the requirements of this subparagraph only if:

16 (i) it constitutes a custodial account, the assets of which are held
17 by a bank, as defined in paragraph one of subsection (d) of section four
18 hundred one of the internal revenue code, an insurance company qualified
19 to do business in this state, or another person who demonstrates, to the
20 satisfaction of the tax commission, that the manner in which he or she
21 will hold the assets will be consistent with the requirements of this
22 subdivision, or

23 (ii) it is a trust.

24 In the case of a trust referred to in clause (ii) of this subpara-
25 graph, the assets may be held by a bank or other person who demonstrates
26 to the satisfaction of the tax commission that the manner in which he or
27 she will administer the trust will be consistent with the requirements
28 of this subdivision. Such a trust shall not be disqualified under this
29 subparagraph merely because a person other than the trustee so adminis-
30 tering the trust may be granted, under the trust instrument, the power
31 to control the investment of the trust funds either by directing invest-
32 ments, including reinvestments, disposals and exchanges, or by disap-
33 proving proposed investments, including reinvestments, disposals and
34 exchanges. Such a trust may use annuity, endowment or life insurance
35 contracts of a life insurance company exclusively as the funding media
36 of the trust, if so provided by regulations of the state tax commis-
37 sion, and if the life insurance company supplies annually such informa-
38 tion about trust transactions as the tax commission shall by regulations
39 prescribe. For purposes of this subdivision, the term "bank" shall have
40 the same meaning ascribed to it by the last sentence of paragraph one of
41 subsection (d) of section four hundred one of the internal revenue code.

42 (C) For purposes of this subdivision, the term "eligible beneficiary"
43 means a person:

44 (i) having a relationship to the creator of the fund specified in
45 paragraphs one, two, three or six of subsection (a) of section one
46 hundred fifty-two of the internal revenue code,

47 (ii) who is a dependent of the creator of the fund pursuant to section
48 one hundred fifty-two of the internal revenue code, or is a member of
49 the armed forces of the United States on active duty, is a volunteer in
50 the peace corps, or is a full-time volunteer under the domestic volun-
51 teer service act of 1973, and

52 (iii) who either: (I) has not attained the age of twenty-one, except
53 that where his or her twenty-first birthday falls within a taxable year
54 with respect to which a modification based on contributions to a quali-
55 fied higher education fund with respect to which he or she is a benefi-
56 ciary is allowed to a taxpayer, for purposes of this subclass such

1 beneficiary shall be deemed not to have attained the age of twenty-one
2 until the day next succeeding the last day of such taxable year, or (II)
3 is a student, as defined in paragraph four of subsection (e) of section
4 one hundred fifty-one of the internal revenue code or, for a period of
5 up to four years, is a member of the armed forces of the United States
6 on active duty, is a volunteer in the peace corps, or is a full-time
7 volunteer under the domestic volunteer service act of 1973. Where the
8 determination of an individual's status as a student is required for a
9 purpose other than determining the permissibility of a modification
10 under this subdivision, an individual shall be deemed not to be a
11 student as of the last day of any calendar year during which he or she
12 fails to satisfy the requirements of subparagraphs (A) and (B) of para-
13 graph four of subsection (e) of section one hundred fifty-one of the
14 internal revenue code during each of five calendar months during such
15 calendar year.

16 (D) A person who meets the requirements of subparagraph (C) of this
17 paragraph shall cease to be an eligible beneficiary:

18 (i) if payments by the fund to him or her, or on his or her behalf,
19 for the purpose specified in clause (i) of subparagraph (A) of this
20 paragraph do not commence within five years after the date on which such
21 person was graduated or separated from secondary school, excluding any
22 period of up to four years during which an otherwise eligible benefi-
23 ciary was a member of the armed forces of the United States on active
24 duty, a volunteer in the peace corps, or in service as a full-time
25 volunteer under the domestic volunteer service act of 1973, or

26 (ii) after the expiration of ten years from the date of such gradu-
27 ation or separation, excluding any period of up to four years during
28 which an otherwise eligible beneficiary was a member of the armed forces
29 of the United States on active duty, a volunteer in the peace corps, or
30 in service as a full-time volunteer under the domestic volunteer service
31 act of 1973, or

32 (iii) if within six months after either his or her eighteenth birthday
33 or the date on which such fund is established, whichever is later, he or
34 she does not file with the tax commission, on a form and in the manner
35 prescribed by regulation, a notice of consent relating to the tax treat-
36 ment of payments from a qualified higher education fund imposed under
37 paragraph fourteen of subdivision (b) of this section.

38 (E) Where a fund is continued subsequent to its creator's death, an
39 individual shall not cease to be an eligible beneficiary by reason of
40 failure to fulfill the requirement set forth in clause (ii) of subpara-
41 graph (C) of this paragraph.

42 (F) For purposes of this subdivision, the term "institution of higher
43 education" means an educational organization described in clause (ii) of
44 subparagraph (A) of paragraph one of subsection (b) of section one
45 hundred seventy of the internal revenue code,

46 (i) which provides an educational program for which it awards an asso-
47 ciate, baccalaureate or higher degree or provides a program which is
48 acceptable for full credit toward such a degree,

49 (ii) contributions to or for the use of which constitute charitable
50 contributions within the meaning of section one hundred seventy (c) of
51 the internal revenue code,

52 (iii) which is legally authorized to provide and does provide a
53 program of postsecondary education, and

54 (iv) which is accredited by a nationally recognized accrediting agency
55 or association listed by the United States commissioner of education.

56 (4) A qualified higher education fund shall terminate:

1 (A) if a contribution is made to the fund in excess of the amount
2 allowable as a subtraction from federal adjusted gross income under
3 paragraph one of this subdivision,

4 (B) if a distribution is made by the fund other than to, or on behalf
5 of, an eligible beneficiary for the purpose specified in clause (i) of
6 subparagraph (A) of paragraph three of this subdivision,

7 (C) if the plan ceases to have an eligible beneficiary, or

8 (D) in the absence of a testamentary disposition or inter vivos trust
9 provision to the contrary, upon the death of the creator of the fund, or

10 (E) if the fund is otherwise terminated under the tax law.

11 (5) The tax commission may by regulation require the filing of a
12 report annually by the creator of a qualified higher education fund or
13 other person designated by such regulation, such report to set forth the
14 amounts contributed to a qualified higher education fund, as well as the
15 amount, purpose and beneficiary of each disbursement made therefrom.
16 The tax commission may also by regulation require written notification
17 annually to each beneficiary of such disbursements made on his or her
18 behalf.

19 (6) The provisions of subparagraph (B) of paragraph four of this
20 subdivision shall not apply in the case of a rollover. A rollover occurs
21 where the creator of a qualified higher education fund withdraws all of
22 the assets of such fund and not later than sixty days subsequent to such
23 withdrawal establishes a new qualified higher education fund and depos-
24 its therein an amount equal to the value of the assets so withdrawn.
25 Such deposit shall not constitute a contribution within the meaning of
26 this subdivision. This paragraph shall not apply if at any time during
27 the one year period ending on the date of such withdrawal from the qual-
28 ified higher education fund the creator had made a similar withdrawal
29 from another qualified higher education fund, both such funds having at
30 least one beneficiary in common, where such prior withdrawal was
31 followed by the establishment of a new qualified higher education fund
32 such that a rollover was effected pursuant to the provisions of this
33 paragraph.

34 (1) Qualified higher education fund. (1) Upon termination of a
35 qualified higher education fund under subparagraph (A), (B) or (E) of
36 paragraph four of subdivision (k) of this section, a taxpayer to whom
37 the assets of the fund are required to be distributed pursuant to clause
38 (iii) of subparagraph (A) of paragraph three of subdivision (k) of this
39 section shall add to his or her federal adjusted gross income for the
40 taxable year during which the terminating event occurs an amount equal
41 to one hundred ten per centum of an amount which bears the same ratio to
42 the value of the assets of such fund immediately prior to termination as
43 the total contributions made to such fund by a city resident individual,
44 estate or trust bears to the total contributions made to such fund. For
45 purposes of this subdivision the value of the assets of the fund imme-
46 diately prior to termination shall include the value of any distrib-
47 utions made to or on behalf of an eligible beneficiary who subsequently
48 ceased to be an eligible beneficiary pursuant to clause (iii) of subpar-
49 agraph (D) of paragraph three of subdivision (k) of this section.

50 (2) Payments made to or on behalf of an eligible beneficiary from a
51 qualified higher education fund for the purpose specified in clause (i)
52 of subparagraph (A) of paragraph three of subdivision (k) of this
53 section shall be added to the federal adjusted gross income of the indi-
54 vidual taxpayer to whom or on whose behalf the payment is made, in
55 accordance with the following. For the first taxable year of such
56 taxpayer in which no payment described in this paragraph is made with

1 respect to him or her and during which such taxpayer is not a student,
2 as defined in paragraph four of subsection (e) of section one hundred
3 fifty-one of the internal revenue code, treating the terms "individual"
4 and "taxpayer" therein as referring to such taxpayer, or, for a period
5 of up to four years, a member of the armed forces of the United States
6 on active duty, a volunteer in the peace corps, or a full-time volunteer
7 under the domestic volunteer service act of 1973, which taxable year
8 commences after the last day of the first calendar year in which such a
9 payment is made, one-fifth of the aggregate of all such payments there-
10 tofore made, such aggregate amount pro-rated, pursuant to regulations
11 promulgated by the tax commission, according to the portion of the total
12 contributions made to the fund prior to the first day of such taxable
13 year which constitute amounts contributed by a city resident individual,
14 estate or trust, shall be added to the federal adjusted gross income of
15 such taxpayer for such taxable year and for each of the four succeeding
16 taxable years in which no such payment is made and in which such taxpay-
17 er is not a student, as defined above, or, for a period of up to four
18 years, a member of the armed forces of the United States on active duty,
19 a volunteer in the peace corps, or a full-time volunteer under the
20 domestic volunteer service act of 1973. If in a taxable year subsequent
21 to a taxable year in which such addition to federal adjusted gross
22 income is required, a payment described in this paragraph is made, one-
23 fifth of the amount of such payment, pro-rated, pursuant to regulations
24 promulgated by the tax commission, according to the portion of the total
25 contributions made to the fund prior to the first day of such taxable
26 year which constitute amounts contributed by a city resident individual,
27 estate or trust, shall be added to the federal adjusted gross income of
28 such taxpayer for each of the five immediately succeeding taxable years
29 in which no such payment is made and in which such taxpayer is not a
30 student, as defined above, or, for a period of up to four years, a
31 member of the armed forces of the United States on active duty, a volun-
32 teer in the peace corps, or a full-time volunteer under the domestic
33 volunteer service act of 1973.

34 (n) Where gain or loss is recognized for federal income tax purposes
35 upon the disposition of stock or indebtedness of a corporation electing
36 under subchapter s of chapter one of the internal revenue code:

37 (1) There shall be added to federal adjusted gross income the amount
38 of increase in basis with respect to such stock or indebtedness pursuant
39 to subsection (a) of section thirteen hundred seventy-six of the inter-
40 nal revenue code as such section was in effect for taxable years begin-
41 ning before January first, nineteen hundred eighty-three and subpara-
42 graphs (A) and (B) of paragraph one of subsection (a) of section
43 thirteen hundred sixty-seven of such code, for each taxable year of the
44 corporation beginning, in the case of a corporation taxable under arti-
45 cle nine-A of the tax law, after December thirty-first, nineteen hundred
46 eighty, for which the election provided for in subsection (a) of section
47 six hundred sixty of the tax law was not in effect, and

48 (2) There shall be subtracted from federal adjusted gross income:

49 (A) the amount of reduction in basis with respect to such stock or
50 indebtedness pursuant to subsection (b) of section thirteen hundred
51 seventy-six of the internal revenue code as such section was in effect
52 for taxable years beginning before January first, nineteen hundred
53 eighty-three and subparagraphs (B) and (C) of paragraph two of
54 subsection (a) of section thirteen hundred sixty-seven of such code, for
55 each taxable year of the corporation beginning, in the case of a corpo-
56 ration taxable under article nine-A of the tax law, after December thir-

1 ty-first, nineteen hundred eighty, for which the election provided for
2 in subsection (a) of section six hundred sixty of the tax law was not in
3 effect and

4 (B) the amount of any modifications to federal gross income with
5 respect to such stock pursuant to paragraph twenty-one of subdivision
6 (b) of this section.

7 (o) Modifications for new business investment gains and certain new
8 business investments.

9 1. For purposes of this subdivision, the following definitions shall
10 apply:

11 (A) "New business investment gain" means gain from the sale of a new
12 business investment issued to the taxpayer before January first, nine-
13 teen hundred eighty-eight, if:

14 (i) such new business investment is, in the hands of the person sell-
15 ing the same, whether or not the taxpayer, a capital asset as defined in
16 section twelve hundred twenty-one of the internal revenue code of nine-
17 teen hundred fifty-four, as amended, and

18 (ii) such new business investment was held by such person for the
19 period specified in paragraph two of this subdivision.

20 (B) "New business" means a corporation or partnership organized or
21 formed under the laws of any state which:

22 (i) adopts a plan on or after July first, nineteen hundred eighty-one
23 and before January first, nineteen hundred eighty-eight, to conduct a
24 new business within the meaning and intent of this section and to issue
25 new business investments, as defined in this subdivision, and

26 (ii) is, at the date of adoption of such plan, subject to taxation,
27 whether or not any amount is owing, under section one hundred eighty-
28 three or one hundred eighty-four of article nine of the tax law, or
29 under article nine-A of the tax law or article twenty-three of the tax
30 law, or would have been subject to tax under article twenty-three of
31 such law, as such article was in effect on January first, nineteen
32 hundred eighty, if such article were still in effect, and the first
33 taxable period for which such new business became subject to such taxa-
34 tion commenced on or after July first, nineteen hundred eighty-one and
35 before January first, nineteen hundred eighty-eight, and such first
36 taxable period includes the date of adoption of such plan; if not so
37 subject to taxation, the new business must be subject to taxation under
38 such sections or articles for the first time within one year from the
39 date of adoption of such plan, and

40 (iii) is conducted, or will be conducted, as evidenced by such plan,
41 whereby at least ninety percent of the assets, valued at original cost,
42 are located and employed in this state and eighty percent of the employ-
43 ees, in addition, in the case of a partnership, excluding partners, are
44 principally employed in this state during each taxable period, or part
45 thereof, as required by clause (iv) of this subparagraph, and

46 (iv) within ninety days after adoption of such plan, or, if a return
47 is required, as part of such return, under such article nine, article
48 nine-A or article twenty-three of the tax law, whichever is sooner,
49 shall file a new business certificate with the tax commission attesting
50 to whether it meets, if subject to taxation under such articles, or
51 intends to meet, if not so subject, all of the conditions stated in
52 clauses (i), (ii) and (iii) of this subparagraph within the time set
53 forth therein. Thereafter, during the first four taxable years of such
54 new business, along with, and as part of, any return required under such
55 articles, such new business shall make and file a new business certif-
56 icate for the period covered by such return attesting to whether it has

1 met the conditions specified in this subparagraph during the taxable
2 period covered by such return. If no return is required under such arti-
3 cles, such certificate shall be filed annually on or before the
4 fifteenth day of March which shall cover the twelve consecutive calendar
5 month period ending on the last day of December immediately preceding
6 such March fifteenth. If such new business fails to meet such conditions
7 specified in this subparagraph, it shall, in addition, give notice of
8 this fact, within the time prescribed by the tax commission, to the
9 holders of its "new business investments." The tax commission shall
10 prescribe the form and content of such new business certification and
11 may require a new business to file such certificate for periods, even if
12 no return is filed or required, but for this section, covering up to
13 eight years from the date of adoption of such plan, as in its
14 discretion, it deems the same necessary for the enforcement of this
15 section, and

16 (v) Special rules:

17 (1) For any taxable period, in order to constitute a new business, a
18 business enterprise must have derived more than sixty percent of its
19 aggregate gross receipts from sources other than royalties, rents, divi-
20 dends, interest, annuities and sales or exchanges of stock or securi-
21 ties.

22 (2) A new business does not include: (i) any new business of which
23 twenty-five percent or more of the number of shares of stock that enti-
24 tle the holders thereof to vote for the election of directors or trus-
25 tees is owned, directly or indirectly, by a taxpayer subject to tax
26 under section one hundred eighty-three, one hundred eighty-four, former
27 section one hundred eighty-five or former section one hundred eighty-six
28 of article nine of the tax law, or under article nine-A, or thirty-three
29 of the tax law or (ii) any new business substantially similar in opera-
30 tion and in ownership, directly or indirectly, to a business entity, or
31 entities, taxable, or previously taxable, under such section, such arti-
32 cle, article twenty-three of the tax law or which would have been
33 subject to tax under such article twenty-three, as such article was in
34 effect on January first, nineteen hundred eighty, or the income, or
35 losses, of which is, or was, includible under article twenty-two of such
36 tax law whereby the intent and purpose of this section would be evaded.

37 (C) "New business investment" means and includes the following invest-
38 ments issued before January first, nineteen hundred eighty-eight by a
39 new business pursuant to a plan described in clause (i) of subparagraph
40 (B) of this paragraph for money or other property, other than stock or
41 securities, on or before the expiration of the third taxable year of
42 such new business, excluding any short period immediately preceding such
43 taxable year because the new business was not in existence for an entire
44 taxable year, or forty-two months from the adoption of such plan, which-
45 ever is sooner: (i) original issuance capital stock as part of a new
46 issue, (ii) other original issuance securities of a new issue of a like
47 nature as stocks which are designed as a means of investment and issued
48 for the purpose of financing corporate enterprises and providing for a
49 distribution of rights in such enterprises, (iii) debt obligations such
50 as bonds and debentures for a term of at least one year, whether
51 secured or unsecured, and (iv) certificates and other instruments
52 representing proprietary interests, whether limited or otherwise, in and
53 assumption of general liabilities, whether limited or otherwise, of a
54 partnership enterprise.

1 2. A taxpayer may subtract from his federal adjusted gross income a
 2 portion of an amount constituting a new business investment gain, as
 3 follows:

4	If new business	The modification is equal to the
5	investment held for:	following proportion of the gain
6		includible in federal
7		adjusted gross income:

8 At least four years, but

9 less than five years

twenty-five percent

10 At least five years, but

11 less than six years

fifty percent

12 At least six years

one hundred percent

13 3. Where, within six months of the realization of a new business
 14 investment gain allowable as the basis of a modification under paragraph
 15 two of this subdivision, such modification is equal to less than one
 16 hundred percent of the portion of the gain includible in federal
 17 adjusted gross income and the taxpayer purchases a new business invest-
 18 ment which is then held for a period of at least six months, the taxpay-
 19 er may subtract from his or her federal adjusted gross income ten
 20 percent, but not an amount that will reduce the portion of such gain
 21 included in his or her New York income below zero, of the amount of such
 22 gain where the purchase price of the new business investment is equal to
 23 or greater than the proceeds of the sale giving rise to such gain. Where
 24 the purchase price of the new business investment is less than an amount
 25 equal to the proceeds of such sale, the modification allowable under
 26 this paragraph shall be equal to ten percent of an amount equal to the
 27 product of: (A) the amount of the gain and (B) a fraction the numerator
 28 of which is the purchase price of the new investment and the denominator
 29 of which is an amount equal to the proceeds of such sale. The modifica-
 30 tion allowable under this paragraph may be utilized, at the option of
 31 the taxpayer, with respect to the taxable year in which the new business
 32 investment gain is realized or the year containing the last day of the
 33 six-month retention period described in this paragraph.

34 4. The tax commission may prescribe such rules and regulations as may
 35 be necessary to carry out the purposes of this subdivision.

36 (p) New business investment deferral. For taxable years beginning
 37 before January first, nineteen hundred eighty-eight, at the option of
 38 the taxpayer, there may be subtracted from federal adjusted gross income
 39 a reinvested amount of long-term capital gain realized in a taxable year
 40 from the sale of a capital asset, as such term is defined in section
 41 twelve hundred twenty-one of the internal revenue code, which is not a
 42 new business investment. A reinvested amount of long-term capital gain
 43 shall mean an amount which bears the same ratio to the long-term capital
 44 gain realized from the sale of a capital asset which was includible in
 45 New York adjusted gross income as that portion of the sale proceeds
 46 which is reinvested, within one year from date of sale, in a New York
 47 new business bears to the total sale proceeds. For the purposes of this
 48 subdivision, a New York new business is a business enterprise which: (1)
 49 has been a taxpayer under article nine-A, twenty-two, or thirty-three of
 50 the tax law for no more than three taxable years, including short taxa-
 51 ble years, (2) over fifty percent of the number of shares of stock that
 52 entitle the holders thereof to vote for the election of directors or
 53 trustees is not owned, directly or indirectly, by a taxpayer subject to
 54 tax under section one hundred eighty-three, one hundred eighty-four or
 55 one hundred eighty-five of article nine of the tax law, or under article
 56 nine-A, thirty-two or thirty-three of the tax law, (3) is not substan-

1 tially similar in operation or ownership, directly or indirectly, to a
2 business entity, or entities taxable, or previously taxable, under such
3 sections, such articles, article twenty-three of the tax law or which
4 would have been subject to tax under article twenty-three, as such arti-
5 cle was in effect on January first, nineteen hundred eighty, or the
6 income, or losses, of which is, or was, includible under article twen-
7 ty-two of the tax law whereby the intent and purpose of this subdivision
8 would be evaded, (4) locates and employs at least ninety percent of its
9 assets in the state, (5) employs principally in the state eighty percent
10 of its employees, and (6) derives less than forty percent of its gross
11 income from dividends, interest, royalties, other than mineral, oil, or
12 gas royalties or copyright royalties, annuities and (7) reports at least
13 twenty-five hundred dollars in gross income in any taxable year. The
14 reinvested amount must qualify as a capital asset as defined pursuant to
15 section twelve hundred twenty-one of the internal revenue code and must
16 be retained by the taxpayer for at least twelve months. The modification
17 allowable under this subdivision shall be utilized with respect to the
18 taxable year in which the twelve month retention period ends.

19 (q) An amount deferred under subdivision (p) of this section shall be
20 added to federal adjusted gross income when the reinvestment in the New
21 York new business which qualified a taxpayer for such deferral is sold.

22 (r) In the case of a sale or other disposition of property acquired
23 from a decedent and valued by the executor of the estate of such dece-
24 dent for the purposes of the tax under article twenty-six of the tax law
25 pursuant to paragraph two of subsection (b) of section nine hundred
26 fifty-four of the tax law, where such estate was insufficient to require
27 the filing of a federal estate tax return, the amount necessary to prop-
28 erly reflect the gain or loss from such sale or other disposition which
29 would have been realized under this chapter, had, in the case of clause
30 (i) of this subdivision, a federal estate tax return been filed similar-
31 ly valuing such property pursuant to section two thousand thirty-two of
32 the internal revenue code, or in the case of clause (ii) of this subdivi-
33 sion, pursuant to section two thousand thirty-two-A of such code.

34 (s) New York S termination year. (1) General. In the case of a New
35 York S termination year, the amount of any item of S corporation income,
36 loss and deduction included in the shareholder's federal adjusted gross
37 income and any reductions for taxes, as described in paragraphs two and
38 three of subsection (f) of section thirteen hundred sixty-six of the
39 internal revenue code, shall be adjusted in accordance with the treat-
40 ment provided in paragraph two or three of this subdivision.

41 (2) Pro rata allocation. Unless paragraph three of this subdivision
42 applies, an equal portion of each S corporation item shall be assigned
43 to each day of the S corporation's taxable year for federal income tax
44 purposes. The portion of each such item thereby assigned to the S short
45 year shall be treated as an item of a New York S corporation, and the
46 portion of each such item thereby assigned to the C short year shall be
47 treated as an item of an S corporation which is a New York C corpo-
48 ration.

49 (3) Normal tax accounting. The portion of each S corporation item
50 assigned to the S short year and the C short year shall be determined
51 using normal tax accounting rules if:

52 (A) there is a sale or exchange of fifty percent or more of the stock
53 in such corporation during the New York S termination year or

54 (B) the corporation so elects, as provided in subparagraph (B) of
55 paragraph two of subsection (s) of section six hundred twelve of the tax
56 law.

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

6 (B) Effective rate of tax. "Effective rate of tax" means, as to any
7 city, the maximum statutory rate of tax imposed by the city on or meas-
8 ured by a related member's net income multiplied by the apportionment
9 percentage, if any, applicable to the related member under the laws of
10 said jurisdiction. For purposes of this definition, the effective rate
11 of tax as to any city is zero where the related member's net income tax
12 liability in said city is reported on a combined or consolidated return
13 including both the taxpayer and the related member where the reported
14 transactions between the taxpayer and the related member are eliminated
15 or offset. Also, for purposes of this definition, when computing the
16 effective rate of tax for a city in which a related member's net income
17 is eliminated or offset by a credit or similar adjustment that is
18 dependent upon the related member either maintaining or managing intan-
19 gible property or collecting interest income in that city, the maximum
20 statutory rate of tax imposed by said city shall be decreased to reflect
21 the statutory rate of tax that applies to the related member as effec-
22 tively reduced by such credit or similar adjustment.

23 (C) Royalty payments. Royalty payments are payments directly connected
24 to the acquisition, use, maintenance or management, ownership, sale,
25 exchange, or any other disposition of licenses, trademarks, copyrights,
26 trade names, trade dress, service marks, mask works, trade secrets,
27 patents and any other similar types of intangible assets as determined
28 by the state commissioner of taxation and finance, and include amounts
29 allowable as interest deductions under section one hundred sixty-three
30 of the internal revenue code to the extent such amounts are directly or
31 indirectly for, related to or in connection with the acquisition, use,
32 maintenance or management, ownership, sale, exchange or disposition of
33 such intangible assets.

34 (D) Valid business purpose. A valid business purpose is one or more
35 business purposes, other than the avoidance or reduction of taxation,
36 which alone or in combination constitute the primary motivation for some
37 business activity or transaction, which activity or transaction changes
38 in a meaningful way, apart from tax effects, the economic position of
39 the taxpayer. The economic position of the taxpayer includes an increase
40 in the market share of the taxpayer, or the entry by the taxpayer into
41 new business markets.

42 (2) Royalty expense add backs. (A) For the purpose of computing city
43 adjusted gross income, a taxpayer must add back royalty payments direct-
44 ly or indirectly paid, accrued, or incurred in connection with one or
45 more direct or indirect transactions with one or more related members
46 during the taxable year to the extent deductible in calculating federal
47 taxable income.

48 (B) Exceptions. (i) The adjustment required in this subdivision shall
49 not apply to the portion of the royalty payment that the taxpayer estab-
50 lishes, by clear and convincing evidence of the type and in the form
51 specified by the commissioner of finance, meets all of the following
52 requirements: (I) the related member was subject to tax in this city or
53 another city within the United States or a foreign nation or some combi-
54 nation thereof on a tax base that included the royalty payment paid,
55 accrued or incurred by the taxpayer; (II) the related member during the
56 same taxable year directly or indirectly paid, accrued or incurred such

1 portion to a person that is not a related member; and (III) the trans-
2 action giving rise to the royalty payment between the taxpayer and the
3 related member was undertaken for a valid business purpose.

4 (ii) The adjustment required in this subdivision shall not apply if
5 the taxpayer establishes, by clear and convincing evidence of the type
6 and in the form specified by the commissioner of finance, that: (I) the
7 related member was subject to tax on or measured by its net income in
8 this city or another city within the United States, or some combination
9 thereof; (II) the tax base for said tax included the royalty payment
10 paid, accrued or incurred by the taxpayer; and (III) the aggregate
11 effective rate of tax applied to the related member in those jurisdic-
12 tions is no less than eighty percent of the statutory rate of tax that
13 applied to the taxpayer under section 11-1701 of this chapter for the
14 taxable year.

15 (iii) The adjustment required in this subdivision shall not apply if
16 the taxpayer establishes, by clear and convincing evidence of the type
17 and in the form specified by the commissioner of finance, that: (I) the
18 royalty payment was paid, accrued or incurred to a related member organ-
19 ized under the laws of a country other than the United States; (II) the
20 related member's income from the transaction was subject to a comprehen-
21 sive income tax treaty between such country and the United States; (III)
22 the related member was subject to tax in a foreign nation on a tax base
23 that included the royalty payment paid, accrued or incurred by the
24 taxpayer; (IV) the related member's income from the transaction was
25 taxed in such country at an effective rate of tax at least equal to that
26 imposed by this city; and (V) the royalty payment was paid, accrued or
27 incurred pursuant to a transaction that was undertaken for a valid busi-
28 ness purpose and using terms that reflect an arm's length relationship.

29 (iv) The adjustment required in this subdivision shall not apply if
30 the taxpayer and the commissioner of finance agree in writing to the
31 application or use of alternative adjustments or computations. The
32 commissioner of finance may, in his or her discretion, agree to the
33 application or use of alternative adjustments or computations when he or
34 she concludes that in the absence of such agreement the income of the
35 taxpayer would not be properly reflected.

36 (u) Alimony modifications. (1) In the case of applicable alimony or
37 separate maintenance payments, the following modifications shall apply:

38 (A) There shall be subtracted from federal adjusted gross income any
39 applicable alimony or separate maintenance payments made by the taxpayer
40 during the taxable year.

41 (B) There shall be added to federal adjusted gross income any applica-
42 ble alimony or separate maintenance payments received by the taxpayer
43 during the taxable year.

44 (2) (A) The term "alimony or separate maintenance payments" means
45 payments as defined under section seventy-one of the internal revenue
46 code in effect immediately prior to the enactment of Public Law 115-97.

47 (B) The term "applicable alimony or separate maintenance payments"
48 means payments made under an alimony or separation instrument, as
49 defined in section seventy-one of the internal revenue code in effect
50 immediately prior to the enactment of Public Law 115-97, that was
51 executed after December thirty-first, two thousand eighteen, and any
52 divorce or separation instrument executed on or before such date and
53 modified after such date if the modification expressly provides that the
54 amendments made by this section apply to such modification.

1 (v) Qualified moving expense reimbursement and moving expenses. (1) In
2 the case of applicable qualified moving expense reimbursement and moving
3 expenses, the following modifications shall apply:

4 (A) There shall be subtracted from federal adjusted gross income any
5 applicable qualified moving expense reimbursement received by the
6 taxpayer during the taxable year.

7 (B) There shall be subtracted from federal adjusted gross income any
8 applicable moving expenses paid by the taxpayer during the taxable year.

9 (2) Applicable qualified moving expense reimbursement and moving
10 expenses are those deductions as allowed by paragraph (g) of section one
11 hundred thirty-two and section two hundred seventeen, respectfully, of
12 the internal revenue code immediately prior to the enactment of Public
13 Law 115-97.

14 § 11-1713 City deduction of a resident individual. The city
15 deduction of a city resident individual shall be his or her city stand-
16 ard deduction unless such resident individual elects to deduct his or
17 her city itemized deduction under the conditions set forth in section
18 11-1715 of this chapter.

19 § 11-1714 City standard deduction of a city resident individual. (a)
20 Unmarried individual. For taxable years beginning after nineteen hundred
21 ninety-five, the city standard deduction of a city resident individual
22 who is not married nor the head of a household nor a surviving spouse
23 nor an individual who is claimed as a dependent by another New York
24 state taxpayer shall be seven thousand five hundred dollars; for taxable
25 years beginning in nineteen hundred ninety-five, such standard deduction
26 shall be seven thousand four hundred dollars; for taxable years begin-
27 ning in nineteen hundred ninety-four, such standard deduction shall be
28 six thousand six hundred dollars; and for taxable years beginning after
29 nineteen hundred eighty-nine and before nineteen hundred ninety-four,
30 such standard deduction shall be six thousand dollars.

31 (b) Husband and wife filing jointly and surviving spouse. For taxable
32 years beginning after nineteen hundred ninety-five, the city standard
33 deduction of a husband and wife whose city taxable income is determined
34 jointly or a surviving spouse shall be thirteen thousand dollars; for
35 taxable years beginning in nineteen hundred ninety-five, such standard
36 deduction shall be twelve thousand three hundred fifty dollars; for
37 taxable years beginning in nineteen hundred ninety-four, such standard
38 deduction shall be ten thousand eight hundred dollars; and for taxable
39 years beginning after nineteen hundred eighty-nine and before nineteen
40 hundred ninety-four, such standard deduction shall be nine thousand five
41 hundred dollars.

42 (c) Head of household. For taxable years beginning after nineteen
43 hundred ninety-five, the city standard deduction of an individual who is
44 a head of household shall be ten thousand five hundred dollars; for
45 taxable years beginning in nineteen hundred ninety-five, such standard
46 deduction shall be ten thousand dollars; for taxable years beginning in
47 nineteen hundred ninety-four, such standard deduction shall be eight
48 thousand one hundred fifty dollars; and for taxable years beginning
49 after nineteen hundred eighty-nine and before nineteen hundred ninety-
50 four, such standard deduction shall be seven thousand dollars.

51 (d) Married individuals filing separately. For taxable years beginning
52 after nineteen hundred ninety-five, the city standard deduction of a
53 married individual filing a separate return shall be six thousand five
54 hundred dollars; for taxable years beginning in nineteen hundred nine-
55 ty-five, such standard deduction shall be six thousand one hundred
56 seventy-five dollars; for taxable years beginning in nineteen hundred

1 ninety-four, such standard deduction shall be five thousand four hundred
2 dollars; and for taxable years beginning after nineteen hundred eighty-
3 nine and before nineteen hundred ninety-four, such standard deduction
4 shall be four thousand seven hundred fifty dollars.

5 (e) Standard deduction of a dependent individual. For taxable years
6 beginning after nineteen hundred ninety-five, the city standard
7 deduction of a city resident individual whose federal exemption amount
8 is zero shall be three thousand dollars; for taxable years beginning in
9 nineteen hundred ninety-five, such standard deduction shall be two thou-
10 sand nine hundred dollars; and for taxable years beginning after nine-
11 teen hundred eighty-nine and before nineteen hundred ninety-five, such
12 standard deduction shall be two thousand eight hundred dollars.

13 (f) For taxable years beginning on or after January first, two thou-
14 sand thirteen, the amounts of standard deductions set forth in this
15 section shall be adjusted in the same manner as the amounts of standard
16 deductions set forth in section six hundred fourteen of the tax law.

17 § 11-1715 City itemized deduction of a city resident individual.

18 (a) General. If federal taxable income of a city resident individual
19 is determined by itemizing deductions or claiming the federal standard
20 deduction from his or her federal adjusted gross income, such resident
21 individual may elect to deduct his or her city itemized deduction or
22 claim his or her city standard deduction.

23 The city itemized deduction of a city resident individual means the
24 total amount of his or her deductions from federal adjusted gross income
25 allowed, other than federal deductions for personal exemptions, as
26 provided in the laws of the United States for the taxable year, as such
27 deductions existed immediately prior to the enactment of Public Law
28 115-97 with the modifications specified in this section, except as
29 provided for under subdivision (f) of this section.

30 (b) Husband and wife.

31 (1) A husband and wife, both of whom are required to file returns
32 under this chapter, shall be allowed city itemized deductions only if
33 both elect to take city itemized deductions.

34 (2) The total of the city itemized deductions of a husband and wife
35 whose federal taxable income is determined on a joint return, but whose
36 city taxable incomes are required to be determined separately, shall be
37 divided between them as if their federal taxable incomes had been deter-
38 mined separately.

39 (c) Modifications reducing federal itemized deductions. The total
40 amount of deductions from federal adjusted gross income shall be reduced
41 by the amount of such federal deductions for:

42 (1) state and local general sales taxes as defined in subsection (b)
43 of section one hundred sixty-four of the internal revenue code, to the
44 extent included in federal itemized deductions or income taxes imposed
45 by this city or any other taxing jurisdiction, except city earnings
46 taxes on nonresidents that are imposed upon and paid by taxpayers for
47 taxable years beginning after December thirty-first, nineteen hundred
48 seventy and before January first, two thousand, to the extent that the
49 amount of such tax exceeds the tax computed as if the rates were one-
50 fourth of one percent of wages subject to tax and three-eighths of one
51 percent of net earnings from self-employment subject to tax;

52 (2) interest on indebtedness incurred or continued to purchase or
53 carry obligations or securities the interest on which is exempt from tax
54 under this chapter; and

55 (3) ordinary and necessary expenses paid or incurred during the taxa-
56 ble year for: (i) the production or collection of income which is exempt

1 from tax under this chapter, or (ii) the management, conservation or
2 maintenance of property held for the production of such income, and the
3 amortizable bond premium for the taxable year on any bond the interest
4 on which is exempt from tax under this chapter, to the extent that such
5 expenses and premiums are deductible in determining federal taxable
6 income.

7 (4) premiums paid for long-term care insurance to the extent that such
8 premiums are deductible in determining federal taxable income.

9 (6) in the case of a shareholder of an S corporation:

10 (A) where the election provided for in subsection (a) of section six
11 hundred sixty of the tax law has not been made, S corporation items of
12 deduction included in federal itemized deductions, and

13 (B) in the case of a New York S termination year, the portion of such
14 items assigned to the period beginning on the day the election ceases to
15 be effective, as determined under subdivision (s) of section 11-1712 of
16 this subchapter.

17 (d) Modifications increasing federal itemized deductions. The total
18 amount of deductions from federal adjusted gross income shall be
19 increased by:

20 (1) (Reserved.)

21 (2) interest on indebtedness incurred or continued to purchase or
22 carry obligations or securities the interest on which is subject to tax
23 under this chapter but exempt from federal income tax, to the extent
24 that such interest on indebtedness is not deductible for federal income
25 tax purposes and is not subtracted from federal adjusted gross income
26 pursuant to paragraph nine of subdivision (c) of section 11-1712 of this
27 subchapter; and

28 (3) ordinary and necessary expenses paid or incurred during the taxa-
29 ble year for: (i) the production or collection of income which is
30 subject to tax under this chapter but exempt from federal income tax, or
31 (ii) the management, conservation or maintenance of property held for
32 the production of such income, and the amortizable bond premium for the
33 taxable year on any bond the interest on which is subject to tax under
34 this chapter but exempt from federal income tax, to the extent that such
35 expenses and premiums are not deductible in determining federal adjusted
36 gross income and are not subtracted from federal adjusted gross income
37 pursuant to paragraph ten of subdivision (c) of section 11-1712 of this
38 subchapter.

39 (4) allowable college tuition expenses, as defined in paragraph two of
40 subsection (t) of section six hundred six of the tax law, multiplied by
41 the applicable percentage. Such applicable percentage shall be twenty-
42 five percent for taxable years beginning in two thousand one, fifty
43 percent for taxable years beginning in two thousand two, seventy-five
44 percent for taxable years beginning in two thousand three and one
45 hundred percent for taxable years beginning after two thousand three.
46 Provided, however, no deduction shall be allowed under this paragraph to
47 a taxpayer who claims the credit provided under subsection (t) of
48 section six hundred six of the tax law.

49 (e) Modification of partners and shareholders of S corporations. (1)
50 Partners and shareholders of S corporations which are not New York C
51 corporations. The amounts of modifications under subdivision (c) or
52 under paragraph two or three of subdivision (d) required to be made by a
53 partner or by a shareholder of an S corporation, other than an S corpo-
54 ration which is a New York C corporation, with respect to items of
55 deduction of a partnership or S corporation shall be determined under
56 section 11-1717 of this subchapter.

1 (2) Shareholders of S corporations which are New York C corporations.
2 In the case of a shareholder of an S corporation which is a New York C
3 corporation, the modifications under this section which relate to the
4 corporation's items of deduction shall not apply, except for the modifi-
5 cation provided under paragraph six of subdivision (c) of this section.

6 (3) New York S termination year. In the case of a New York S termi-
7 nation year, the amounts of the modifications required under this
8 section which relate to the S corporation's items of deduction shall be
9 adjusted in the same manner that the S corporation's items are adjusted
10 under subdivision (s) of section 11-1712 of this subchapter.

11 (f) Except as otherwise provided under subdivision (g) of this
12 section, the city itemized deduction otherwise allowable under this
13 section shall be reduced by the sum of the amounts determined under
14 paragraphs one and two of this subdivision.

15 (1) An amount equal to the city itemized deduction otherwise allowable
16 under subdivision (a) of this section, multiplied by a percentage, such
17 percentage to be determined by multiplying, for taxable years beginning
18 in nineteen hundred eighty-eight, ten percent, and for taxable years
19 beginning after nineteen hundred eighty-eight, twenty-five percent, by a
20 fraction,

21 (A) in the case of an unmarried individual or married individual
22 filing a separate return, the numerator of which is the lesser of fifty
23 thousand dollars or the excess of such individual's city adjusted gross
24 income over one hundred thousand dollars and the denominator of which is
25 fifty thousand dollars;

26 (B) in the case of a married individual filing a joint return or a
27 surviving spouse, the numerator of which is the lesser of fifty thousand
28 dollars or the excess of such individual's city adjusted gross income
29 over two hundred thousand dollars and the denominator of which is fifty
30 thousand dollars;

31 (C) in the case of a head of household, the numerator of which is the
32 lesser of fifty thousand dollars or the excess of such individual's city
33 adjusted gross income over one hundred fifty thousand dollars and the
34 denominator of which is fifty thousand dollars.

35 (2) An amount equal to the city itemized deduction of an individual
36 otherwise allowable under subdivision (a) of this section, multiplied by
37 a percentage, such percentage to be determined by multiplying, for taxa-
38 ble years beginning in nineteen hundred eighty-eight, ten percent, and
39 for taxable years beginning after nineteen hundred eighty-eight, twen-
40 ty-five percent, by a fraction, the numerator of which is the lesser of
41 fifty thousand dollars or the excess of such individual's city adjusted
42 gross income over four hundred seventy-five thousand dollars and the
43 denominator of which is fifty thousand dollars.

44 (g) Notwithstanding subdivision (a) of this section, the city itemized
45 deduction for charitable contributions shall be the amount allowed under
46 section one hundred seventy of the internal revenue code, as limited by
47 this subdivision. (1) With respect to an individual whose New York
48 adjusted gross income is over one million dollars but no more than ten
49 million dollars, the New York itemized deduction shall be an amount
50 equal to fifty percent of any charitable contribution deduction allowed
51 under section one hundred seventy of the internal revenue code for taxa-
52 ble years beginning after two thousand nine and before two thousand
53 twenty-five. With respect to an individual whose New York adjusted gross
54 income is over one million dollars, the New York itemized deduction
55 shall be an amount equal to fifty percent of any charitable contribution
56 deduction allowed under section one hundred seventy of the internal

1 revenue code for taxable years beginning in two thousand nine or after
2 two thousand twenty-four.

3 (2) With respect to an individual whose New York adjusted gross income
4 is over ten million dollars, the New York itemized deduction shall be an
5 amount equal to twenty-five percent of any charitable contribution
6 deduction allowed under section one hundred seventy of the internal
7 revenue code for taxable years beginning after two thousand nine and
8 ending before two thousand twenty-five.

9 § 11-1716 City exemptions of a city resident individual. (a) Gener-
10 al. For taxable years beginning after nineteen hundred eighty-seven, a
11 city resident individual shall be allowed a city exemption of one thou-
12 sand dollars for each exemption for which such resident individual is
13 entitled to a deduction for the taxable year under subsection (c) of
14 section one hundred fifty-one of the internal revenue code; and for
15 taxable years beginning in nineteen hundred eighty-seven, a city resi-
16 dent individual other than a taxpayer whose federal exemption amount is
17 zero shall be allowed a city exemption of nine hundred dollars for each
18 exemption for which he or she is entitled to a deduction for the taxable
19 year for federal income tax purposes.

20 (b) Husband and wife. If the city income taxes of a husband and wife
21 are required to be separately determined but their federal income tax is
22 determined on a joint return, each of them shall be separately entitled
23 to the city exemptions under subdivision (a) of this section to which
24 each would be separately entitled for the taxable year if their federal
25 income taxes had been determined on separate returns.

26 § 11-1717 Resident partners and shareholders of S corporations. (a)
27 Partner's and shareholder's modifications. In determining city adjusted
28 gross income and city taxable income of a city resident partner or a
29 city resident shareholder of an S corporation, other than an S corpo-
30 ration which is a New York C corporation, any modification described in
31 subdivision (b), (c) or (d) of section 11-1712 of this subchapter, or
32 subdivision (c) of section 11-1715 of this subchapter or paragraph two
33 or three of subdivision (d) of such section, which relates to an item of
34 partnership or S corporation income, gain, loss or deduction shall be
35 made in accordance with the partner's distributive share or the share-
36 holder's pro rata share, for federal income tax purposes, of the item to
37 which the modification relates. Where a partner's distributive share or
38 a shareholder's pro rata share of any such item is not required to be
39 taken into account separately for federal income tax purposes, the part-
40 ner's or shareholder's share of such item shall be determined in accord-
41 ance with his or her share, for federal income tax purposes, of partner-
42 ship or S corporation taxable income or loss generally. In the case of
43 a New York S termination year, his or her pro rata share of any such
44 item shall be determined under subdivision (s) of section 11-1712 of
45 this subchapter.

46 (b) Character of items. Each item of partnership and S corporation
47 income, gain, loss, or deduction shall have the same character for a
48 partner or shareholder under this subchapter as for federal income tax
49 purposes. Where an item is not characterized for federal income tax
50 purposes, it shall have the same character for a partner or shareholder
51 as if realized directly from the source from which realized by the part-
52 nership or S corporation or incurred in the same manner as incurred by
53 the partnership or S corporation.

54 (c) City tax avoidance or evasion. Where a partner's distributive
55 share of an item of partnership income, gain, loss or deduction is
56 determined for federal income tax purposes by special provision in the

1 partnership agreement with respect to such item, and where the principal
2 purpose of such provision is the avoidance or evasion of tax under this
3 chapter, the partner's distributive share of such item, and any modifi-
4 cation required with respect thereto, shall be determined as if the
5 partnership agreement made no special provision with respect to such
6 item.

7 § 11-1717.1 Residents; special provisions. Notwithstanding any other
8 provisions of this chapter, the city adjusted gross income and the city
9 taxable income of a resident individual or partner of a partnership
10 doing an insurance business as a member of the New York insurance
11 exchange described in section six thousand two hundred one of the insur-
12 ance law, shall not include any item of income, gain, loss or deduction
13 of such business, which is the individual's distributive or pro rata
14 share for federal income tax purposes or which the individual is
15 required to take into account separately for federal income tax
16 purposes. Provided however, such individual's city adjusted gross
17 income shall include his or her distributive or pro rata share of the
18 allocated entire net income as determined by such business under
19 sections fifteen hundred three and fifteen hundred four of the tax law.
20 In the event such allocated entire net income is a loss, there shall not
21 be subtracted from federal adjusted gross income in computing city
22 adjusted gross income such individual's distributive share of such loss.

23 § 11-1718 City taxable income of a city resident estate or trust.
24 The city taxable income of a city resident estate or trust means its
25 federal taxable income as defined in the laws of the United States for
26 the taxable year, with the following modifications:

27 (2) There shall be subtracted the modifications described in para-
28 graphs four and five of subdivision (c) of section 11-1712 of this
29 subchapter, with respect to gains from the sale or other disposition of
30 property, to the extent such gains are excluded from federal distribut-
31 able net income of the estate or trust.

32 (3) There shall be added or subtracted, as the case may be, the share
33 of the estate or trust in the city fiduciary adjustment determined under
34 section 11-1719 of this subchapter.

35 (4) There shall be added or subtracted, as the case may be, the
36 modifications described in paragraphs six, ten, seventeen, eighteen,
37 nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four,
38 twenty-five, twenty-six, twenty-seven, twenty-nine, thirty-four and
39 thirty-five of subdivision (b) and in paragraphs eleven, thirteen,
40 fifteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twen-
41 ty-four, twenty-five, twenty-six and twenty-eight of subdivision (c) of
42 section 11-1712 of this subchapter.

43 (5) In the case of a trust, there shall be added the amount of any
44 includible gain, reduced by any deductions properly allocable thereto,
45 upon which tax is imposed for the taxable year pursuant to section six
46 hundred forty-four of the internal revenue code.

47 § 11-1719 Share of a resident estate, trust or beneficiary in city
48 fiduciary adjustment. (a) General. An adjustment shall be made in
49 determining city taxable income of a city resident estate or trust under
50 section 11-1718 of this subchapter, or city adjusted gross income of a
51 city resident beneficiary of any estate or trust under subdivision (d)
52 of section 11-1712 of this subchapter, in the amount of the share of
53 each in the city fiduciary adjustment as determined in this section.

54 (b) Definition. The city fiduciary adjustment shall be the net
55 amount of the modifications described in section 11-1712 of this
56 subchapter, including subdivision (d) if the estate or trust is a bene-

1 ficiary of another estate or trust, in subdivision (c) and paragraphs
2 two and three of subdivision (d) of section 11-1715 of this subchapter,
3 and in subdivision (e) of this section, which relate to items of income,
4 gain, loss or deduction of an estate or trust. The net amount of such
5 modifications shall not include:

6 (1) Any modification described in paragraphs one and two of subdivi-
7 sion (b) and paragraphs one, two, four, five, six, and seven of subdivi-
8 sion (c) of section 11-1712 of this subchapter with respect to any
9 amount which, pursuant to the terms of the governing instrument, is paid
10 or permanently set aside for a charitable purpose during the taxable
11 year, and

12 (2) Any modification described in paragraph four or five of subdivi-
13 sion (c) of section 11-1712 of this subchapter, with respect to gains
14 from the sale or other disposition of property, to the extent such gains
15 are excluded from federal distributable net income of the estate or
16 trust.

17 (c) Shares of city fiduciary adjustment.

18 (1) The respective shares of an estate or trust and its benefici-
19 aries, including, solely for the purpose of this allocation, nonresident
20 beneficiaries, in the city fiduciary adjustment shall be in proportion
21 to their respective shares of federal distributable net income of the
22 estate or trust.

23 (2) If the estate or trust has no federal distributable net income
24 for the taxable year, the share of each beneficiary in the city fiduci-
25 ary adjustment shall be in proportion to his or her share of the estate
26 or trust income for such year, under local law or the governing instru-
27 ment, which is required to be distributed currently and any other
28 amounts of such income distributed in such year. Any balance of the
29 city fiduciary adjustment shall be allocated to the estate or trust.

30 (d) Alternate attribution of modifications. The tax commission may
31 by regulation establish such other method or methods of determining to
32 whom the items comprising the fiduciary adjustment shall be attributed,
33 as may be appropriate and equitable. Such method may be used by the
34 fiduciary in his or her discretion whenever the allocation of the fidu-
35 ciary adjustment pursuant to subdivision (c) of this section would
36 result in an inequity which is substantial both in amount and in
37 relation to the amount of the fiduciary adjustment.

38 (e) Additional modifications. (1) For any taxable year beginning after
39 December thirty-first, two thousand seventeen, and before January first,
40 two thousand twenty-six, to the extent that the estate or trust claimed
41 a deduction for taxes under section one hundred sixty-four of the inter-
42 nal revenue code that was limited to ten thousand dollars as provided in
43 subparagraph (B) of paragraph six of subdivision (b) of such section one
44 hundred sixty-four or was denied as a result of subparagraph (A) of
45 paragraph six of subdivision (b) of such section one hundred sixty-four,
46 there shall be subtracted the taxes paid or accrued in that taxable year
47 by an estate or trust that the estate or trust was not able to deduct
48 for federal income tax purposes because of such limitation or denial,
49 other than state and local sales taxes and income taxes described in
50 paragraph one of subdivision (c) of section 11-1715 of this subchapter.
51 In determining the makeup of the ten thousand dollars of deduction
52 claimed by the estate or trust under section one hundred sixty-four of
53 the internal revenue code, it shall be presumed that the ten thousand
54 dollars of deduction first comprises the state and local sales taxes or
55 income taxes the estate or trust accrued or paid during the taxable
56 year.

1 (2) For any taxable year beginning after December thirty-first, two
2 thousand seventeen, and before January first, two thousand twenty-six,
3 there shall be subtracted the miscellaneous itemized deductions as
4 described in and limited by section sixty-seven of the internal revenue
5 code, but excluding the deductions described in subsection (e) of
6 section sixty-seven of such code, but determined without regard to
7 subsection (g) of such section.

8 (3) For any taxable year, there shall be added the amount of any
9 deduction allowed pursuant to section one hundred ninety-nine-A of the
10 internal revenue code.

11 § 11-1721 Credits to trust beneficiary receiving accumulation distrib-
12 ution. (a) General. A city resident beneficiary of a trust whose city
13 adjusted gross income includes all or part of an accumulation distrib-
14 ution by such trust, as defined in section six hundred sixty-five of the
15 internal revenue code, including a beneficiary who is required to make
16 the modification required by paragraph thirty-six of subdivision (b) of
17 section 11-1712 of this subchapter, shall be allowed (1) a credit
18 against the tax otherwise due under this chapter for all or a propor-
19 tionate part of any tax paid by the trust under this chapter or under
20 former title T of chapter forty-six of the code of the preceding munici-
21 pality, as it was in effect prior to September first, nineteen hundred
22 eighty-six, for any preceding taxable year which would not have been
23 payable if the trust had in fact made distributions to its beneficiaries
24 at the times and in the amounts specified in section six hundred sixty-
25 six of the internal revenue code; and (2) a credit against the taxes
26 imposed by this chapter for the taxable year for any income tax imposed
27 for the taxable year or any prior taxable year by another state of the
28 United States, a political subdivision thereof, or the District of
29 Columbia, upon income both derived therefrom and subject to tax under
30 this chapter, provided that the amount of the credit shall not exceed
31 the percentage of the tax otherwise due under this chapter determined by
32 dividing the portion of the income that is both taxable to the trust in
33 such other jurisdiction and taxable to the beneficiary under this chap-
34 ter by the total amount of the beneficiary's New York city income.

35 (b) Limitation. The credits under this section shall not reduce the
36 tax otherwise due from the beneficiary under this chapter to an amount
37 less than would have been due if the accumulation distribution or his or
38 her part thereof were excluded from his or her city adjusted gross
39 income.

40 § 11-1724 Computation of separate tax on the ordinary income portion
41 of lump sum distributions received by city resident individuals, estates
42 and trusts. (a) Amount of separate tax. The amount of tax imposed under
43 section 11-1703 of this chapter for any taxable year, with respect to
44 the ordinary income portion of a lump sum distribution received by a
45 city resident individual, estate or trust is an amount equal to five
46 times the tax which would be imposed by section 11-1701 of this chapter
47 at the rate set forth in paragraph three of subdivision (a) or (b),
48 whichever may be applicable, if the recipient of such lump sum distrib-
49 ution were an individual referred to in such subdivision and the city
50 taxable income were an amount equal to one-fifth of the excess of:

51 (1) the total taxable amount of the lump sum distribution for the
52 taxable year, over

53 (2) the minimum distribution allowance.

54 (b) Minimum distribution allowance. For purposes of this section, the
55 minimum distribution allowance shall be that which is calculated accord-

1 ing to subparagraph (C) of paragraph one of subsection (e) of section
2 four hundred two of the internal revenue code.

3 (c) Multiple distributions and distributions of annuity contracts.
4 For purposes of this section, the rules concerning multiple distrib-
5 utions and distributions of annuity contracts as specified by paragraph
6 two of subsection (e) of section four hundred two of the internal reven-
7 ue code shall be applicable, except that references to "paragraph one
8 (A)" shall be deemed to be references to this section, and except that
9 only lump sum distributions, or portions thereof, and distributions of
10 annuity contracts subject to tax under this chapter shall be included,
11 and except that references to the secretary shall be deemed to be refer-
12 ences to the tax commission.

13 (d) Definitions and special rules. For purposes of this section, the
14 following provisions shall apply, to the extent applicable to the
15 taxpayer's federal tax on lump sum distributions: (1) the definitions
16 and special rules as specified in paragraph four of subsection (e) of
17 section four hundred two of the internal revenue code; and (2) the
18 special rules relating to (A) individuals who have attained the age of
19 fifty before January first, nineteen hundred eighty-six and (B) capital
20 gains, as specified in paragraphs three, four, five and six of
21 subsection (h) of section eleven hundred twenty-two of the tax reform
22 act of nineteen hundred eighty-six as enacted by public law 99-514, but
23 (i) in the event that paragraph three of such subsection is applicable,
24 clause (ii) of subparagraph (B) of such paragraph shall be applied using
25 a rate of one and seventy-two hundredths percent, and (ii) in the event
26 that paragraph five of such subsection is applicable, the words "five"
27 and "one-fifth" in subdivision (a) of this section shall be read as
28 "ten" and "one-tenth", respectively, and subdivision (a) of this section
29 shall be applied by using the rate of tax specified in subdivision (a)
30 of section 11-1702 of this chapter as such subdivision was in effect for
31 taxable years beginning in nineteen hundred eighty-six.

32 SUBCHAPTER 3
33 RETURNS AND PAYMENT OF TAX

34 § 11-1751 Returns and liabilities. (a) General. On or before the
35 fifteenth day of the fourth month following the close of a taxable year,
36 an income tax return under this chapter shall be made and filed by or
37 for every city resident individual, estate or trust required to file a
38 New York state personal income tax, including a separate tax on the
39 ordinary income portion of lump sum distributions, return for the taxa-
40 ble year.

41 (b) Husband and wife. (1) If the New York state personal income tax
42 liability of husband and wife is determined on a separate return, their
43 city personal income tax liabilities and returns shall be separate.

44 (2) If the New York state personal income tax liabilities of husband
45 and wife, other than a husband and wife described in paragraph three of
46 this subdivision, are determined on a joint return, they shall file a
47 joint city personal income tax return, and their tax liabilities shall
48 be joint and several except as provided in paragraphs four and five of
49 this subdivision and in subsection (e) of section six hundred eighty-
50 five of the tax law.

51 (3) If the New York state personal income tax liabilities of husband
52 and wife, other than a husband and wife described in paragraph three of
53 this subdivision are determined on a joint return, they shall file a
54 joint city personal income tax return, and their tax liabilities shall

1 be joint and several except as provided in paragraph five of this subdivi-
2 vision, section 11-1755 of this subchapter and subsection (e) of section
3 six hundred eighty-five of the tax law.

4 (4) If either husband or wife is a city resident and the other is a
5 city nonresident, and their New York state personal income tax liabil-
6 ities are determined on a joint return:

7 (A) they may elect to file a joint city personal income tax return as
8 if both were residents, in which case their city personal income tax
9 liabilities shall be joint and several except as provided in paragraphs
10 four and five of this subdivision and in subsection (e) of section six
11 hundred eighty-five of the tax law, or

12 (B) they may elect to file a joint city personal income tax return as
13 if both were residents, in which case their city personal income tax
14 liabilities shall be joint and several except as provided in paragraph
15 five of this subdivision, section 11-1755 of this subchapter and
16 subsection (e) of section six hundred eighty-five of the tax law, or

17 (C) the resident spouse may elect to file a separate city personal
18 income tax return, in which case his or her city personal income tax
19 liability shall be determined as if he or she were filing a separate New
20 York state personal income tax return.

21 (5) If a joint return has been made under this subdivision for a taxa-
22 ble year and only one spouse is liable for past-due support, or a past-
23 due legally enforceable debt, or a city of New York tax warrant judgment
24 debt, or an amount of a default in repayment of a guaranteed student,
25 state university or city university loan of which the state commissioner
26 of taxation and finance has been notified pursuant to section one
27 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-
28 one-e, one hundred seventy-one-f or one hundred seventy-one-l of the tax
29 law, as the case may be, then an overpayment and interest thereon shall
30 be credited against such past-due support, or a past-due legally
31 enforceable debt, or a city of New York tax warrant judgment debt, or
32 such amount of a default in repayment of a guaranteed student, state
33 university or city university loan, unless the spouse not liable for
34 such past-due support, or a past-due legally enforceable debt, or a city
35 of New York tax warrant judgment debt, or such amount of a default in
36 repayment of a guaranteed student, state university or city university
37 loan demands, on a declaration made in accordance with regulations or
38 instructions prescribed by the state commissioner of taxation and
39 finance, that the portion of the overpayment and interest attributable
40 to such spouse not be credited against the past-due support, or a past-
41 due legally enforceable debt, or a city of New York tax warrant judgment
42 debt, or amount of a default in repayment of a guaranteed student, state
43 university or city university loan owed by the other spouse. Upon such
44 demand, the state commissioner of taxation and finance shall determine
45 the amount of the overpayment attributable to each spouse in accordance
46 with regulations prescribed by the state commissioner of taxation and
47 finance and credit only that portion of the overpayment and interest
48 thereon attributable to the spouse liable for past-due support, or a
49 past-due legally enforceable debt, or a city of New York tax warrant
50 judgment debt, or amount of a default in repayment of a guaranteed
51 student, state university or city university loan against such past-due
52 support, or a past-due legally enforceable debt, or a city of New York
53 tax warrant judgment debt, or such amount of a default in repayment of a
54 guaranteed student, state university or city university loan. Such
55 demand may be filed (A) with the return of the spouse not liable for
56 past-due support or past-due legally enforceable debt, or a city of New

1 York tax warrant judgment debt, or default in repayment of a guaranteed
2 student, state university, or city university loan or (B) with the
3 commissioner of taxation and finance within ten days after notification
4 is provided such spouse by the commissioner of taxation and finance
5 pursuant to subdivision seven of section one hundred seventy-one-c,
6 subdivision six of section one hundred seventy-one-d, subdivision seven
7 of section one hundred seventy-one-e, subdivision seven of section one
8 hundred seventy-one-f or subdivision six of section one hundred seven-
9 ty-one-1 of the tax law.

10 (6) The state commissioner of taxation and finance shall clearly alert
11 married taxpayers, on all appropriate publications and instructions,
12 that their liability for tax will be joint and several if they file
13 joint income tax returns. The state commissioner of taxation and finance
14 shall include notice of an individual's right to relief from joint and
15 several liability pursuant to section six hundred fifty-four of the tax
16 law in the disclosure of rights statement required by section three
17 thousand four of the tax law and in any notice regarding collection of
18 tax due with respect to a liability on a joint return.

19 (c) Decedents. The return for any deceased individual shall be made
20 and filed by his or her executor, administrator, or other person charged
21 with his or her property. If a final return of a decedent is for a
22 fractional part of a year, the due date of such return shall be the
23 fifteenth day of the fourth month following the close of the twelve-
24 month period which began with the first day of such fractional part of
25 the year.

26 (d) Individuals under a disability. The return for an individual who
27 is unable to make a return by reason of minority or other disability
28 shall be made and filed by his or her guardian, committee, fiduciary or
29 other person charged with the care of his or her person or property
30 other than a receiver in possession of only a part of his or her proper-
31 ty, or by his or her duly authorized agent.

32 (e) Estates and trusts. The return for an estate or trust shall be
33 made and filed by the fiduciary.

34 (f) Joint fiduciaries. If two or more fiduciaries are acting jointly,
35 the return may be made by any one of them.

36 (h) Tax a debt. Any tax under this chapter, and any increase, interest
37 or penalty thereon, shall, from the time it is due and payable, be a
38 personal debt of the person liable to pay the same, to the city of New
39 York.

40 (i) Cross reference. For provisions as to information returns by part-
41 nerships, employers and other persons, see section 11-1758 of this
42 subchapter.

43 § 11-1752 Time and place for filing returns and paying tax. (a)
44 Except as provided in subdivision (b) of this section, a person required
45 to make and file a return under this chapter shall, without assessment,
46 notice or demand, pay any tax due thereon to the commissioner of taxa-
47 tion and finance on or before the date fixed for filing such return,
48 determined without regard to any extension of time for filing the
49 return. The commissioner shall prescribe by regulation the place for
50 filing any return, statement, or other document required pursuant to
51 this chapter and for payment of any tax.

52 (b) The commissioner of taxation and finance may allow individuals who
53 have income only from wages, salaries, tips and like remuneration for
54 services performed as an employee, interest, dividends and unemployment
55 compensation to elect to have the commissioner compute the tax due. To
56 provide for expeditious and uniform administration of the tax computa-

1 tions which involve numerous variables, the commissioner may further
2 qualify, with regard to period of residency, deductions, credits,
3 exemptions, amount and character of gross income, and any other appro-
4 priate factors relative to calculation of tax, those individuals who may
5 elect to have their taxes computed by the commissioner. Any such
6 election shall be made on the form prescribed by the commissioner for
7 this purpose. If a qualified taxpayer elects to have the commissioner
8 compute the tax, the amount determined by the commissioner shall be paid
9 (i) within ten days from the date of the issuance of a notice and demand
10 therefor or (ii) on the date fixed for filing such return, determined
11 without regard to any extension of time for filing, whichever is later.

12 § 11-1753 Signing of returns and other documents. (a) General. Any
13 return, statement or other document required to be made pursuant to this
14 chapter shall be signed in accordance with regulations or instructions
15 prescribed by the tax commission. The fact that an individual's name is
16 signed to a return, statement, or other document, shall be prima facie
17 evidence for all purposes that the return, statement or other document
18 was actually signed by such individual.

19 (b) Partnerships. Any return, statement or other document required of
20 a partnership shall be signed by one or more partners. The fact that a
21 partner's name is signed to a return, statement, or other document,
22 shall be prima facie evidence for all purposes that such partner is
23 authorized to sign on behalf of the partnership.

24 (c) Certifications. The making or filing of any return, statement or
25 other document or copy thereof required to be made or filed pursuant to
26 this chapter, including a copy of a federal return, shall constitute a
27 certification by the person making or filing such return, statement or
28 other document or copy thereof that the statements contained therein are
29 true and that any copy filed is a true copy.

30 § 11-1754 Change of resident status during year. (a) General. If an
31 individual changes his or her status during his or her taxable year from
32 city resident to city nonresident, or from city nonresident to city
33 resident, such individual shall file one return as a resident for the
34 portion of the year during which he or she is a city resident, and a
35 return under chapter nineteen of this title, for the portion of the year
36 during which he or she is a city nonresident, subject to such exceptions
37 as the tax commission may prescribe by regulation.

38 (b) City taxable income as city resident. The city taxable income for
39 the portion of the year during which he or she is a city resident shall
40 be determined, except as provided in subdivision (c) of this section, as
41 if his or her taxable year for federal income tax purposes were limited
42 to the period of his or her city resident status.

43 (c) Special accruals.

44 (1) If an individual changes his or her status from city resident to
45 city nonresident, he or she shall, regardless of his or her method of
46 accounting, accrue for the portion of the taxable year prior to such
47 change of status any items of income, gain, loss or deduction accruing
48 prior to the change of status, if not otherwise properly includible,
49 whether or not because of an election to report on an installment basis,
50 or allowable for city income tax purposes for such portion of the taxa-
51 ble year or for a prior taxable year. The amounts of such accrued items
52 shall be determined with the applicable modifications described in
53 sections 11-1712 and 11-1715 of this chapter as if such accrued items
54 were includible or allowable for federal income tax purposes.

55 (2) If an individual changes his or her status from city nonresident
56 to city resident, he or she shall, regardless of his or her method of

1 accounting, accrue for the portion of the taxable year prior to such
2 change of status any items of income, gain, loss or deduction accruing
3 prior to the change of status, other than items derived from or
4 connected with New York state sources, if not otherwise properly inclu-
5 dible, whether or not because of an election to report on an installment
6 basis, or allowable for federal income tax purposes for such portion of
7 the taxable year or for a prior taxable year. The amounts of such
8 accrued items shall be determined with the applicable modifications
9 described in sections 11-1712 and 11-1715 of this chapter as if such
10 accrued items were includible or allowable for federal income tax
11 purposes.

12 (3) No item of income, gain, loss or deduction which is accrued under
13 this subdivision shall be taken into account in determining city
14 adjusted gross income or the city itemized deduction for any subsequent
15 taxable period.

16 (4) The accruals under this subdivision shall not be required if the
17 individual files with the tax commission a bond or other security
18 acceptable to the tax commission, conditioned upon the inclusion of
19 amounts accruable under this subdivision in city adjusted gross income
20 for one or more subsequent taxable years as if the individual had not
21 changed his or her resident status.

22 (5) The provisions of subdivisions (a), (b) and paragraphs one through
23 four of this subdivision shall apply if an individual changes his or her
24 status from a city resident to city nonresident or from a city nonresi-
25 dent to a city resident during a taxable year, or at the beginning of a
26 taxable year, as a result of a change of domicile or as a result of
27 becoming a city resident or city nonresident based on the definition
28 contained in subparagraph (B) of paragraph one of subdivision (b) of
29 section 11-1705 of this chapter.

30 (6) Except as provided in this paragraph, where an individual who is a
31 member of a partnership or shareholder of an S corporation changes
32 status from city resident to city nonresident, or from city nonresident
33 to city resident, the portion of the distributive or pro rata share of
34 income, gain and loss, less deductions attributable thereto, from a
35 partnership or S corporation shall be allocated to the resident and
36 nonresident periods of the partner or shareholder on a proportionate
37 basis throughout the taxable year of the partnership or S corporation.

38 In such event, the portion of the distributive or pro rata share allo-
39 cated to the period of residency shall be determined based on the number
40 of days of residency within the reporting period of the partnership or S
41 corporation over the total number of days in the reporting period of the
42 partnership or S corporation. Provided, however, that the commissioner
43 may require, or the individual may elect, to accrue to the period of
44 residence, and the period of nonresidence, the portion of the distribu-
45 tive or pro rata share of partnership or S corporation income, gain and
46 loss, less deductions attributable thereto, accruing during the individ-
47 ual's respective resident and nonresident periods in a manner that
48 reflects the date of accrual of said income, gain and loss by the part-
49 nership or S corporation.

50 (7) Except as provided in this paragraph, where an individual who is a
51 beneficiary of an estate or trust changes status from city resident to
52 city nonresident, or from city nonresident to city resident, the portion
53 of any estate or trust income credited, distributable, payable or
54 required to be distributed to such beneficiary shall be allocated to the
55 resident and nonresident periods of the beneficiary on a proportionate
56 basis throughout the taxable year of the estate or trust. In such event,

1 the portion of such estate or trust income allocated to the period of
2 residency shall be determined based on the number of days of residency
3 within the reporting period of the estate or trust over the total number
4 of days in the reporting period of the estate or trust. Provided, howev-
5 er, that the commissioner may require, or the beneficiary may elect, to
6 accrue to the period of residence, and the period of nonresidence, the
7 portion of such estate or trust income accruing during the beneficiary's
8 respective resident and nonresident periods in a manner that reflects
9 the date of accrual of said estate or trust income by the estate or
10 trust.

11 (d) City minimum tax. Where two returns are required under this
12 section, the total of the taxes due thereon shall not be less than would
13 be due if the city taxable incomes reportable on the two returns were
14 included in one return.

15 (e) Proration. Where a return is required under this section, the
16 city personal exemptions allowable under section 11-1716 of this chapter
17 shall be prorated, under regulations of the tax commission, to reflect
18 the portions of the entire taxable year during which the individual was
19 a resident.

20 (f) Standard deduction. Where a return is required under this
21 section, the city standard deduction allowable on such return shall be
22 the amount allowed pursuant to the provisions of section 11-1714 of this
23 chapter, prorated according to the period covered by the return.

24 (g) Trusts. If the status of a trust changes during its taxable year
25 from city resident to city nonresident, or from city nonresident to city
26 resident, the fiduciary shall file one return as a city resident trust
27 for the portion of the year during which the trust is a city resident
28 trust, and one return under chapter nineteen of this title for the
29 portion of the year during which the trust is a city nonresident trust,
30 subject to such exceptions as the tax commission may prescribe by regu-
31 lations. The provisions of subdivisions (b), (c), (d) and (e) of this
32 section shall apply for the purposes of this subdivision, except to the
33 extent that any of such provisions may be inconsistent with the
34 provisions of section 11-1718 of this chapter, and except that the term
35 "individual" shall be read as "trust", the term "city adjusted gross
36 income" shall be read as "city taxable income", reference to "gain"
37 shall include any modification for includible gain under subdivision
38 five of section 11-1718 of this chapter, and the phrase "personal
39 exemptions allowable under section 11-1716 of this chapter" shall be
40 read as "city exemptions allowable under section 11-1718 of this chap-
41 ter."

42 (h) Lump sum distributions. If the status of a taxpayer changes
43 during his or her taxable year from city resident to city nonresident,
44 or from city nonresident to city resident, the taxpayer shall, regard-
45 less of his method of accounting, accrue for the portion of the taxable
46 year prior to such change of status the total taxable amount of a lump
47 sum distribution accruing prior to the change of status, if the ordinary
48 income portion thereof is not otherwise subject to tax under section
49 11-1703 of this chapter for such portion of the taxable year or for a
50 prior taxable year. No ordinary income portion of a lump sum distrib-
51 ution the total taxable amount of which is accrued under this subdivi-
52 sion shall be subject to tax under section 11-1703 of this chapter for
53 any subsequent taxable period. The accrual under this subdivision shall
54 not be required if the taxpayer files with the tax commission a bond or
55 other security acceptable to the tax commission, conditioned upon the
56 payment of tax under section 11-1703 of this chapter, with respect to

1 such amount accruable under this subdivision, for a subsequent taxable
2 year as if the taxpayer had not changed its resident status.

3 (i) Deduction for two-earner married couples. Where a return is
4 required under this section, the amount of deduction under paragraph
5 twenty-nine of subdivision (c) of section 11-1712 of this chapter shall
6 be equal to ten percent of the lesser of:

7 (1) thirty thousand dollars, pro rated according to the period covered
8 by the return or

9 (2) the qualified earned income of the spouse with the lower qualified
10 earned income for the period covered by the return.

11 § 11-1755 Relief from joint and several liability on joint return.

12 (a) General. The provisions of section six thousand fifteen of the
13 internal revenue code applicable to the liability of individuals who
14 file joint income tax returns shall apply to the same extent as if such
15 section of such code were contained in and made part of this section,
16 except to the extent that any provision of such section is either incon-
17 sistent with or not relevant to this chapter and except as modified in
18 subdivision (b) of this section, or with such other modifications as may
19 be necessary to adapt the language of such provisions to the provisions
20 of this chapter.

21 (b) Modifications. Section six thousand fifteen of the internal reven-
22 ue code shall be read as modified by this subdivision.

23 (1) "Secretary" shall be read as "state commissioner of taxation and
24 finance".

25 (2) "Internal revenue service" shall be read as "department of taxa-
26 tion and finance".

27 (3) "Tax court" shall be read as "division of tax appeals".

28 (4) In the heading of subsection (a) and in clause (ii) of subpara-
29 graph (A) of paragraph three of subsection (c), the phrase "section
30 6013(d)(3)" shall be read as "paragraphs two and three of subdivision
31 (b) of section 11-1751 of this chapter".

32 (5) In paragraph three of subsection (b), the phrase "section
33 6662(d)(2)(A)" shall be read as "subdivision (p) of section 11-1785 of
34 this chapter".

35 (6) In subparagraph (B) of paragraph two of subsection (d), the phrase
36 "section 1 or 55" shall be read as "section 11-1701 of this chapter".

37 (7) In clause (i) of subparagraph (B) of paragraph one of subsection
38 (e), the phrase "section 6851 or 6861" shall be read as "section 11-1794
39 of this chapter" and "section 7485" shall be read as "subdivision (c) of
40 section 11-1790 of this chapter".

41 (8) In paragraph two of subsection (e), the phrase "section 6502"
42 shall be read as "section one hundred seventy-four-a of the tax law and
43 section 11-1792 of this chapter".

44 (9) In subparagraph (A) of paragraph three of subsection (e), the
45 phrase "section 6512(b), 7121, or 7122" shall be read as "subdivision
46 fifteenth, eighteenth, eighteenth-a or eighteenth-d of section one
47 hundred seventy-one of the tax law and subdivision (b) of section
48 11-1789 of this chapter".

49 (10) The following provisions of such section six thousand fifteen
50 shall be disregarded: (A) The phrase "notwithstanding the provisions of
51 section 7421(a)" contained in clause (ii) of subparagraph (B) of para-
52 graph one of subsection (e); and (B) subparagraph (C) of paragraph three
53 of subsection (e).

54 (c) Federal determination. If an individual is relieved of a federal
55 income tax liability pursuant to subsection (b) of section six thousand
56 fifteen of the internal revenue code, there shall be a rebuttable

1 presumption that such individual shall also be entitled to equivalent
2 relief from liability under this section, to the extent that such indi-
3 vidual has an understatement of tax under this chapter for the same
4 taxable year that is attributable to the same erroneous item or items to
5 which the individual's federal income tax liability was attributable.

6 § 11-1757 Extensions of time. (a) General. The commissioner of taxa-
7 tion and finance may grant a reasonable extension of time for payment of
8 tax or estimated tax, or any installment, or for filing any return,
9 statement, or other document required pursuant to this chapter, on such
10 terms and conditions as it may require. Except for a taxpayer who is
11 outside the United States or who intends to claim nonresident status
12 pursuant to clause (ii) of subparagraph (A) of paragraph one of subdivi-
13 sion (b) of section 11-1705 of this chapter, no such extension for
14 filing any return, statement or other document, shall exceed six months.

15 (b) Furnishing of security. If any extension of time is granted for
16 payment of any amount of tax, the tax commission may require the taxpay-
17 er to furnish a bond or other security in an amount not exceeding twice
18 the amount for which the extension of time for payment is granted on
19 such terms and conditions as the tax commission may require.

20 § 11-1758 Requirements concerning returns, notices, records and state-
21 ments. (a) General. The tax commission may prescribe regulations as to
22 the keeping of records, the content and form of returns and statements,
23 and the filing of copies of federal income tax returns and determi-
24 nations. The tax commission may require any person, by regulation or
25 notice served upon such person, to make such returns, render such state-
26 ments, or keep such records, as the tax commission may deem sufficient
27 to show whether or not such person is liable under this chapter for tax
28 or for collection of tax.

29 (b) Identifying numbers. (1) When required by regulations prescribed
30 by the tax commission:

31 (A) Inclusion in returns. Any person required under the authority of
32 this chapter to make a return, statement, or other document shall
33 include in such return, statement or other document such identifying
34 number as may be prescribed for securing proper identification of such
35 person.

36 (B) Furnishing number to other persons. Any person with respect to
37 whom a return, statement or other document is required under the author-
38 ity of this chapter to be made by another person shall furnish to such
39 other person such identifying number as may be prescribed for securing
40 his or her proper identification.

41 (C) Furnishing number of another person. Any person required under the
42 authority of this chapter to make a return, statement, or other document
43 with respect to another person shall request from such other person, and
44 shall include in any such return, statement, or other document, such
45 identifying number as may be prescribed for securing proper identifica-
46 tion of such other person.

47 (2) Limitation.

48 (A) Except as provided in subparagraph (B) of this paragraph, a return
49 of any person with respect to his or her liability for tax, or any
50 statement or other document in support thereof, shall not be considered
51 for purposes of subparagraphs (B) and (C) of paragraph one of this
52 subdivision as a return, statement or other document with respect to
53 another person.

54 (B) For purposes of subparagraphs (B) and (C) of paragraph one of this
55 subdivision, a return of an estate or trust with respect to its liabil-
56 ity for tax, and any statement or other document in support thereof,

1 shall be considered as a return, statement, or other document with
2 respect to each beneficiary of such estate or trust.

3 (3) Requirement of information. For purposes of this section, the tax
4 commission is authorized to require such information as may be necessary
5 to assign an identifying number to any person.

6 (c) Partnerships and S corporations.

7 (1) Partnerships. Every partnership having a city resident partner
8 shall make a return for the taxable year setting forth all items of
9 income, gain, loss and deduction and such other pertinent information as
10 the tax commission may by regulations and instructions prescribe. Such
11 return shall be filed on or before the fifteenth day of the fourth month
12 following the close of each taxable year except that the due date for
13 the return of a partnership consisting entirely of nonresident aliens
14 shall be the date prescribed for the filing of its federal partnership
15 return for the taxable year. For purposes of this paragraph, "taxable
16 year" means a year or a period which would be a taxable year of the
17 partnership if it were subject to tax under this chapter.

18 (2) S corporations. Every S corporation for which the election
19 provided for in subsection (a) of section six hundred sixty of the tax
20 law is in effect shall make a return setting forth all items of income,
21 loss and deduction and such other pertinent information as the tax
22 commission may by regulations and instructions prescribe. Such return
23 shall be filed on or before the fifteenth day of the third month follow-
24 ing the close of each taxable year.

25 (d) Information at source. The tax commission may prescribe regu-
26 lations and instructions requiring returns of information to be made and
27 filed on or before February twenty-eighth of each year as to the payment
28 or crediting in any calendar year of amounts of six hundred dollars or
29 more to any taxpayer under this chapter. Such returns may be required of
30 any persons, including lessees or mortgagors of real or personal proper-
31 ty, fiduciaries, employers, and all officers and employees of this
32 state, or of any municipal corporation or political subdivision of this
33 state, having the control, receipt, custody, disposal or payment of
34 interest, rents, salaries, wages, premiums, annuities, compensations,
35 remunerations, emoluments or other fixed or determinable gains, profits
36 or income, except interest coupons payable to bearer. A duplicate of the
37 statement as to tax withheld on wages, required to be furnished by an
38 employer to an employee, shall constitute the return of information
39 required to be made under this section with respect to such wages.

40 (e) Notice of qualification as receiver, etc. Every receiver, trustee
41 in bankruptcy, assignee for benefit of creditors, or other like fiduci-
42 ary shall give notice of his or her qualification as such to the tax
43 commission, as may be required by regulation.

44 (g) Requirements applicable to tax return preparer.

45 (1) Signature of tax return preparer. Any individual who is a tax
46 return preparer and prepares any return or claim for refund, shall sign
47 such return or claim for refund in accordance with regulations or
48 instructions prescribed by the commissioner of taxation and finance.

49 (2) Furnishing identifying numbers. Any return or claim for refund
50 which is prepared by a tax return preparer shall include the identifying
51 number of the preparer required by paragraph one of this subdivision to
52 sign such return or claim for refund. In addition, where such individual
53 preparer is an employee of an employer which is a tax return preparer
54 with respect to such return or claim for refund, or where such preparer
55 is a partner in a partnership which is a tax return preparer with
56 respect to such return or claim for refund, then such return or claim

1 for refund shall also include the identifying number of such employer or
2 partnership. Such identifying numbers shall be as prescribed by the
3 commissioner of taxation and finance in order to secure the proper iden-
4 tification of such individual preparer, partnership or employer. The
5 responsibility for the inclusion of such identifying numbers shall be as
6 set forth in paragraph two of subdivision (t) of section 11-1785 of this
7 chapter.

8 (3) Furnishing copy to taxpayer. Any person who is a tax return
9 preparer with respect to any return or claim for refund shall furnish a
10 completed copy of such return or claim for refund to the taxpayer not
11 later than the time such return or claim for refund is presented for
12 such taxpayer's signature.

13 (4) Copy or list to be retained by tax return preparer. Any person who
14 is a tax return preparer with respect to any return or claim for refund
15 shall for a three year retention period described in paragraph nine of
16 this subdivision:

17 (A) retain a completed copy of such return or claim for refund, or
18 retain, on a list, the name and identification number of the taxpayer
19 for whom such return or claim was prepared, and

20 (B) make such copy or list available for inspection upon request by
21 the commissioner of taxation and finance.

22 (5) Tax return preparer defined. For purposes of this chapter, the
23 term "tax return preparer" means any person who prepares for compen-
24 sation, or who employs or engages one or more persons to prepare for
25 compensation any return or claim for refund. The preparation of a
26 substantial portion of a return or claim for refund shall be treated as
27 if it were the preparation of such return or claim for refund. Where an
28 employer and one or more employees of such employer are tax return
29 preparers with respect to the same return or claim for refund, or where
30 a partnership and one or more partners in such partnership are tax
31 return preparers with respect to the same return or claim for refund,
32 for purposes of paragraphs three and four of this subdivision, such
33 employer or such partnership shall be deemed to be the sole tax return
34 preparer. A person shall not be a "tax return preparer" merely because
35 such person:

36 (A) furnishes typing, reproducing, or other mechanical assistance,

37 (B) prepares a return or claim for refund of the employer, or of an
38 officer or employee of the employer, by whom he or she is regularly and
39 continuously employed, or

40 (C) prepares as a fiduciary a return or claim for refund for any
41 person.

42 (6) Person defined. For purposes of this subdivision, the term
43 "person" includes an individual, corporation, including a dissolved
44 corporation, or partnership.

45 (7) Return defined. For purposes of this subdivision, the term
46 "return" shall mean any return required under this chapter.

47 (8) Claim for refund defined. For purposes of this subdivision, the
48 term "claim for refund" shall mean a claim for refund of or credit
49 against any tax imposed under this chapter, and shall include any claim
50 for refund of any credit treated as an overpayment of tax under this
51 chapter.

52 (9) Retention period defined. For purposes of this subdivision, the
53 term "retention period" shall mean:

54 (A) in the case of a tax return, the period ending the later of three
55 years after the due date of such return, without regard to extensions,

1 or three years after the date such return was presented to the taxpayer
2 for such taxpayer's signature, and

3 (B) in the case of a claim for refund, the period ending three years
4 after such claim for refund was presented to the taxpayer for such
5 taxpayer's signature.

6 (10) Mandatory electronic filing by certain tax return preparers.

7 (A)(i) If a tax return preparer prepared more than two hundred original
8 returns during the calendar year beginning on January first, two thou-
9 sand five, and if, in the calendar year beginning on January first, two
10 thousand six, such tax return preparer prepares one or more authorized
11 returns using tax software, then, for such calendar year two thousand
12 six and for each subsequent calendar year thereafter, all authorized
13 returns prepared by such tax return preparer shall be filed electron-
14 ically, in accordance with instructions prescribed by the commissioner
15 of taxation and finance.

16 (ii) If a tax return preparer prepared more than one hundred original
17 returns during any calendar year beginning on or after January first,
18 two thousand six, and if, in any succeeding calendar year such tax
19 return preparer prepares one or more authorized returns using tax soft-
20 ware, then, for such succeeding calendar year and for each subsequent
21 calendar year thereafter, all authorized returns prepared by such tax
22 return preparer shall be filed electronically, in accordance with
23 instructions prescribed by the commissioner of taxation and finance.

24 (B) For purposes of this paragraph: (i) "Electronic" means computer
25 technology; provided, however, that the commissioner of taxation and
26 finance may, in instructions, provide that use of barcode technology
27 will also satisfy the mandatory electronic filing requirements of this
28 section.

29 (ii) "Authorized return" means any return required under this article
30 which the commissioner of taxation and finance has authorized to be
31 filed electronically.

32 (iii) "Original return" means a return required under this article
33 that is filed, without regard to extensions, during the calendar year
34 for which that return is required to be filed.

35 (iv) "Tax software" means any computer software program intended for
36 tax return preparation purposes.

37 § 11-1759 Report of federal changes, corrections or disallowances. If
38 the amount of a taxpayer's federal taxable income, total taxable amount
39 or ordinary income portion of a lump sum distribution or includible gain
40 of a trust reported on his federal income tax return for any taxable
41 year, or the amount of any claim of right adjustment, is changed or
42 corrected by the United States internal revenue service or other compe-
43 tent authority, or as the result of a renegotiation of a contract or
44 subcontract with the United States or the amount an employer is required
45 to deduct and withhold from wages for federal income tax withholding
46 purposes is changed or corrected by such service or authority or if a
47 taxpayer's claim for credit or refund of federal income tax is disal-
48 lowed in whole or in part, the taxpayer or employer shall report such
49 change or correction or disallowance within ninety days after the final
50 determination of such change, correction, renegotiation, or disallow-
51 ance, or as otherwise required by the commissioner, and shall concede
52 the accuracy of such determination or state wherein it is erroneous. The
53 allowance of a tentative carryback adjustment based upon a net operating
54 loss carryback pursuant to section sixty-four hundred eleven of the
55 internal revenue code shall be treated as a final determination for
56 purposes of this section. Any taxpayer filing an amended federal income

1 tax return and any employer filing an amended federal return of income
2 tax withheld shall also file within ninety days thereafter an amended
3 return under this chapter, and shall give such information as the
4 commissioner may require. The commissioner may by regulation prescribe
5 such exceptions to the requirements of this section as he or she deems
6 appropriate. For purposes of this section, (i) the term "taxpayer" shall
7 include a partnership having a resident partner or having any income
8 derived from New York sources, and a corporation with respect to which
9 the taxable year of such change, correction, disallowance or amendment
10 is a year with respect to which the election provided for in subsection
11 (a) of section six hundred sixty of the tax law is in effect, and (ii)
12 the term "federal income tax return" shall include the returns of income
13 required under sections six thousand thirty-one and six thousand thir-
14 ty-seven of the internal revenue code. In the case of such a corpo-
15 ration, such report shall also include any change or correction of the
16 taxes described in paragraphs two and three of subsection (f) of section
17 thirteen hundred sixty-six of the internal revenue code. Reports made
18 under this section by a partnership or corporation shall indicate the
19 portion of the change in each item of income, gain, loss or deduction,
20 and, in the case of a corporation, of each change in, or disallowance of
21 a claim for credit or refund of such tax, allocable to each partner or
22 shareholder and shall set forth such identifying information with
23 respect to such partner or shareholder as may be prescribed by the
24 commissioner.

25 § 11-1761 Change of election. Any election expressly authorized by
26 this chapter may be changed on such terms and conditions as the tax
27 commission may prescribe by regulation.

28 § 11-1762 Computation of tax where taxpayer restores substantial
29 amount held under claim of right. (a) General. If:

30 (1) an item was included in city adjusted gross income for a prior
31 taxable year, or years, because it appeared that the taxpayer had an
32 unrestricted right to such item, and

33 (2) for the current taxable year the provisions of paragraph five of
34 subsection (a) of section thirteen hundred forty-one of the internal
35 revenue code apply to such item, then the tax imposed by this chapter
36 for the taxable year shall be an amount equal to

37 (3) the tax for the taxable year computed without regard to this
38 section, minus

39 (4) the decrease in tax under this chapter for the prior taxable year,
40 or years, which would result solely from the exclusion of such item, or
41 portion thereof, from city adjusted gross income for such prior taxable
42 year, or years.

43 (b) Special rules. If the decrease in tax ascertained under paragraph
44 four of subdivision (a) of this section exceeds the tax imposed by this
45 chapter for the taxable year, such excess shall be considered a payment
46 of tax on the last day prescribed by law for the payment of tax for the
47 taxable year, and shall be refunded or credited in the same manner as if
48 it were an overpayment for such taxable year.

49
50

SUBCHAPTER 4 WITHHOLDING OF TAX

51 § 11-1771 Requirement of withholding tax from wages. (a) General. (1)
52 Every employer maintaining an office or transacting business within this
53 city or state and making payment on and after January first, nineteen
54 hundred seventy-seven of any wages taxable under this chapter, or under

1 section two of chapter eight hundred eighty-two of the laws of nineteen
2 hundred seventy-five, as amended by chapter eight hundred eighty-six of
3 the laws of nineteen hundred seventy-five, shall deduct and withhold
4 from such wages for each payroll period a tax computed in such manner as
5 to result, so far as practicable, in withholding from the employee's
6 wages during each calendar year an amount substantially equivalent to
7 the tax reasonably estimated to be due under this chapter or such
8 section two resulting from the inclusion in the employee's city adjusted
9 gross income of his or her wages received during such calendar year.
10 The method of determining the amount to be withheld shall be prescribed
11 by regulations of the tax commission, with due regard to the city with-
12 holding exemptions of the employee and the sum of any credits allowable
13 against his or her tax. The section shall not apply to payments by the
14 United States for service in the armed forces of the United States so
15 long as the right to require deduction and withholding of tax from such
16 payments is prohibited by the laws of the United States. Service in the
17 armed forces of the United States shall have the same meaning as when
18 used in a comparable context in the laws of the United States relating
19 to withholding of city income taxes.

20 (2) The tax commission may provide, by regulations, for withholding:

21 (A) from remuneration for services performed by an employee for his or
22 her employer which does not constitute wages, and

23 (B) from remuneration for services performed by an employee for his or
24 her employer which does not constitute wages, and (B) from any other
25 type of payment, with respect to which the tax commission finds that
26 withholding would be appropriate under the provisions of this chapter,
27 if the employer and the employee, or in the case of any other type of
28 payment the person making and the person receiving the payment, agree to
29 such withholding. Such agreement shall be made in such form and manner
30 as the tax commission may by regulations provide. For purposes of this
31 chapter, remuneration or other payments with respect to which such
32 agreement is made shall be treated as if they were wages paid by an
33 employer to an employee to the extent that such remuneration is paid or
34 other payments are made during the period for which the agreement is in
35 effect.

36 (3) The tax commission shall provide by regulation for an exemption
37 from withholding for: (i) employees under eighteen years of age, (ii)
38 employees under twenty-five years of age who are full-time students and
39 (iii) employees over sixty-five years of age, provided such employees
40 had no income tax liability in the prior year and can reasonably antic-
41 ipate none in the current year.

42 (b) Extension of withholding to certain periodic payments and gambling
43 winnings.

44 (1) For purposes of this chapter, any payment subject to withholding,
45 within the meaning of paragraph two of this subdivision, shall be treat-
46 ed as if it were wages paid by an employer to an employee.

47 (2) Payments subject to withholding. For purposes of paragraph one of
48 this subdivision, a payment subject to withholding means:

49 (A) Any supplemental unemployment compensation benefit paid to an
50 individual to the extent includible in such individual's city adjusted
51 gross income.

52 (B) Any member or employee contributions to a retirement system or
53 pension fund picked up by the employer pursuant to subdivision f of
54 section five hundred seventeen or subdivision d of section six hundred
55 thirteen of the retirement and social security law or section 13-225.1,
56 13-327.1, 13-125.1, 13-125.2 or 13-521.1 of the code of the preceding

1 municipality or subdivision nineteen of section twenty-five hundred
2 seventy-five of the education law.

3 (C) Any payment of an annuity to an individual to the extent includi-
4 ble in such individual's city adjusted gross income, if at the time the
5 payment is made a request that such annuity be subject to withholding
6 under this chapter is in effect.

7 (D) Any payment of winnings from a wager placed in a lottery conducted
8 by the division of the lottery, if the proceeds from such wager exceed
9 five thousand dollars and such proceeds are payable pursuant to a prize
10 claim made by an individual who was a resident of the city at the time
11 of the selection of the prize winning lottery ticket.

12 (F) Any amount deducted or deferred from an employee's salary under a
13 flexible benefits program established pursuant to section twenty-three
14 of the general municipal law or section one thousand two hundred ten-a
15 of the public authorities law.

16 (G) Any amount by which an employee's salary is reduced pursuant to
17 the provisions of subdivision b of section 12-126.1 and subdivision b of
18 section 12-126.2 of the code of the preceding municipality.

19 (3) Additional provisions applicable to this subdivision.

20 (A) Request for annuity withholding. A request that an annuity be
21 subject to withholding under this chapter shall be made by the payee in
22 writing to the person making the annuity payments.

23 Such a request may, notwithstanding any provision of law to the
24 contrary, be terminated by furnishing to the person making the payments
25 a written statement of termination. Such a request for withholding or
26 statement of termination shall take effect in such manner as the commis-
27 sioner of taxation and finance shall prescribe.

28 (B) Withholding on lottery winnings upon change of residence. If a
29 payee of lottery winnings subject to the provisions of subparagraph (D)
30 of paragraph two of this subdivision changes status from resident to
31 nonresident, withholding in accordance with such subparagraph shall
32 constitute other security acceptable to the commissioner of taxation and
33 finance within the meaning of paragraph four of subdivision (c) of
34 section 11-1754 of this chapter, unless such payee elects, in such
35 manner as the commissioner of taxation and finance shall prescribe, to
36 apply the provisions of paragraph one of such subdivision (c) to the
37 proceeds, in which case withholding under this subdivision shall no
38 longer apply to such proceeds.

39 (C) Proceeds. For purposes of subparagraphs (D) and (E) of paragraph
40 two of this subdivision, proceeds from a wager shall be determined by
41 reducing the amount received by the amount of the wager.

42 (D) Taxes withheld at maximum rate. The tax withheld on any payment
43 subject to withholding under subparagraph (D) or (E) of paragraph two of
44 this subdivision shall be withheld at the highest rate of tax on city
45 taxable income, without any allowance for deductions or exemptions, in
46 effect under this chapter for the taxable year in which the payment is
47 made.

48 (E) Determination of residence. For purposes of applying the
49 provisions of subparagraphs (D) and (E) of paragraph two of this subdivi-
50 sion, any payor of proceeds shall determine the residence of the payee
51 of such proceeds in accordance with regulations or instructions of the
52 commissioner of taxation and finance or, in the absence of any such
53 regulations or instructions, in accordance with the address of the payee
54 required under the provisions of paragraph six of subsection (q) of
55 section thirty-four hundred two of the internal revenue code.

1 (b) Extension of withholding to unemployment compensation benefits,
2 annuity payments, and lottery winnings.

3 (1) For purposes of this chapter:

4 (A) any supplemental unemployment compensation benefit paid to an
5 individual to the extent includible in such individual's city adjusted
6 gross income,

7 (B) any payment of an annuity to an individual to the extent includi-
8 ble in such individual's city adjusted gross income, if at the time the
9 payment is made a request that such annuity be subject to withholding
10 under this chapter is in effect, and

11 (C) any periodic payment (but only where such payment is part of a
12 series of payments extending over a period greater than one year), of
13 lottery winnings by the division of the lottery, if at the time the
14 payment is made a request that such lottery winnings be subject to with-
15 holding under this chapter is in effect, shall be treated as if it were
16 a payment of wages by an employer to an employee for a payroll period.

17 (D) any member or employee contributions to a retirement system or
18 pension fund picked up or paid by the employer for members of the
19 Manhattan and Bronx surface transportation authority pension plan and
20 treated as employer contributions in determining income tax treatment
21 under subdivision (h) of section four hundred fourteen of the Internal
22 Revenue Code.

23 (2) Request for withholding. A request that an annuity be subject to
24 withholding under this chapter shall be made by the payee in writing to
25 the person making the annuity payments, and a request that lottery
26 winnings be subject to withholding under this chapter shall be made by
27 the payee in writing to the division of the lottery, in the manner
28 prescribed by the commissioner of taxation and finance. A request that
29 an annuity be subject to withholding may, notwithstanding any provision
30 of law to the contrary, be terminated by furnishing to the person making
31 the payments a written statement of termination. A request that lottery
32 winnings be subject to withholding under this chapter shall not be revo-
33 cable while the payee is a nonresident, and shall constitute other secu-
34 rity acceptable to the tax commission within the meaning of paragraph
35 four of subdivision (c) of section 11-1754 of this chapter.

36 Such a request for withholding or statement of termination shall take
37 effect in such manner as the commissioner of taxation and finance shall
38 provide by regulation.

39 (c) Withholding exemptions. For purposes of this section:

40 (1) The number of city withholding exemptions which an employee
41 receiving wages taxable under this chapter may claim shall not exceed
42 the number of city exemptions allowed pursuant to the provisions of
43 section 11-1716 of this chapter and such additional city withholding
44 exemptions as may be prescribed by regulations or instructions of the
45 commissioner of taxation and finance, taking into account the applicable
46 standard deduction and such other factors as he or she finds appropri-
47 ate.

48 (2) The amount of each city withholding exemption shall be the amount
49 of the city exemption allowed pursuant to the provisions of section
50 11-1716 of this chapter.

51 (3) Withholding exemption certificate. An employee shall be required
52 to file with his or her employer a withholding exemption certificate in
53 accordance with regulations or instructions prescribed by the commis-
54 sioner of taxation and finance.

55 § 11-1772 Information statement for employee. Every employer required
56 to deduct and withhold tax under this chapter from the wages of an

1 employee, or who would have been required so to deduct and withhold tax
2 if the employee had claimed no more than one withholding exemption,
3 shall furnish to each such employee in respect of the wages paid by such
4 employer to such employee during the calendar year on or before February
5 fifteenth of the succeeding year, or, if his or her employment is termi-
6 nated before the close of such calendar year, within thirty days from
7 the date on which the last payment of the wages is made, a written
8 statement as prescribed by the tax commission showing the amount of
9 wages paid by the employer to the employee, the amount deducted and
10 withheld as tax, and such other information as the tax commission shall
11 prescribe.

12 § 11-1773 Credit for tax withheld. Wages upon which tax is required
13 to be withheld shall be taxable under this chapter as if no withholding
14 were required, but any amount of tax actually deducted and withheld
15 under this chapter in any calendar year shall be deemed to have been
16 paid to the tax commission on behalf of the person from whom withheld,
17 and such person shall be credited with having paid that amount of tax
18 for the taxable year beginning in such calendar year.

19 For a taxable year of less than twelve months, the credit shall be
20 made under regulations of the tax commission.

21 § 11-1774 Employer's return and payment of withheld taxes. (a) Gener-
22 al. Every employer required to deduct and withhold tax under this chap-
23 ter shall file a withholding return and pay over to the tax commission
24 or to a depository designated by the tax commission, the taxes so
25 required to be deducted and withheld, as hereafter prescribed.

26 (1) If, after having made a payroll, an employer has been required to
27 deduct and withhold, but has not paid over, a cumulative aggregate
28 amount of seven hundred dollars or more of tax during a calendar quar-
29 ter, such employer shall file a return and pay over the tax. If an
30 employer was required to remit a cumulative aggregate amount of less
31 than fifteen thousand dollars in withholding tax during the calendar
32 year which precedes the previous calendar year, the tax shall be paid
33 over on or before the fifth business day following the date of making
34 such a payroll. If an employer was required to remit a cumulative aggre-
35 gate amount more than or equal to fifteen thousand dollars in withhold-
36 ing tax during the calendar year which precedes the previous calendar
37 year, the tax shall be paid over on or before the third business day
38 following the date of making such a payroll. In the case of an "educa-
39 tional organization" as defined in paragraph two of subsection (a) of
40 section nine of the tax law or a "health care provider" as defined in
41 paragraph four of subsection (a) of section nine of the tax law, the tax
42 shall be paid over on or before the fifth business day following the
43 date of making such a payroll.

44 (2) If, at the close of any calendar quarter, an employer has been
45 required to deduct and withhold, but has not paid over, a cumulative
46 aggregate amount of less than seven hundred dollars of tax during such
47 calendar quarter, such employer shall pay over the tax with the quarter-
48 ly combined withholding, wage reporting and unemployment insurance
49 return required to be filed for such quarter by paragraph four of this
50 subdivision, on or before the last date prescribed by such paragraph for
51 filing such return.

52 (3) If an employer makes more than one payroll per week, then such
53 employer shall determine the applicability of the rules described in
54 paragraphs one and two of this subdivision measured by the last payroll
55 made within the week by such employer; provided, however, that in any
56 week in which the end of a quarter occurs between the making of payrolls

1 by an employer, any tax required to be deducted and withheld in a
2 payroll or payrolls made during such week prior to or on the end of the
3 quarter shall be paid over. If an employer was required to remit a cumu-
4 lative aggregate amount of less than fifteen thousand dollars in with-
5 holding tax during the calendar year preceding the previous calendar
6 year, the tax shall be paid over on or before the fifth business day
7 following the date of making the last payroll in such quarter. If an
8 employer was required to remit a cumulative aggregate amount more than
9 or equal to fifteen thousand dollars in withholding tax during the
10 calendar year preceding the previous calendar year, the tax shall be
11 paid over on or before the third business day following the date of
12 making the last payroll in such quarter. In the case of an "educational
13 organization" as defined in paragraph two of subsection (a) of section
14 nine of the tax law or a "health care provider" as defined in paragraph
15 four of subsection (a) of section nine of the tax law, the tax shall be
16 paid over on or before the fifth business day following the date of
17 making such a payroll. For purposes of this paragraph, the term "week"
18 shall mean the period Sunday through Saturday.

19 (4)(A) All employers described in paragraph one of subdivision (a) of
20 section 11-1771 of this subchapter, including those whose wages paid are
21 not sufficient to require the withholding of tax from the wages of any
22 of their employees, all employers required to provide the wage reporting
23 information for the employees described in subdivision one of section
24 one hundred seventy-one-a of the tax law, and all employers liable for
25 unemployment insurance contributions or for payments in lieu of such
26 contributions pursuant to article eighteen of the labor law, shall file
27 a quarterly combined withholding, wage reporting and unemployment insur-
28 ance return with the department of taxation and finance detailing the
29 preceding calendar quarter's withholding tax transactions, such quar-
30 ter's wage reporting information, such quarter's unemployment insurance
31 contributions, and such other related information as the commissioner of
32 taxation and finance or the commissioner of labor, as applicable, may
33 prescribe. In addition, the return covering the last calendar quarter of
34 each year shall also include withholding reconciliation information for
35 such calendar year. Such returns shall be filed no later than the last
36 day of the month following the last day of each calendar quarter;
37 provided, however, that an employer may provide the wage reporting
38 information covering the last calendar quarter of each year, and the
39 withholding reconciliation information for such year no later than
40 February twenty-eighth of the succeeding year.

41 (B) An employer shall, at the time prescribed by subparagraph (A) of
42 this paragraph for filing each quarterly combined withholding, wage
43 reporting and unemployment insurance return, pay over, in a single
44 remittance, the unemployment insurance contributions and aggregate with-
45 holding taxes required to be paid over with such return.

46 Notwithstanding any provision of law to the contrary, an overpayment
47 of unemployment insurance contributions or of aggregate withholding
48 taxes made by an employer with the quarterly combined withholding, wage
49 reporting and unemployment insurance return for a calendar quarter may
50 be only credited by such employer against such employer's liability for
51 unemployment insurance contributions or aggregate withholding taxes,
52 respectively.

53 (5) The tax commission may, if it believes such action necessary for
54 the protection of the revenues, require any employer to make such return
55 and pay to it the tax deducted and withheld at any time, or from time to
56 time.

1 (6) "Aggregate amount" as used in paragraphs one, two and three of
2 this subdivision means the aggregate of the aggregate amounts of New
3 York state personal income tax, city personal income tax on residents
4 and city earnings tax on nonresidents authorized to be deducted and
5 withheld.

6 (b) Deposit in trust for tax commission. Whenever any employer fails
7 to collect, truthfully account for, pay over the tax, or make returns of
8 the tax as required in this section, the tax commission may serve a
9 notice requiring such employer to collect the taxes which become collec-
10 tible after service of such notice, to deposit such taxes in a bank
11 approved by the tax commission, in a separate account, in trust for and
12 payable to the tax commission, and to keep the amount of such tax in
13 such account until payment over to the tax commission. Such notice
14 shall remain in effect until a notice of cancellation is served by the
15 tax commission.

16 § 11-1775 Employer's liability for withheld taxes. Every employer
17 required to deduct and withhold tax under this chapter is hereby made
18 liable for such tax. For purposes of assessment and collection, any
19 amount required to be withheld and paid over to the tax commission, and
20 any additions to tax, penalties and interest with respect thereto, shall
21 be considered the tax of the employer. Any amount of tax actually
22 deducted and withheld under this chapter shall be held to be a special
23 fund in trust for the tax commission. No employee shall have any right
24 of action against his or her employer in respect to any moneys deducted
25 and withheld from his or her wages and paid over to the tax commission
26 in compliance or in intended compliance with this chapter.

27 § 11-1776 Employer's failure to withhold. If an employer fails to
28 deduct and withhold tax as required, and thereafter the tax against
29 which such tax may be credited is paid, the tax so required to be
30 deducted and withheld shall not be collected from the employer, but the
31 employer shall not be relieved from liability for any penalties, inter-
32 est, or additions to the tax otherwise applicable in respect of such
33 failure to deduct and withhold.

34 § 11-1777 Designation of third parties to perform acts required of
35 employers. In case a fiduciary, agent, or other person has the control,
36 receipt, custody, or disposal of, or pays the wages of an employee or
37 group of employees, employed by one or more employers, the tax commis-
38 sion, under regulations promulgated by it, is authorized to designate
39 such fiduciary, agent, or other person to perform such acts as are
40 required of employers under this chapter and as the tax commission may
41 specify. Except as may be otherwise prescribed by the tax commission,
42 all provisions of law, including penalties, applicable in respect of an
43 employer shall be applicable to a fiduciary, agent, or other person so
44 designated but, except as so provided, the employer for whom such fidu-
45 ciary, agent, or other person acts shall remain subject to the
46 provisions of law, including penalties, applicable in respect of employ-
47 ers.

48 § 11-1778 Liability of third parties paying or providing for wages.

49 (a) Direct payment by third party. If a lender, surety or other person,
50 who is not an employer with respect to an employee or group of employ-
51 ees, pays wages directly to such an employee or group of employees,
52 employed by one or more employers, or to an agent on behalf of such
53 employee or employees, such lender, surety or other person shall be
54 liable for the amount of taxes, together with interest, required to be
55 deducted and withheld from such wages by the employer.

1 (b) Funds supplied to employer by third parties. If a lender, surety
2 or other person supplies funds to or for the account of an employer for
3 the specific purpose of paying wages of the employees of such employer,
4 with actual notice or knowledge that such employer does not intend to or
5 will not be able to make timely payment or deposit of the amounts of tax
6 required by this chapter to be deducted and withheld by such employer
7 from such wages, such lender, surety or other person shall be liable for
8 the amount of the taxes, together with interest, which are not paid over
9 to the tax commission by such employer with respect to such wages.
10 However, the liability of such lender, surety or other person shall be
11 limited to an amount equal to twenty-five percent of the amount so
12 supplied to or for the account of such employer for such purpose.

13 (c) Effect of payment. Any amounts paid to the tax commission pursuant
14 to this section shall be credited against the liability of the employer.

15 SUBCHAPTER 5

16 PROCEDURE AND ADMINISTRATION

17 § 11-1781 Notice of deficiency. (a) General. If upon examination of a
18 taxpayer's return under this chapter the tax commission determines that
19 there is a deficiency of income tax, it may mail a notice of deficiency
20 to the taxpayer. If a taxpayer fails to file an income tax return
21 required under this chapter, the tax commission is authorized to esti-
22 mate the taxpayer's city taxable income and tax thereon, from any infor-
23 mation in its possession, and to mail a notice of deficiency to the
24 taxpayer. A notice of deficiency shall be mailed by certified or regis-
25 tered mail to the taxpayer at his or her last known address in or out of
26 this state. If a husband and wife are jointly liable for tax, a notice
27 of deficiency may be a single joint notice, except that if the tax
28 commission has been notified by either spouse that separate residences
29 have been established, then, in lieu of the single joint notice, a
30 duplicate original of the joint notice shall be mailed to each spouse at
31 his or her last known address in or out of this state. If the taxpayer
32 is deceased or under a legal disability, a notice of deficiency may be
33 mailed to his or her last known address in or out of this state, unless
34 the tax commission has received notice of the existence of a fiduciary
35 relationship with respect to the taxpayer.

36 (b) Notice of deficiency as assessment. After ninety days from the
37 mailing of a notice of deficiency, such notice shall be an assessment of
38 the amount of tax specified in such notice, together with the interest,
39 additions to tax and penalties stated in such notice, except only for
40 any such tax or other amounts as to which the taxpayer has within such
41 ninety day period filed with the tax commission a petition under section
42 11-1789 of this subchapter. If the notice of deficiency is addressed to
43 a person outside of the United States, such period shall be one hundred
44 fifty days instead of ninety days.

45 (c) Restrictions on assessment and levy. No assessment of a deficiency
46 in tax and no levy or proceeding in court for its collection shall be
47 made, begun or prosecuted, except as otherwise provided in section
48 11-1794 of this subchapter, until a notice of deficiency has been mailed
49 to the taxpayer, nor until the expiration of the time for filing a peti-
50 tion contesting such notice, nor, if a petition with respect to the
51 taxable year has been filed with the tax commission, until the decision
52 of the tax commission has become final. For exception in the case of
53 judicial review of the decision of the tax commission, see subdivision
54 (c) of section 11-1790 of this subchapter.

55 (d) Exceptions for mathematical errors. If a mathematical error
56 appears on a return, including an overstatement of the credit for income

1 tax withheld at the source, or of the amount paid as estimated income
2 tax, the tax commission shall notify the taxpayer that an amount of tax
3 in excess of that shown upon the return is due, and that such excess has
4 been assessed. Such notice shall not be considered as a notice of defi-
5 ciency for the purposes of this section, subdivision (f) of section
6 11-1787 of this subchapter, limiting credits or refunds after petition
7 to the tax commission, or subdivision (b) of section 11-1789 of this
8 subchapter, authorizing the filing of a petition with the tax commission
9 based on a notice of deficiency, nor shall such assessment or collection
10 be prohibited by the provisions of subdivision (c) of this section.

11 (e) Exceptions where federal changes, corrections or disallowances are
12 not reported. (1) If the taxpayer or employer fails to comply with
13 section 11-1759 of this chapter, instead of the mode and time of assess-
14 ment provided for in subdivision (b) of this section, the tax commission
15 may assess a deficiency based upon such federal change, correction or
16 disallowance by mailing to the taxpayer a notice of additional tax due
17 specifying the amount of the deficiency, and such deficiency, together
18 with the interest, additions to tax and penalties stated in such notice,
19 shall be deemed assessed on the date such notice is mailed unless within
20 thirty days after the mailing of such notice a report of the federal
21 change, correction or disallowance or an amended return, where such
22 return was required by section 11-1759 of this chapter, is filed accom-
23 panied by a statement showing wherein such federal determination and
24 such notice of additional tax due are erroneous.

25 (2) Such notice shall not be considered as a notice of deficiency for
26 the purposes of this section, subdivision (f) of section 11-1787 of this
27 subchapter, limiting credits or refunds after petition to the tax
28 commission, or subdivision (b) of section 11-1789 of this subchapter,
29 authorizing the filing of a petition with the tax commission based on a
30 notice of deficiency, nor shall such assessment or the collection there-
31 of be prohibited by the provisions of subdivision (c) of this section.

32 (3) If a husband and wife are jointly liable for tax, a notice of
33 additional tax due may be a single joint notice, except that if the tax
34 commission has been notified by either spouse that separate residences
35 have been established, then, in lieu of the joint notice, a duplicate
36 original of the joint notice shall be mailed to each spouse at his or
37 her last known address in or out of this state. If the taxpayer is
38 deceased or under a legal disability, a notice of additional tax due may
39 be mailed to his or her last known address in or out of this state,
40 unless the tax commission has received notice of the existence of a
41 fiduciary relationship with respect to the taxpayer.

42 (f) Waiver of restrictions. The taxpayer shall at any time, whether or
43 not a notice of deficiency has been issued, have the right to waive the
44 restrictions on assessment and collection of the whole or any part of
45 the deficiency by a signed notice in writing filed with the tax commis-
46 sion.

47 (g) Deficiency defined. For purposes of this chapter, a deficiency
48 means the amount of the tax imposed by this chapter, less (i) the amount
49 shown as the tax upon the taxpayer's return, whether the return was made
50 or the tax computed by such taxpayer or by the tax commission, and less
51 (ii) the amounts previously assessed, or collected without assessment,
52 as a deficiency and plus (iii) the amount of any rebates. For the
53 purpose of this definition, the tax imposed by this chapter and the tax
54 shown on the return shall both be determined without regard to payments
55 on account of estimated tax or the credit for withholding tax; and a
56 rebate means so much of an abatement, credit, refund or other repayment,

1 whether or not erroneous, made on the ground that the amounts entering
2 into the definition of a deficiency showed a balance in favor of the
3 taxpayer.

4 § 11-1782 Assessment. (a) Assessment date. The amount of tax which a
5 return shows to be due, or the amount of tax which a return would have
6 shown to be due but for a mathematical error, shall be deemed to be
7 assessed on the date of filing of the return, including any amended
8 return showing an increase of tax. In the case of a return properly
9 filed without computation of tax, the tax computed by the tax commission
10 shall be deemed to be assessed on the date on which payment is due. If
11 a notice of deficiency has been mailed, the amount of the deficiency
12 shall be deemed to be assessed on the date specified in subdivision (b)
13 of section 11-1781 of this subchapter if no petition to the tax commis-
14 sion is filed, or if a petition is filed, then upon the date when a
15 decision of the tax commission establishing the amount of the deficiency
16 becomes final. If an amended return or report filed pursuant to section
17 11-1759 of this chapter concedes the accuracy of a federal change or
18 correction, any deficiency in tax under this chapter resulting therefrom
19 shall be deemed to be assessed on the date of filing such report or
20 amended return, and such assessment shall be timely notwithstanding
21 section 11-1783 of this subchapter. If a notice of additional tax due,
22 as prescribed in subdivision (e) of section 11-1781 of this subchapter,
23 has been mailed, the amount of the deficiency shall be deemed to be
24 assessed on the date specified in such subdivision unless within thirty
25 days after the mailing of such notice a report of the federal change or
26 correction or an amended return, where such return was required by
27 section 11-1759 of this chapter, is filed accompanied by a statement
28 showing wherein such federal determination and such notice of additional
29 tax due are erroneous. Any amount paid as a tax or in respect of a tax,
30 other than amounts withheld at the source or paid as estimated income
31 tax, shall be deemed to be assessed upon the date of receipt of payment,
32 notwithstanding any other provisions.

33 (b) Other assessment powers. If the mode or time for the assessment of
34 any tax under this chapter, including interest, additions to tax and
35 assessable penalties, is not otherwise provided for, the tax commission
36 may establish the same by regulations.

37 (c) Estimated income tax. No unpaid amount of estimated tax shall be
38 assessed.

39 (d) Omission of income, item of tax preference, total taxable amount
40 or ordinary income portion of a lump sum distribution on return. The tax
41 may be assessed at any time within six years after the return was filed
42 if: (1) an individual omits from his city adjusted gross income, the
43 sum of his items of tax preference, or the total taxable amount or ordi-
44 nary income portion of a lump sum distribution an amount properly inclu-
45 dible therein which is in excess of twenty-five percent of the amount of
46 city adjusted gross income, the sum of the items of tax preference or
47 the total taxable amount or ordinary income portion of a lump sum
48 distribution stated in the return, or (2) an estate or trust omits from
49 its city adjusted gross income, the sum of its items of tax preference,
50 or the total taxable amount or ordinary income portion of a lump sum
51 distribution an amount properly includible therein which is in excess of
52 twenty-five percent of the amount stated in the return of city adjusted
53 gross income, or the sum of the items of tax preference, or the total
54 taxable amount or ordinary income portion of a lump sum distribution,
55 respectively. For purposes of this paragraph, city adjusted gross income

1 means New York adjusted gross income as determined under paragraph four
2 of subsection (e) of section six hundred one of the tax law.

3 For purposes of this subdivision there shall not be taken into account
4 any amount which is omitted in the return if such amount is disclosed in
5 the return, or in a statement attached to the return, in a manner
6 adequate to apprise the commissioner of the nature and amount of the
7 item of income, tax preference, the total taxable amount or ordinary
8 income portion of a lump sum distribution.

9 (e) Cross reference. For assessment in case of jeopardy, see section
10 11-1794 of this subchapter.

11 § 11-1783 Limitations on assessment. (a) General. Except as otherwise
12 provided in this section, any tax under this chapter shall be assessed
13 within three years after the return was filed, whether or not such
14 return was filed on or after the date prescribed.

15 (b) Time return deemed filed.

16 (1) Early return. For purposes of this section a return of income tax,
17 except withholding tax, filed before the last day prescribed by law or
18 by regulations promulgated pursuant to law for the filing thereof, shall
19 be deemed to be filed on such last day.

20 (2) Return of withholding tax. For purposes of this section, if a
21 return of withholding tax for any period ending with or within a calen-
22 dar year is filed before April fifteenth of the succeeding calendar
23 year, such return shall be deemed to be filed on April fifteenth of such
24 succeeding calendar year.

25 (c) Exceptions.

26 (1) Assessment at any time. The tax may be assessed at any time if:

27 (A) no return is filed,

28 (B) a false or fraudulent return is filed with intent to evade tax, or

29 (C) the taxpayer or employer fails to comply with section 11-1759 of
30 this chapter.

31 (2) Extension by agreement. Where, before the expiration of the time
32 prescribed in this section for the assessment of tax, both the tax
33 commission and the taxpayer have consented in writing to its assessment
34 after such time, the tax may be assessed at any time prior to the expi-
35 ration of the period agreed upon. The period so agreed upon may be
36 extended by subsequent agreements in writing made before the expiration
37 of the period previously agreed upon.

38 (3) Report of federal changes, corrections or disallowances. If the
39 taxpayer or employer complies with section 11-1759 of this chapter, the
40 assessment, if not deemed to have been made upon the filing of the
41 report or amended return, may be made at any time within two years after
42 such report or amended return was filed. The amount of such assessment
43 of tax shall not exceed the amount of the increase in city tax attribut-
44 able to such federal change or correction. The provisions of this para-
45 graph shall not affect the time within which or the amount for which an
46 assessment may otherwise be made.

47 (4) Deficiency attributable to net operating loss carryback. If a
48 deficiency is attributable to the application to the taxpayer of a net
49 operating loss carryback, it may be assessed at any time that a defi-
50 ciency for the taxable year of the loss may be assessed.

51 (5) Recovery of erroneous refund. An erroneous refund shall be consid-
52 ered an underpayment of tax on the date made, and an assessment of a
53 deficiency arising out of an erroneous refund may be made at any time
54 within two years from the making of the refund, except that the assess-
55 ment may be made within five years from the making of the refund if it

1 appears that any part of the refund was induced by fraud or misrepresenta-
2 tion of a material fact.

3 (6) Request for prompt assessment. If a return is required for a dece-
4 dent or for a decedent's estate during the period of administration, the
5 tax shall be assessed within eighteen months after written request
6 therefor, made after the return is filed, by the executor, administrator
7 or other person representing the estate of such decedent, but not more
8 than three years after the return was filed, except as otherwise
9 provided in this subdivision and subdivision (d) of this section.

10 (7) Report on use of certain property. Under the circumstances
11 described in paragraph two of subdivision (g) of section 11-1712 of this
12 chapter, the tax may be assessed within three years after the filing of
13 a return reporting that property has been used for purposes other than
14 research and development to a greater extent than originally reported.

15 (8) Report concerning waste treatment facility, air pollution control
16 facility or eligible business facility. Under the circumstances
17 described in paragraph three of subdivision (h) of section 11-1712 of
18 this chapter, the tax may be assessed within three years after filing of
19 the return containing the information required by such paragraph, or, if
20 a certificate of compliance in respect to an air pollution control
21 facility shall be revoked, within three years after the tax commission
22 shall receive notice of such revocation from the taxpayer or as required
23 by section 19-0309 of the environmental conservation law, whichever
24 notice is received earlier.

25 (9) Except as otherwise provided in paragraph three of this subdivi-
26 sion, or as otherwise provided in this section where a longer period of
27 time may apply, if a taxpayer files an amended return, an assessment of
28 tax, if not deemed to have been made upon the filing of the amended
29 return, including recovery of a previously paid refund, attributable to
30 a change or correction on the amended return from a prior return may be
31 made at any time within one year after such amended return is filed.

32 (d) Omission of income, total taxable amount or ordinary income
33 portion of a lump sum distribution on return. The tax may be assessed at
34 any time within six years after the return was filed if:

35 (1) an individual omits from his city adjusted gross income the total
36 taxable amount or ordinary income portion of a lump sum distribution an
37 amount properly includible therein which is in excess of twenty-five
38 percent of the amount of city adjusted gross income or the total taxable
39 amount or ordinary income portion of a lump sum distribution stated in
40 the return, or

41 (2) an estate or trust omits from its city adjusted gross income, or
42 the total taxable amount or ordinary income portion of a lump sum
43 distribution an amount properly includible therein which is in excess of
44 twenty-five percent of the amount stated in the return of city adjusted
45 gross income, or the total taxable amount or ordinary income portion of
46 a lump sum distribution, respectively. For purposes of this paragraph,
47 city adjusted gross income means New York adjusted gross income as
48 determined under paragraph four of subsection (e) of section six hundred
49 one of the tax law.

50 For purposes of this subdivision there shall not be taken into account
51 any amount which is omitted in the return if such amount is disclosed in
52 the return, or in a statement attached to the return, in a manner
53 adequate to apprise the commissioner of the nature and amount of the
54 item of income, the total taxable amount or ordinary income portion of a
55 lump sum distribution.

1 (e) Suspension of running of period of limitation. The running of the
2 period of limitations on assessment or collection of tax or other
3 amount, or of a transferee's liability, shall, after the mailing of a
4 notice of deficiency, be suspended for the period during which the tax
5 commission is prohibited under subdivision (c) of section 11-1781 of
6 this subchapter from making the assessment or from collecting by levy.

7 § 11-1784 Interest on underpayment. (a) General. If any amount of
8 income tax is not paid on or before the last date prescribed in this
9 chapter for payment, interest on such amount at the underpayment rate
10 set by the commissioner of taxation and finance pursuant to section
11 11-1797 of this subchapter, or if no rate is set, at the rate of seven
12 and one-half percent per annum shall be paid for the period from such
13 last date to the date paid, whether or not any extension of time for
14 payment was granted. Interest under this subdivision shall not be paid
15 if the amount thereof is less than one dollar. If the time for filing of
16 a return of tax withheld by an employer is extended, the employer shall
17 pay interest for the period for which the extension is granted and may
18 not charge such interest to the employee.

19 (b) Exception as to estimated tax. This section shall not apply to any
20 failure to pay estimated tax.

21 (c) Exception for mathematical error. No interest shall be imposed on
22 any underpayment of tax due solely to mathematical error if the taxpayer
23 files a return within the time prescribed in this chapter, including any
24 extension of time, and pays the amount of underpayment within three
25 months after the due date of such return, as it may be extended.

26 (d) Suspension of interest on deficiencies. If a waiver of
27 restrictions on assessment of a deficiency has been filed by the taxpay-
28 er, and if notice and demand by the tax commission for payment of such
29 deficiency is not made within thirty days after the filing of such waiv-
30 er, interest shall not be imposed on such deficiency for the period
31 beginning immediately after such thirtieth day and ending with the date
32 of notice and demand.

33 (e) Tax reduced by carryback. If the amount of tax for any taxable
34 year is reduced by reason of a carryback of a net operating loss, such
35 reduction in tax shall not affect the computation of interest under this
36 section for the period ending with the filing date for the taxable year
37 in which the net operating loss arises. Such filing date shall be deter-
38 mined without regard to extensions of time to file.

39 (f) Interest treated as tax. Interest under this section shall be paid
40 upon notice and demand and shall be assessed, collected and paid in the
41 same manner as income tax. Any reference in this chapter to the tax
42 imposed by this chapter shall be deemed also to refer to interest
43 imposed by this section on such tax.

44 (g) Interest on penalties or additions to tax. Interest shall be
45 imposed under subdivision (a) of this section in respect of any assessa-
46 ble penalty or addition to tax only if such assessable penalty or addi-
47 tion to tax is not paid within twenty-one calendar days from the date of
48 the notice and demand therefor under subdivision (b) of section 11-1792
49 of this subchapter, ten business days if the amount for which such
50 notice and demand is made equals or exceeds one hundred thousand
51 dollars, and in such case interest shall be imposed only for the period
52 from such date of the notice and demand to the date of payment.

53 (h) Payment within specified period after notice and demand. If notice
54 and demand is made for payment of any amount under subdivision (b) of
55 section 11-1792 of this subchapter, and if such amount is paid within
56 twenty-one calendar days, ten business days if the amount for which such

1 notice and demand is made equals or exceeds one hundred thousand
2 dollars, after the date of such notice and demand, interest under this
3 section on the amount so paid shall not be imposed for the period after
4 the date of such notice and demand.

5 (i) Limitation on assessment and collection. Interest prescribed under
6 this section may be assessed and collected, at any time during the peri-
7 od within which the tax or other amount to which such interest relates
8 may be assessed and collected, respectively.

9 (j) Interest on erroneous refund. Any portion of tax or other amount
10 which has been erroneously refunded, and which is recoverable by the
11 commissioner of taxation and finance, shall bear interest at the under-
12 payment rate set by such commissioner pursuant to section 11-1797 of
13 this subchapter, or if no rate is set, at the rate of seven and one-half
14 percent per annum from the date of the payment of the refund, but only
15 if it appears that any part of the refund was induced by fraud or a
16 misrepresentation of a material fact.

17 (k) Satisfaction by credits. If any portion of a tax is satisfied by
18 credit of an overpayment, then no interest shall be imposed under this
19 section on the portion of the tax so satisfied for any period during
20 which, if the credit had not been made, interest would have been allow-
21 able with respect to such overpayment.

22 § 11-1785 Additions to tax and civil penalties. (a) (1) Failure to
23 file tax return. (A) In case of failure to file a tax return under this
24 chapter on or before the prescribed date, determined with regard to any
25 extension of time for filing, unless it is shown that such failure is
26 due to reasonable cause and not due to willful neglect, there shall be
27 added to the amount required to be shown as tax on such return five
28 percent of the amount of such tax if the failure is for not more than
29 one month, with an additional five percent for each additional month or
30 fraction thereof during which such failure continues, not exceeding
31 twenty-five percent in the aggregate.

32 (B) In the case of a failure to file a return of tax within sixty days
33 of the date prescribed for filing of such return, determined with regard
34 to any extension of time for filing, unless it is shown that such fail-
35 ure is due to reasonable cause and not due to willful neglect, the addi-
36 tion to tax hereunder shall not be less than the lesser of one hundred
37 dollars or one hundred percent of the amount required to be shown as tax
38 on such return.

39 (C) For purposes of this paragraph, the amount of tax required to be
40 shown on the return shall be reduced by the amount of any part of the
41 tax which is paid on or before the date prescribed for payment of the
42 tax and by the amount of any credit against the tax which may be claimed
43 upon the return.

44 (2) Failure to pay tax shown on return. In case of failure to pay the
45 amounts shown as tax on any return required to be filed under this chap-
46 ter on or before the prescribed date, determined with regard to any
47 extension of time for payment, unless it is shown that such failure is
48 due to reasonable cause and not due to willful neglect, there shall be
49 added to the amount shown as tax on such return one-half of one percent
50 of the amount of such tax if the failure is not for more than one month,
51 with an additional one-half of one percent for each additional month or
52 fraction thereof during which such failure continues, not exceeding
53 twenty-five percent in the aggregate. For the purpose of computing the
54 addition for any month, the amount of tax shown on the return shall be
55 reduced by the amount of any part of the tax which is paid on or before
56 the beginning of such month and by the amount of any credit against the

1 tax which may be claimed upon the return. If the amount of tax required
2 to be shown on a return is less than the amount shown as tax on such
3 return, this paragraph shall be applied by substituting such lower
4 amount.

5 (3) Failure to pay tax required to be shown on return. In case of
6 failure to pay any amount in respect of any tax required to be shown on
7 a return required to be filed under this chapter which is not so shown,
8 including an assessment made pursuant to subdivision (a) of section
9 11-1782 of this subchapter, within twenty-one calendar days of the date
10 of a notice and demand therefor, ten business days if the amount for
11 which such notice and demand is made equals or exceeds one hundred thou-
12 sand dollars, unless it is shown that such failure is due to reasonable
13 cause and not due to willful neglect, there shall be added to the amount
14 of tax stated in such notice and demand one-half of one percent of such
15 tax if the failure is not for more than one month, with an additional
16 one-half of one percent for each additional month or fraction thereof
17 during which such failure continues, not exceeding twenty-five percent
18 in the aggregate. For the purpose of computing the addition for any
19 month, the amount of tax stated in the notice and demand shall be
20 reduced by the amount of any part of the tax which is paid before the
21 beginning of such month.

22 (4) Limitations on additions. (A) With respect to any return, the
23 amount of the addition under paragraph one of this subdivision shall be
24 reduced by the amount of the addition under paragraph two of this subdivi-
25 sion for any month to which an addition applies under both paragraphs
26 one and two of this subdivision. In any case described in subparagraph
27 (B) of such paragraph one of this subdivision, the amount of the addi-
28 tion under such paragraph one shall not be reduced below the amount
29 provided in such subparagraph.

30 (B) With respect to any return, the maximum amount of the addition
31 permitted under paragraph three of this subdivision shall be reduced by
32 the amount of the addition under paragraph one of this subdivision,
33 determined without regard to subparagraph (B) of such paragraph, which
34 is attributable to the tax for which the notice and demand is made and
35 which is not paid within ten days of such notice and demand.

36 (b) Deficiency due to negligence. (1) If any part of a deficiency is
37 due to negligence or intentional disregard of this chapter or rules or
38 regulations established pursuant to such chapter, but without intent to
39 defraud, there shall be added to the tax an amount equal to five percent
40 of the deficiency.

41 (2) There shall be added to the tax, in addition to the amount deter-
42 mined under paragraph one of this subdivision, an amount equal to fifty
43 percent of the interest payable under section 11-1784 of this subchapter
44 with respect to the portion of the underpayment described in such para-
45 graph one which is attributable to the negligence or intentional disre-
46 gard referred to in such paragraph, for the period beginning on the last
47 date prescribed by law for payment of such underpayment, determined
48 without regard to any extension, and ending on the date of the assess-
49 ment of the tax, or, if earlier, the date of the payment of the tax.

50 (3) If any payment is shown on a return made by a payor with respect
51 to dividends, patronage dividends and interest under subsection (a) of
52 section six thousand forty-two, subsection (a) of section six thousand
53 forty-four or subsection (a) of section six thousand forty-nine of the
54 internal revenue code, respectively, and the payee fails to include any
55 portion of such payment in city adjusted gross income, any portion of an
56 underpayment attributable to such failure shall be treated, for purposes

1 of this subdivision, as due to negligence in the absence of clear and
2 convincing evidence to the contrary. If any penalty is imposed under
3 this subdivision by reason of this paragraph, the amount of the penalty
4 imposed by paragraph one of this subdivision shall be five percent of
5 the portion of the underpayment which is attributable to the failure
6 described in this paragraph.

7 (c) Failure by individual to pay estimated income tax. (1) Addition
8 to the tax. Except as otherwise provided in this subdivision and subdivi-
9 sion (d) of this section, in the case of any underpayment of estimated
10 tax by an individual, there shall be added to the tax under this chapter
11 for the taxable year an amount determined by applying the underpayment
12 rate established under section 11-1797 of this subchapter, or if no rate
13 is set, at the rate of seven and one-half percent per annum, to the
14 amount of the underpayment for the period of the underpayment. Such
15 period shall run from the due date for the required installment to the
16 earlier of the fifteenth day of the fourth month following the close of
17 the taxable year or, with respect to any portion of the underpayment,
18 the date on which such portion is paid. For purposes of determining such
19 date, a payment of estimated tax shall be credited against unpaid
20 required installments in the order in which such installments are
21 required to be paid. There shall be four required installments for each
22 taxable year, due on April fifteenth, June fifteenth and September
23 fifteenth of such taxable year and on January fifteenth of the following
24 taxable year.

25 (2) Amount of underpayment. For purposes of paragraph one of this
26 subdivision, the amount of the underpayment shall be the excess of the
27 required installment over the amount, if any, of the installment paid on
28 or before the due date for the installment.

29 (3) Required installment. (A) Except as provided in paragraph four of
30 this subdivision, the amount of any required installment shall be twen-
31 ty-five percent of the required annual payment.

32 (B) The required annual payment is the lesser of

33 (i) ninety percent of the tax shown on the return for the taxable
34 year, or, if no return is filed, ninety percent of the tax for such
35 year, or

36 (ii) one hundred percent of the tax shown on the return of the indi-
37 vidual for the preceding taxable year. Provided, however, that the tax
38 shown on such return for taxable years beginning in two thousand eight
39 shall be calculated as if paragraph three of subdivision (f) of section
40 11-1715 of this chapter was in effect for taxable years beginning in two
41 thousand eight. Provided, however, that the tax shown on such return for
42 taxable years beginning in two thousand nine shall be calculated as if
43 paragraph two of subdivision (g) of section 11-1715 of this chapter was
44 in effect for taxable years beginning in two thousand nine.

45 Clause (ii) of this subparagraph shall not apply if the preceding
46 taxable year was not a taxable year of twelve months or if the individ-
47 ual did not file a return for such preceding taxable year.

48 (C) Limitation on use of preceding year's tax.

49 (i) General. If the city adjusted gross income shown on the return of
50 the individual for the preceding taxable year exceeds one hundred fifty
51 thousand dollars, clause (ii) of subparagraph (B) of this paragraph
52 shall be applied by substituting "one hundred ten percent" for "one
53 hundred percent".

54 (ii) Separate returns. In the case of a husband and wife who file
55 separate returns pursuant to subdivision (b) of section 11-1751 of this
56 chapter for the taxable year for which the amount of the installment is

1 being determined, clause (i) of this subparagraph shall be applied by
2 substituting "seventy-five thousand dollars" for "one hundred fifty
3 thousand dollars".

4 (4) Annualized income installment. (A) In general. In the case of
5 any required installment, if the individual establishes that the annual-
6 ized income installment determined under subparagraph (B) of this para-
7 graph is less than the amount determined under paragraph three of this
8 subdivision, the annualized income installment shall be the required
9 installment. Any reduction in a required installment resulting from the
10 application of this subparagraph shall be recaptured by increasing the
11 amount of the next required installment determined under paragraph three
12 of this subdivision by the amount of such reduction, and by increasing
13 successive required installments as necessary to effect full recapture.

14 (B) Determination of annualized income installment. In the case of
15 any required installment, the annualized income installment is the
16 excess, if any, of an amount equal to the applicable percentage of the
17 tax for the taxable year computed by placing on an annualized basis the
18 taxable income for months in the taxable year ending before the due date
19 for the installment, over the aggregate amount of any prior required
20 installments for the taxable year. The applicable percentage of the tax
21 shall be twenty-two and one-half percent in the case of the first
22 installment, forty-five percent in the case of the second installment,
23 sixty-seven and one-half percent in the case of the third installment
24 and ninety percent in the case of the fourth installment, and shall be
25 computed without regard to any increase in the rates applicable to the
26 taxable year unless such increase was enacted at least thirty days prior
27 to the due date of the installment.

28 (5) Definitions and special rules. (A) Definition of the term tax
29 and application of credits against tax. For purposes of this subdivi-
30 sion and subdivision (d) of this section, the term "tax" means the tax
31 imposed under this chapter minus the credits against tax allowed under
32 this chapter, other than the credit under section 11-1773 of this chap-
33 ter, relating to tax withheld on wages. The credit allowed under
34 section 11-1773 of this chapter for the taxable year shall be deemed a
35 payment of estimated tax, and an equal part of such amount shall be
36 deemed paid on each installment due date for such taxable year, unless
37 the taxpayer establishes the dates on which all amounts were actually
38 withheld, in which case the amounts so withheld shall be deemed payments
39 of estimated tax on the dates on which such amounts were actually with-
40 held.

41 (B) Special rule where return filed on or before January thirty-first.
42 If, on or before January thirty-first of the following taxable year,
43 the taxpayer files a return for the taxable year and pays in full the
44 amount computed on the return as payable, then no addition to tax shall
45 be imposed under paragraph one of this subdivision with respect to any
46 underpayment of the fourth required installment for the taxable year.

47 (C) Special rules for farmers and fishermen. For purposes of this
48 subdivision, if an individual is a farmer or fisherman for any taxable
49 year there shall be only one required installment for the taxable year,
50 due on January fifteenth of the following taxable year in an amount
51 equal to the required annual payment determined under paragraph three of
52 this subdivision by substituting sixty-six and two-thirds percent for
53 ninety percent and without regard to subparagraph (C) of paragraph three
54 of this subdivision. Subparagraph (B) of this paragraph shall be applied
55 by substituting March first for January thirty-first and by treating the
56 required installment under this subparagraph as the fourth required

1 installment. An individual is a farmer or fisherman for any taxable year
2 if the individual's federal gross income from farming or fishing,
3 including oyster farming, for the taxable year is at least two-thirds of
4 the total federal gross income from all sources for the taxable year or
5 if such individual's federal gross income from farming or fishing,
6 including oyster farming, shown on the return of the individual for the
7 preceding taxable year is at least two-thirds of the total federal gross
8 income from all sources shown on such return.

9 (D) Fiscal years. In applying this subdivision to a taxable year
10 beginning on any date other than January first, there shall be substi-
11 tuted, for the months specified in this subdivision, the months which
12 correspond thereto.

13 (E) Short taxable year. This subdivision shall be applied to taxable
14 years of less than twelve months in accordance with regulations
15 prescribed by the tax commission.

16 (F) Joint estimated tax of husband and wife. A husband and wife may
17 make the required annual payment determined under paragraph three of
18 this subdivision as if they were one taxpayer, in which case the liabil-
19 ity under paragraph one of this subdivision with respect to the esti-
20 mated tax shall be joint and several. No such joint payment may be made
21 if husband and wife are separated under a decree of divorce or separate
22 maintenance, or if they have different taxable years. If a joint
23 payment is made but husband and wife determine their taxes under this
24 chapter separately, the estimated tax for such year may be treated as
25 the estimated tax of either husband or wife, or may be divided between
26 them, as they may elect.

27 (6) Trusts and certain estates. (A) General. This subdivision shall
28 apply to any trust or estate except as provided in subparagraphs (B) and
29 (C) of this paragraph.

30 (B) Exception for estates and certain trusts. This subdivision shall
31 not apply with respect to any taxable year ending before the date two
32 years after the date of the decedent's death to (i) the estate of such
33 decedent or (ii) any trust all of which was treated, under subpart E of
34 part I of subchapter J of chapter one of the internal revenue code, as
35 owned by the decedent and to which the residue of the decedent's estate
36 will pass under his will, or, if no will is admitted to probate, which
37 is the trust primarily responsible for paying debts, taxes and expenses
38 of administration.

39 (C) Special rule for annualizations. In the case of any estate or
40 trust, subparagraph (B) of paragraph four of this subdivision shall be
41 applied by substituting "ending before the date one month before the due
42 date for the installment" for "ending before the due date for the
43 installment".

44 (D) In the case of a trust, the trustee may elect to treat any portion
45 of a payment of estimated tax made by such trust for any taxable year of
46 the trust as a payment made by a beneficiary of such trust. Any amount
47 so treated shall be treated as paid or credited to the beneficiary on
48 the last day of such taxable year, and for purposes of this subdivision,
49 the amount so treated shall not be treated as a payment of estimated tax
50 made by the trust, but shall be treated as a payment of estimated tax
51 made by such beneficiary on the January fifteenth following the end of
52 the trust's taxable year.

53 (E) An election under subparagraph (D) of this paragraph shall be made
54 on or before the sixty-fifth day after the close of the taxable year and
55 in such manner as the commissioner of taxation and finance may
56 prescribe.

1 (F) Extension to last year of estate. In the case of a taxable year
2 reasonably expected to be the last taxable year of an estate, any refer-
3 ence in subparagraph (D) of this paragraph to a trust shall be treated
4 as including a reference to an estate, and the fiduciary of the estate
5 shall be treated as the trustee.

6 (d) Exceptions to addition to tax for failure to pay estimated income
7 tax.

8 (1) Where tax is small amount. No addition to tax shall be imposed
9 under subdivision (c) of this section for any taxable year if the tax
10 shown on the return for such taxable year, or, if no return is filed,
11 the tax, reduced by the credit allowable under section 11-1773 of this
12 chapter, is less than one hundred dollars.

13 (2) Where no tax liability for preceding taxable year. No addition to
14 tax shall be imposed under subdivision (c) of this section for any taxa-
15 ble year if the preceding taxable year was a taxable year of twelve
16 months, the individual did not have any liability for tax under this
17 chapter for the preceding taxable year and throughout the preceding
18 taxable year the individual was a resident of this city or a nonresident
19 who had city adjusted gross income.

20 (3) Installment due on or after individual's death. No addition to
21 tax shall be imposed under subdivision (c) of this section with respect
22 to any installment due on or after the individual's death.

23 (4) Waiver in certain cases. (A) In general. No addition to tax
24 shall be imposed under subdivision (c) of this section with respect to
25 any underpayment to the extent the tax commission determines that by
26 reason of casualty, disaster or other unusual circumstances the imposi-
27 tion of such addition to tax would be against equity and good
28 conscience.

29 (B) Newly retired or disabled individuals. No addition to tax shall
30 be imposed under subdivision (c) of this section with respect to any
31 underpayment if the tax commission determines that in the taxable year
32 for which estimated payments were required to be made or in the taxable
33 year preceding such taxable year the taxpayer retired after having
34 attained age sixty-two or became disabled, and that such underpayment
35 was due to reasonable cause and not to willful neglect.

36 (e) Deficiency due to fraud. (1) If any part of a deficiency is due
37 to fraud, there shall be added to the tax an amount equal to fifty
38 percent of the deficiency.

39 (2) There shall be added to the tax, in addition to the amount deter-
40 mined under paragraph one of this subdivision, an amount equal to fifty
41 percent of the interest payable under section 11-1784 of this subchapter
42 with respect to the portion of the underpayment described in such para-
43 graph one which is attributable to fraud, for the period beginning on
44 the last day prescribed by law for payment of such underpayment, deter-
45 mined without regard to any extension, and ending on the date of the
46 assessment of the tax, or, if earlier, the date of the payment of the
47 tax.

48 (3) The addition to tax under this subdivision shall be in lieu of any
49 other addition to tax imposed by subdivision (a) or (b) of this section.

50 (4) In the case of a joint return under section 11-1751 of this chap-
51 ter, this subdivision shall not apply with respect to the tax of a
52 spouse unless some part of the underpayment is due to the fraud of such
53 spouse.

54 (f) Non-willful failure to pay withholding tax. If any employer,
55 without intent to evade or defeat any tax imposed by this chapter or the
56 payment thereof, shall fail to make a return and pay a tax withheld by

1 him or her at the time required by or under the provisions of section
2 11-1774 of this chapter, such employer shall be liable for such tax and
3 shall pay the same together with interest thereon and the addition to
4 tax provided in subdivision (a) of this section, and such interest and
5 addition to tax shall not be charged to or collected from the employee
6 by the employer. The tax commission shall have the same rights and
7 powers for the collection of such tax, interest and addition to tax
8 against such employer as are now prescribed by this chapter for the
9 collection of tax against an individual taxpayer.

10 (g) Willful failure to collect and pay over tax. Any person required
11 to collect, truthfully account for, and pay over the tax imposed by this
12 chapter who willfully fails to collect such tax or truthfully account
13 for and pay over such tax or willfully attempts in any manner to evade
14 or defeat the tax or the payment thereof, shall, in addition to other
15 penalties provided by law, be liable to a penalty equal to the total
16 amount of the tax evaded, or not collected, or not accounted for and
17 paid over. No addition to tax under subdivision (b) or (e) of this
18 section shall be imposed for any offense to which this subdivision
19 applies. The tax commission shall have the power, in its discretion, to
20 waive, reduce or compromise any penalty under this subdivision.

21 (h) Failure to file certain information returns. (1) Except as other-
22 wise provided in this paragraph, in case of each failure to file a
23 statement of a payment to another person, required under authority of
24 subdivision (d) of section 11-1758 of this chapter, relating to informa-
25 tion at source, including the duplicate statement of tax withheld on
26 wages, on the date prescribed therefor, determined with regard to any
27 extension of time for filing, unless it is shown that such failure is
28 due to reasonable cause and not to willful neglect, there shall, upon
29 notice and demand by the tax commission and in the same manner as tax,
30 be paid by the person so failing to file the statement, a penalty of
31 fifty dollars for each statement not so filed, but the total amount
32 imposed on the delinquent person for all such failures during any calen-
33 dar year shall not exceed ten thousand dollars.

34 (2) If any partnership or S corporation required to file a return or
35 report under subdivision (c) of section 11-1758 of this chapter or under
36 section 11-1759 of this chapter for any taxable year fails to file such
37 return or report at the time prescribed therefor, determined with regard
38 to any extension of time for filing, or files a return or report which
39 fails to show the information required under such subdivision (c) or
40 section 11-1759 of this chapter, unless it is shown that such failure is
41 due to reasonable cause and not due to willful neglect, there shall,
42 upon notice and demand by the commissioner and in the same manner as
43 tax, be paid by the partnership or S corporation a penalty for each
44 month, or fraction thereof, during which such failure continues, but not
45 to exceed five months. The amount of such penalty for any month is the
46 product of fifty dollars, multiplied by the number of partners in the
47 partnership or shareholders in the S corporation during any part of the
48 taxable year who were subject to tax under this chapter during any part
49 of such taxable year.

50 (i) Additional penalty. Any person who with fraudulent intent shall
51 fail to pay, or to deduct or withhold and pay, any tax, or to make,
52 render, sign or certify any return, or to supply any information within
53 the time required by or under this chapter, shall be liable to penalty
54 of not more than one thousand dollars, in addition to any other amounts
55 required under this chapter, to be imposed, assessed and collected by
56 the tax commission. The tax commission shall have the power, in its

1 discretion, to waive, reduce or compromise any penalty under this subdi-
2 vision.

3 (j) Fraudulent statement or failure to furnish statement to employee.
4 In addition to any criminal penalties provided by law, any person
5 required under the provisions of section 11-1772 of this chapter to
6 furnish a statement to an employee, who willfully furnishes a false or
7 fraudulent statement, or who willfully fails to furnish a statement in
8 the manner, at the time, and showing the information required under
9 section 11-1772 of this chapter, or regulations prescribed thereunder,
10 shall for each such failure be subject to a penalty under this chapter
11 of fifty dollars.

12 (k) Failure to supply identifying numbers. If any person who is
13 required by regulations prescribed under subdivision (b) of section
14 11-1758 of this chapter:

15 (1) to include his or her identifying number in any return, state-
16 ment, or other document;

17 (2) to furnish his or her identifying number to another person; or
18 (3) to include in any return, statement or other document made with
19 respect to another person the identifying number of such other person,
20 fails to comply with such requirement at the time prescribed by such
21 regulations, such person shall, unless it is shown that such failure is
22 due to reasonable cause and not due to willful neglect, pay a penalty of
23 five dollars for each such failure described in paragraph one of this
24 subdivision and fifty dollars for each such failure described in para-
25 graph two of this subdivision, and this paragraph, except that the total
26 amount imposed on such person for all such failures during any calendar
27 year shall not exceed ten thousand dollars; except that for failure to
28 include his or her own identification number in any return, statement or
29 other document, such penalty shall not be imposed unless such person
30 shall have failed to supply his or her identification number to the tax
31 commission within thirty days after demand therefor.

32 (1) Additions treated as tax. The additions to tax and penalties
33 provided by this section shall be paid upon notice and demand and shall
34 be assessed, collected and paid in the same manner as taxes, and any
35 reference in this chapter to income tax or tax imposed by this chapter,
36 shall be deemed also to refer to the additions to tax and penalties
37 provided by this section. For purposes of section 11-1781 of this
38 subchapter, this subdivision shall not apply to:

39 (1) any addition to tax under subdivision (a) of this section except
40 as to that portion attributable to a deficiency;

41 (2) any addition to tax under subdivision (c) of this section;

42 (3) any penalty under subdivision (h) of this section and any addi-
43 tional penalty under subdivision (i) of this section; and

44 (4) any penalties under subdivisions (j), (k), (q), (r), (s) and (t)
45 of this section.

46 (m) Determination of deficiency. For purposes of subdivisions (b) and
47 (e) of this section, the amount shown as the tax by the taxpayer upon
48 his or her return shall be taken into account in determining the amount
49 of the deficiency only if such return was filed on or before the last
50 day prescribed for the filing of such return, determined with regard to
51 any extension of time for such filing.

52 (n) Person defined. For purposes of subdivisions (g), (i), (o), (q)
53 and (r) of this section, the term person includes an individual, corpo-
54 ration, partnership or limited liability company or an officer or
55 employee of any corporation, including a dissolved corporation, or a
56 member or employee of any partnership, or a member, manager or employee

1 of a limited liability company, who as such officer, employee, manager
2 or member is under a duty to perform the act in respect of which the
3 violation occurs.

4 (o) Failure to make deposits of taxes. In case of failure by any
5 person required by this chapter, or by regulations of the tax commission
6 under this chapter, to deposit on the date prescribed therefor any
7 amount of tax imposed by this chapter in a depository authorized pursu-
8 ant to subdivision (a) of section 11-1792 of this subchapter to receive
9 such deposits, unless it is shown that such failure is due to reasonable
10 cause and not due to willful neglect, there shall be imposed on such
11 person a penalty of five percent of the amount of the underpayment. For
12 purposes of this subdivision the term "underpayment" means the excess of
13 the amount of the tax required to be so deposited over the amount, if
14 any, thereof, deposited on or before the date prescribed therefor.

15 (p) Substantial understatement of liability. If there is a substantial
16 understatement of income tax for any taxable year, there shall be added
17 to the tax an amount equal to ten percent of the amount of any underpay-
18 ment attributable to such understatement. For purposes of this subdivi-
19 sion, there is a substantial understatement of income tax for any taxa-
20 ble year if the amount of the understatement for the taxable year
21 exceeds the greater of ten percent of the tax required to be shown on
22 the return for the taxable year, or two thousand dollars. For purposes
23 of this subdivision, the term "understatement" means the excess of the
24 amount of the tax required to be shown on the return for the taxable
25 year, over the amount of the tax imposed which is shown on the return
26 reduced by any rebate, within the meaning of subdivision (g) of section
27 11-1781 of this subchapter. The amount of such understatement shall be
28 reduced by that portion of the understatement which is attributable to
29 the tax treatment of any item by the taxpayer if there is or was
30 substantial authority for such treatment, or any item with respect to
31 which the relevant facts affecting the item's tax treatment are
32 adequately disclosed in the return or in a statement attached to the
33 return. The tax commission may waive all or any part of the addition to
34 tax provided by this subdivision on a showing by the taxpayer that there
35 was reasonable cause for the understatement, or part thereof, and that
36 the taxpayer acted in good faith.

37 (q) Frivolous tax returns. If any individual files what purports to
38 be a return of any tax imposed by this chapter but which does not
39 contain information on which the substantial correctness of the self-as-
40 sessment may be judged, or contains information that on its face indi-
41 cates that the self-assessment is substantially incorrect; and such
42 conduct is due to a position which is frivolous, or an intent, which
43 appears on the purported return, to delay or impede the administration
44 of this chapter, then such individual shall pay a penalty not exceeding
45 five hundred dollars. This penalty shall be in addition to any other
46 penalty provided by law.

47 (r) Aiding or assisting in the giving of fraudulent returns, reports,
48 statements or other documents. (1) Any person who, with the intent that
49 tax be evaded, shall, for a fee or other compensation or as an incident
50 to the performance of other services for which such person receives
51 compensation, aid or assist in, or procure, counsel, or advise the prep-
52 aration or presentation under, or in connection with any matter arising
53 under this chapter of any return, report, declaration, statement or
54 other document which is fraudulent or false as to any material matter,
55 or supply any false or fraudulent information, whether or not such
56 falsity of fraud is with the knowledge or consent of the person author-

1 ized or required to present such return, report, declaration, statement
2 or other document shall pay a penalty not exceeding one thousand
3 dollars.

4 (2) For purposes of paragraph one of this subdivision, the term
5 "procures" includes ordering, or otherwise causing, a subordinate to do
6 an act, and knowing of, and not attempting to prevent, participation by
7 a subordinate in an act. The term "subordinate" means any other person,
8 whether or not a director, officer, employee, or agent of the taxpayer
9 involved, over whose activities the person has direction, supervision or
10 control.

11 (3) For purposes of paragraph one of this subdivision, a person
12 furnishing typing, reproducing, or other mechanical assistance with
13 respect to a document shall not be treated as having aided or assisted
14 in the preparation of such document by reason of such assistance.

15 (4) The penalty imposed by this subdivision shall be in addition to
16 any other penalty provided by law.

17 (s) False information with respect to withholding. In addition to any
18 criminal penalty provided by law, if any individual makes a statement
19 under section 11-1771 of this chapter which results in a decrease in the
20 amounts deducted and withheld under this chapter, and as of the time
21 such statement was made, there was no reasonable basis for such state-
22 ment, such individual shall pay a penalty of five hundred dollars for
23 such statement. The tax commission shall waive the penalty imposed
24 under this subdivision if the taxes imposed with respect to the individ-
25 ual under this chapter for the taxable year are equal to or less than
26 the sum of the credits against such taxes allowed by this chapter, and
27 the payments of estimated tax which are considered payments on account
28 of such taxes.

29 (t) Failure of tax return preparer to conform to certain requirements.

30 (1) Failure to sign return or claim for refund. Any individual who is a
31 tax return preparer with respect to any return or claim for refund, who
32 is required pursuant to paragraph one of subdivision (g) of section
33 11-1758 of this chapter to sign such return or claim for refund, and who
34 fails to comply with such requirement with respect to such return or
35 claim for refund, shall be subject to a penalty of fifty dollars for
36 each such failure, unless it is shown that such failure is due to
37 reasonable cause and not due to willful neglect. The maximum penalty
38 imposed under this paragraph on any person with respect to returns or
39 claims for refund filed during any calendar year shall not exceed twenty-
40 five thousand dollars.

41 (2) Failure to furnish identifying number. If any identifying number
42 required to be included on any return or claim for refund pursuant to
43 paragraph two of subdivision (g) of section 11-1758 of this chapter is
44 not so included, the person who is the tax return preparer with respect
45 to such return or claim for refund shall be subject to a penalty of
46 fifty dollars with respect to such return or claim for refund unless it
47 is shown that such failure is due to reasonable cause and not willful
48 neglect. For purposes of this paragraph, where an employer and one or
49 more employees of such employer are tax return preparers with respect to
50 the same return or claim for refund or where a partnership and one or
51 more partners in such partnership are tax return preparers with respect
52 to the same return or claim for refund, such employer or such partner-
53 ship shall be deemed to be the sole tax return preparer with respect to
54 such return or claim for refund. The maximum penalty imposed under this
55 paragraph on any person with respect to returns or claims for refund

1 filed during any calendar year shall not exceed twenty-five thousand
2 dollars.

3 (3) Failure to furnish copy to taxpayer. Any person who is a tax
4 return preparer with respect to any return or claim for refund, who is
5 required under paragraph three of subdivision (g) of section 11-1758 of
6 this chapter to furnish a copy of such return or claim for refund to the
7 taxpayer, and who fails to comply with such provision with respect to
8 such return or claim for refund shall be subject to a penalty of fifty
9 dollars for each such failure, unless it is shown that such failure is
10 due to reasonable cause and not due to willful neglect. The maximum
11 penalty imposed under this paragraph on any person with respect to
12 returns or claims for refund filed during any calendar year shall not
13 exceed twenty-five thousand dollars.

14 (4) Failure to retain copy or list. Any person who is a tax return
15 preparer with respect to any return or claim for refund, who is required
16 under paragraph four of subdivision (g) of section 11-1758 of this chap-
17 ter to: (i) retain a copy of such return or claim for refund or retain
18 on a list the name and taxpayer identifying number of the taxpayer for
19 whom such return or claim for refund was prepared and (ii) make such
20 copy or list available for inspection upon request by the commissioner
21 of taxation and finance, and who fails to comply with the retention
22 requirement or who complies with the retention requirement but fails to
23 comply with such request by the commissioner, shall be subject to a
24 penalty of fifty dollars for each such failure, unless it is shown that
25 such failure is due to reasonable cause and not due to willful neglect.
26 The maximum penalty imposed under this paragraph on any person with
27 respect to any calendar year shall not exceed twenty-five thousand
28 dollars.

29 (5) Failure to electronically file. If a tax return preparer is
30 required to file returns electronically pursuant to paragraph ten of
31 subdivision (g) of section 11-1758 of this chapter, and such preparer
32 fails to file one or more of such returns electronically, then such
33 preparer shall be subject to a penalty of fifty dollars for each such
34 failure to electronically file a return, unless it is shown that such
35 failure is due to reasonable cause and not due to willful neglect. For
36 purposes of this paragraph, reasonable cause shall include, but not be
37 limited to, a taxpayer's election not to electronically file his or her
38 return.

39 § 11-1786 Overpayment. (a) General. The state commissioner of taxa-
40 tion and finance, within the applicable period of limitations, may cred-
41 it an overpayment of income tax and interest on such overpayment against
42 any liability in respect of any tax imposed by this chapter or by chap-
43 ter nineteen of this title on the person who made the overpayment or any
44 other tax imposed on such person pursuant to the authority of the tax
45 law or any other law if such tax is administered by the state commis-
46 sioner of taxation and finance, against any liability in respect of any
47 tax imposed on such person by the tax law and, as provided in sections
48 one hundred seventy-one-c, one hundred seventy-one-d, one hundred seven-
49 ty-one-e, one hundred seventy-one-f and one hundred seventy-one-l of the
50 tax law, against past-due support, against a past-due legally enforcea-
51 ble debt, against a city of New York tax warrant judgment debt and
52 against the amount of a default in repayment of a guaranteed student,
53 state university or city university loan. The balance shall be refunded
54 by the state comptroller out of the proceeds of the tax retained by him
55 or her for such general purpose. Any refund under this section shall be
56 made only upon the filing of a return and upon a certificate of the

1 state commissioner of taxation and finance approved by the state comp-
2 troller. The state comptroller, as a condition precedent to the approval
3 of such a certificate, may examine into the facts as disclosed by the
4 return of the person who made the overpayment and other information and
5 data available in the files of the state commissioner of taxation and
6 finance.

7 (b) Excessive withholding. If the amount allowable as a credit for
8 tax withheld from the taxpayer exceeds his or her tax to which the cred-
9 it relates, the excess shall be considered an overpayment.

10 (c) Overpayment by employer. If there has been an overpayment of tax
11 required to be deducted and withheld under section 11-1771 of this chap-
12 ter, refund shall be made to the employer only to the extent that the
13 amount of the overpayment was not deducted and withheld by the employer.

14 (d) Overpayment by a deceased person. Notwithstanding section thir-
15 teen hundred ten of the surrogate's court procedure act, any overpayment
16 by a decedent not in excess of one thousand dollars may be refunded to
17 the decedent's surviving spouse unless the return for the decedent was
18 filed by his or her executor or administrator.

19 (e) Credits against estimated tax. The commissioner of taxation and
20 finance may prescribe regulations providing for the crediting against
21 the estimated income tax for any taxable year of the amount determined
22 to be an overpayment of the income tax for a preceding taxable year. If
23 any overpayment of income tax is so claimed as a credit against esti-
24 mated tax for the succeeding taxable year, such amount shall be consid-
25 ered as a payment of the income tax for the succeeding taxable year, and
26 no claim for credit or refund of such overpayment shall be allowed for
27 the taxable year for which the overpayment arises, except upon request
28 to the commissioner of taxation and finance on or before the last day
29 prescribed for the filing of the return for the succeeding taxable year,
30 determined with regard to any extension of time granted. If good cause
31 is shown for reversing the credit, the commissioner of taxation and
32 finance may, in his or her discretion, credit the overpayment against a
33 liability or refund the overpayment without interest. Provided, the
34 person who made the overpayment will not be relieved of liability for
35 any penalty imposed for a consequent underpayment of estimated tax for
36 the succeeding taxable year. The decision of the commissioner of taxa-
37 tion and finance to grant or deny the request is final and not subject
38 to further administrative or judicial review.

39 (f) Rule where no tax liability. If there is no tax liability for a
40 period in respect of which an amount is paid as income tax, such amount
41 shall be considered an overpayment.

42 (g) Assessment and collection after limitation period. If any amount
43 of income tax is assessed or collected after the expiration of the peri-
44 od of limitations properly applicable thereto, such amount shall be
45 considered an overpayment.

46 (h) Cross reference. For provision barring application of article
47 fifty-two of the civil practice law and rules to any amount to be
48 refunded or credited to a taxpayer, see section seven of the tax law.

49 § 11-1787 Limitations on credit or refund. (a) General. Claim for
50 credit or refund of an overpayment of income tax shall be filed by the
51 taxpayer within three years from the time the return was filed or two
52 years from the time the tax was paid, whichever of such periods expires
53 the later, or if no return was filed, within two years from the time the
54 tax was paid. If the claim is filed within the three year period, the
55 amount of the credit or refund shall not exceed the portion of the tax
56 paid within the three years immediately preceding the filing of the

1 claim plus the period of any extension of time for filing the return.
2 If the claim is not filed within the three year period, but is filed
3 within the two year period, the amount of the credit or refund shall not
4 exceed the portion of the tax paid during the two years immediately
5 preceding the filing of the claim. Except as otherwise provided in this
6 section, if no claim is filed, the amount of a credit or refund shall
7 not exceed the amount which would be allowable if a claim had been filed
8 on the date the credit or refund is allowed.

9 (b) Extension of time by agreement. If an agreement under the
10 provisions of paragraph two of subdivision (c) of section 11-1783 of
11 this subchapter, extending the period for assessment of income tax, is
12 made within the period prescribed in subdivision (a) of this section
13 for the filing of a claim for credit or refund, the period for filing a
14 claim for credit or refund, or for making credit or refund if no claim
15 is filed, shall not expire prior to six months after the expiration of
16 the period within which an assessment may be made pursuant to the agree-
17 ment or any extension thereof. The amount of such credit or refund
18 shall not exceed the portion of the tax paid after the execution of the
19 agreement and before the filing of the claim or the making of the credit
20 or refund, as the case may be, plus the portion of the tax paid within
21 the period which would be applicable under subdivision (a) of this
22 section if a claim had been filed on the date the agreement was
23 executed.

24 (c) Notice of federal change or correction. A claim for credit or
25 refund of any overpayment of tax attributable to a federal change or
26 correction required to be reported pursuant to section 11-1759 of this
27 chapter shall be filed by the taxpayer within two years from the time
28 the notice of such change or correction or such amended return was
29 required to be filed with the commissioner of taxation and finance. If
30 the report or amended return required by section 11-1759 of this chapter
31 is not filed within the ninety day period therein specified, no interest
32 shall be payable on any claim for credit or refund of the overpayment
33 attributable to the federal change or correction. The amount of such
34 credit or refund shall not exceed the amount of the reduction in tax
35 attributable to such federal change, correction or items amended on the
36 taxpayer's amended federal income tax return. This subdivision shall
37 not affect the time within which or the amount for which a claim for
38 credit or refund may be filed apart from this subdivision.

39 (d) Overpayment attributable to net operating loss carryback. A claim
40 for credit or refund of so much of an overpayment as is attributable to
41 the application to the taxpayer of a net operating loss carryback shall
42 be filed within three years from the time the return was due, including
43 extensions thereof, for the taxable year of the loss, or within the
44 period prescribed in subdivision (b) of this section in respect of such
45 taxable year, or within the period prescribed in subdivision (c) of this
46 section, where applicable, in respect of the taxable year to which the
47 net operating loss is carried back, whichever expires the latest.

48 (e) Failure to file claim within prescribed period. No credit or
49 refund shall be allowed or made, except as provided in subdivision (f)
50 of this section or subdivision (d) of section 11-1790 of this subchap-
51 ter, after the expiration of the applicable period of limitation speci-
52 fied in this chapter, unless a claim for credit or refund is filed by
53 the taxpayer within such period. Any later credit shall be void and any
54 later refund erroneous. No period of limitations specified in any other
55 law shall apply to the recovery by a taxpayer of moneys paid in respect
56 of taxes under this chapter.

1 (f) Effect of petition to tax commission. If a notice of deficiency
2 for a taxable year has been mailed to the taxpayer under section 11-1781
3 of this subchapter and if the taxpayer files a timely petition with the
4 tax commission under section 11-1789 of this subchapter, it may deter-
5 mine that the taxpayer has made an overpayment for such year, whether or
6 not it also determines a deficiency for such a year. No separate claim
7 for credit or refund for such year shall be filed, and no credit or
8 refund for such year shall be allowed or made, except:

9 (1) as to overpayments determined by a decision of the tax commission
10 which has become final; and

11 (2) as to any amount collected in excess of an amount computed in
12 accordance with the decision of the tax commission which has become
13 final; and

14 (3) as to any amount collected after the period of limitation upon the
15 making of levy for collection has expired; and

16 (4) as to any amount claimed as a result of a change or correction
17 described in subdivision (c) of this section.

18 (g) Limit on amount of credit or refund. The amount of overpayment
19 determined under subdivision (f) of this section shall, when the deci-
20 sion of the tax commission has become final, be credited or refunded in
21 accordance with subdivision (a) of section 11-1786 of this subchapter
22 and shall not exceed the amount of tax which the tax commission deter-
23 mines as part of its decision was paid:

24 (1) after the mailing of the notice of deficiency, or

25 (2) within the period which would be applicable under subdivision (a),
26 (b) or (c) of this section, if on the date of the mailing of the notice
27 of deficiency a claim had been filed, whether or not filed, stating the
28 grounds upon which the tax commission finds that there is an overpay-
29 ment.

30 (h) Early return. For purposes of this section, any return filed
31 before the last day prescribed for the filing thereof shall be consid-
32 ered as filed on such last day, determined without regard to any exten-
33 sion of time granted the taxpayer.

34 (i) Prepaid income tax. For purposes of this section, any tax paid by
35 the taxpayer before the last day prescribed for its payment, any income
36 tax withheld from the taxpayer during any calendar year, and any amount
37 paid by the taxpayer as estimated income tax for a taxable year shall be
38 deemed to have been paid by him or her on the fifteenth day of the
39 fourth month following the close of his or her taxable year with respect
40 to which such amount constitutes a credit or payment.

41 (j) Return and payment of withholding tax. Notwithstanding subdivi-
42 sion (h) of this section, for purposes of this section with respect to
43 any withholding tax:

44 (1) if a return for any period ending with or within a calendar year
45 is filed before April fifteenth of the succeeding calendar year, such
46 return shall be considered filed on April fifteenth of such succeeding
47 calendar year; and

48 (2) if a tax with respect to remuneration paid during any period
49 ending with or within a calendar year is paid before April fifteenth of
50 the succeeding calendar year, such tax shall be considered paid on April
51 fifteenth of such succeeding calendar year.

52 (k) Running of periods of limitation suspended while taxpayer is
53 unable to manage financial affairs due to disability. (1) In the case of
54 an individual taxpayer, the running of the periods specified in subdivi-
55 sions (a), (b), and (c) of this section shall be suspended during any
56 period of such individual's life that such individual is financially

1 disabled. For purposes of this subdivision, an individual taxpayer is an
2 individual who is subject to the tax imposed under this chapter.

3 (2) For purposes of paragraph one of this subdivision, an individual
4 taxpayer is financially disabled if such individual is unable to manage
5 his or her financial affairs by reason of a medically determinable phys-
6 ical or mental impairment of that individual which can be expected to
7 result in death or which has lasted or can be expected to last for a
8 continuous period of not less than twelve months. An individual shall
9 not be considered to have such impairment unless proof of the existence
10 thereof is furnished in such form and manner as the commissioner of
11 taxation and finance may require.

12 (3) An individual taxpayer shall not be treated as financially disa-
13 bled during any period that such individual's spouse or any other person
14 is authorized to act on behalf of such individual in financial matters.

15 (1) Cross reference. For provision barring refund of overpayment
16 credited against tax of a succeeding year, see subdivision (e) of
17 section 11-1786 of this subchapter.

18 § 11-1788 Interest on overpayment. (a) General. Notwithstanding the
19 provisions of section sixteen of the state finance law, interest shall
20 be allowed and paid as follows at the overpayment rate set by the
21 commissioner of taxation and finance pursuant to section 11-1797 of this
22 subchapter, or if no rate is set, at the rate of six percent per annum
23 upon any overpayment in respect of the tax imposed by this chapter:

24 (1) from the date of the overpayment to the due date of an amount
25 against which a credit is taken;

26 (2) from the date of the overpayment to a date, to be determined by
27 the commissioner of taxation and finance, preceding the date of a refund
28 check by not more than thirty days, whether or not such refund check is
29 accepted by the taxpayer after tender of such check to the taxpayer. The
30 acceptance of such check shall be without prejudice to any right of the
31 taxpayer to claim any additional overpayment and interest thereon.

32 (3) Late and amended returns and claims for credit or refund.
33 Notwithstanding paragraph one or two of this subdivision, in the case of
34 an overpayment claimed on a return of tax which is filed after the last
35 date prescribed for filing such return, determined with regard to exten-
36 sions, or claimed on an amended return of tax or claimed on a claim for
37 credit or refund, no interest shall be allowed or paid for any day
38 before the date on which such return or claim is filed.

39 (4) Interest on certain refunds. To the extent provided for in regu-
40 lations promulgated by the commissioner of taxation and finance, if an
41 item of income, gain, loss, deduction or credit is changed from the
42 taxable year or period in which it is reported to the taxable year or
43 period in which it belongs and the change results in an underpayment in
44 a taxable year or period and an overpayment in some other taxable year
45 or period, the provisions of paragraph three of this subdivision with
46 respect to an overpayment shall not be applicable to the extent that the
47 limitation in such paragraph on the right to interest would result in a
48 taxpayer not being allowed interest for a length of time with respect to
49 an overpayment while being required to pay interest on an equivalent
50 amount of the related underpayment. However, this paragraph shall not be
51 construed as limiting or mitigating the effect of any statute of limita-
52 tions or any other provision of law relating to the authority of such
53 commissioner to issue a notice of deficiency or to allow a credit or
54 refund on an overpayment.

55 (5) Amounts of less than one dollar. No interest shall be allowed or
56 paid if the amount thereof is less than one dollar.

1 (b) Advance payment of tax, payment of estimated tax, and credit for
2 income tax withholding. The provisions of subdivisions (h) and (i) of
3 section 11-1787 of this subchapter applicable in determining the date of
4 payment of tax for purposes of determining the period of limitations on
5 credit or refund, shall be applicable in determining the date of payment
6 for purposes of this section.

7 (c) Income tax refund within forty-five days of claim for overpayment.
8 If any overpayment of tax imposed by this chapter is credited or
9 refunded within forty-five days after the last date prescribed, or
10 permitted by extension of time, for filing the return of such tax on
11 which such overpayment was claimed or within forty-five days after such
12 return was filed, whichever is later, or within forty-five days after an
13 amended return was filed claiming such overpayment or within forty-five
14 days after a claim for credit or refund was filed on which such overpay-
15 ment was claimed, within six months after a demand is filed pursuant to
16 paragraph six of subsection (b) of section six hundred fifty-one of the
17 tax law, no interest shall be allowed under this section on any such
18 overpayment. For purposes of this subdivision, any amended return or
19 claim for credit or refund filed before the last day prescribed, or
20 permitted by extension of time, for the filing of the return of tax for
21 such year shall be considered as filed on such last day.

22 (d) Refund of income tax caused by carryback. For purposes of this
23 section, if any overpayment of tax imposed by this chapter results from
24 a carryback of a net operating loss, such overpayment shall be deemed
25 not to have been made prior to the filing date for the taxable year in
26 which such net operating loss arises. Such filing date shall be deter-
27 mined without regard to extensions of time to file. For purposes of
28 subdivision (c) of this section any overpayment described herein shall
29 be treated as an overpayment for the loss year and such subdivision
30 shall be applied with respect to such overpayment by treating the return
31 for the loss year as not filed before claim for such overpayment is
32 filed. The term "loss year" means the taxable year in which such loss
33 arises.

34 (e) No interest until return in processible form.

35 (1) For purposes of subdivisions (a) and (c) of this section, a return
36 shall not be treated as filed until it is filed in processible form.

37 (2) For purposes of paragraph one of this subdivision, a return is in
38 a processible form if:

39 (A) such return is filed on a permitted form, and

40 (B) such return contains:

41 (i) the taxpayer's name, address, and identifying number and the
42 required signatures, and

43 (ii) sufficient required information, whether on the return or on
44 required attachments, to permit the mathematical verification of tax
45 liability shown on the return.

46 (f) Overpayment credited against past-due support, or against a past-
47 due legally enforceable debt, or a city of New York tax warrant judgment
48 debt, or defaulted guaranteed student, state university or city univer-
49 sity loans. If interest is payable pursuant to this section on that
50 portion of an overpayment of tax imposed by this chapter which is certi-
51 fied by the state commissioner of taxation and finance to the state
52 comptroller as the amount to be credited against past-due support, or
53 against a past-due legally enforceable debt, or a city of New York tax
54 warrant judgment debt, or the amount of a default in repayment of a
55 guaranteed student, state university or city university loan, as the
56 case may be, pursuant to the provisions of sections one hundred seven-

1 ty-one-c, one hundred seventy-one-d, one hundred seventy-one-e, one
2 hundred seventy-one-f and one hundred seventy-one-l of the tax law, such
3 portion of such an overpayment shall cease to bear interest on the date
4 of such certification.

5 (g) Cross-reference. For provision with respect to interest after
6 failure to file notice of federal change under section 11-1759 of this
7 chapter, see subdivision (c) of section 11-1787 of this subchapter.

8 § 11-1789 Petition to tax commission. (a) General. The form of a
9 petition to the tax commission, and further proceedings before the tax
10 commission in any case initiated by the filing of a petition, shall be
11 governed by such rules as the tax commission shall prescribe. No peti-
12 tion shall be denied in whole or in part without opportunity for a hear-
13 ing on reasonable prior notice. Such hearing shall be conducted by one
14 or more members of the tax commission, or by a hearing officer desig-
15 nated by the tax commission to take evidence and report to the tax
16 commission. The tax commissioners shall, acting as a body, jointly
17 decide the case as quickly as practicable. Notice of the decision shall
18 be mailed promptly to the taxpayer by certified or registered mail at
19 his or her last known address, and such notice shall set forth the tax
20 commission's findings of fact and a brief statement of the grounds of
21 decision in each case decided in whole or in part adversely to the
22 taxpayer.

23 (b) Petition for redetermination of a deficiency. Within ninety days,
24 or one hundred fifty days if the notice is addressed to a person outside
25 of the United States, after the mailing of the notice of deficiency
26 authorized by section 11-1781 of this subchapter, the taxpayer may file
27 a petition with the tax commission for a redetermination of the defi-
28 ciency. Such petition may also assert a claim for refund for the same
29 taxable year or years, subject to the limitations of subdivision (g) of
30 section 11-1787 of this subchapter.

31 (c) Petition for refund. A taxpayer may file a petition with the tax
32 commission for the amounts asserted in a claim for refund if:

33 (1) the taxpayer has filed a timely claim for refund with the tax
34 commission,

35 (2) the taxpayer has not previously filed with the tax commission a
36 timely petition under subdivision (b) of this section for the same
37 taxable year unless the petition under this subdivision relates to a
38 separate claim for credit or refund properly filed under subdivision (f)
39 of section 11-1787 of this subchapter, and

40 (3) either: (A) six months have expired since the claim was filed, or
41 (B) the tax commission has mailed to the taxpayer, by registered or
42 certified mail, a notice of disallowance of such claim in whole or in
43 part.

44 No petition under this subdivision shall be filed more than two years
45 after the date of mailing of a notice of disallowance, unless prior to
46 the expiration of such two year period it has been extended by written
47 agreement between the taxpayer and the tax commission. If a taxpayer
48 files a written waiver of the requirement that he or she be mailed a
49 notice of disallowance, the two year period prescribed by this subdivi-
50 sion for filing a petition for refund shall begin on the date such waiv-
51 er is filed.

52 (d) Assertion of deficiency after filing petition.

53 (1) Petition for redetermination of deficiency. If a taxpayer files
54 with the tax commission, a petition for redetermination of a deficiency,
55 the tax commission shall have power to determine a greater deficiency
56 than asserted in the notice of deficiency and to determine if there

1 should be assessed any addition to tax or penalty provided in section
2 11-1785 of this subchapter, if claim therefor is asserted at or before
3 the hearing under rules of the tax commission.

4 (2) Petition for refund. If the taxpayer files with the tax commis-
5 sion a petition for credit or refund for a taxable year, the tax commis-
6 sion may:

7 (A) determine a deficiency for such year as to any amount of defi-
8 ciency asserted at or before the hearing under rules of the tax commis-
9 sion, and within the period in which an assessment would be timely under
10 section 11-1783 of this subchapter, or

11 (B) deny so much of the amount for which credit or refund is sought
12 in the petition, as is offset by other issues pertaining to the same
13 taxable year which are asserted at or before the hearing under rules of
14 the tax commission.

15 (3) Opportunity to respond. A taxpayer shall be given a reasonable
16 opportunity to respond to any matters asserted by the tax commission
17 under this subdivision.

18 (4) Restriction on further notices of deficiency. If the taxpayer
19 files a petition with the tax commission under this section, no notice
20 of deficiency under section 11-1781 of this subchapter may thereafter be
21 issued by the tax commission for the same taxable year, except in case
22 of fraud or with respect to a change or correction required to be
23 reported under section 11-1759 of this chapter.

24 (e) Burden of proof. In any case before the tax commission under this
25 chapter, the burden of proof shall be upon the petitioner except for the
26 following issues, as to which the burden of proof shall be upon the tax
27 commission:

28 (1) whether the petitioner has been guilty of fraud with intent to
29 evade tax;

30 (2) whether the petitioner is liable as the transferee of property of
31 a taxpayer, but not to show that the taxpayer was liable for the tax;

32 (3) whether the petitioner is liable for any increase in a deficiency
33 where such increase is asserted initially after a notice of deficiency
34 was mailed and a petition under this section filed, unless such increase
35 in deficiency is the result of a change or correction required to be
36 reported under section 11-1759 of this chapter, and of which change or
37 correction the tax commission had no notice at the time it mailed the
38 notice of deficiency; and

39 (4) whether any person is liable for a penalty under subdivision (q)
40 or (r) of section 11-1785 of this subchapter.

41 (f) Evidence of related federal determination. Evidence of a federal
42 determination relating to issues raised in a case before the tax commis-
43 sion under this section shall be admissible, under rules established by
44 the tax commission.

45 (g) Jurisdiction over other years. The tax commission shall consider
46 such facts with relation to the taxes for other years as may be neces-
47 sary correctly to determine the tax for the taxable year, but in so
48 doing shall have no jurisdiction to determine whether or not the tax for
49 any other year has been overpaid or underpaid.

50 § 11-1790 Review of tax commission decision. (a) General. A decision
51 of the tax commission shall be subject to judicial review at the
52 instance of any taxpayer effected thereby in the manner provided by law
53 for the review of a final decision or action of administrative agencies
54 of the state. An application by a taxpayer for such review must be made
55 within four months after notice of the decision is sent by certified or
56 registered mail to the taxpayer.

1 (b) Judicial review exclusive remedy of taxpayer. The review of a
2 decision of the tax commission provided by this section shall be the
3 exclusive remedy available to any taxpayer for the judicial determi-
4 nation of the liability of the taxpayer for the taxes imposed by this
5 chapter.

6 (c) Assessment pending review; review bond. Irrespective of any
7 restrictions on the assessment and collection of deficiencies, the tax
8 commission may assess a deficiency after the expiration of the period
9 specified in subdivision (a) of this section, notwithstanding that an
10 application for judicial review in respect of such deficiency has been
11 duly made by the taxpayer, unless the taxpayer, at or before the time
12 his or her application for review is made, has paid the deficiency, has
13 deposited with the tax commission the amount of the deficiency, or has
14 filed with the tax commission a bond, which may be a jeopardy bond under
15 subdivision (h) of section 11-1794 of this subchapter, in the amount of
16 the portion of the deficiency, including interest and other amounts, in
17 respect of which the application for review is made and all costs and
18 charges which may accrue against him or her in the prosecution of the
19 proceeding, including costs of all appeals, and with surety approved by
20 a justice of the supreme court of the state of New York, conditioned
21 upon the payment of the deficiency, including interest and other
22 amounts, as finally determined and such costs and charges. If as a
23 result of a waiver of the restrictions on the assessment and collection
24 of a deficiency any part of the amount determined by the tax commission
25 is paid after the filing of the review bond, such bond shall, at the
26 request of the taxpayer, be proportionately reduced.

27 (d) Credit, refund or abatement after review. If the amount of a
28 deficiency determined by the tax commission is disallowed in whole or in
29 part by the court of review, the amount so disallowed shall be credited
30 or refunded to the taxpayer, without the making of claim therefor, or,
31 if payment has not been made, shall be abated.

32 (e) Date of finality of tax commission decision. A decision of the
33 tax commission shall become final upon the expiration of the period
34 specified in subdivision (a) of this section for making an application
35 for review, if no such application has been duly made within such time,
36 or if such application has been duly made, upon expiration of the time
37 for all further judicial review, or upon the rendering by the tax
38 commission of a decision in accordance with the mandate of the court on
39 review, provided, however, for the purpose of making an application for
40 review, the decision of the tax commission shall be deemed final on the
41 date the notice of decision is sent by certified or registered mail to
42 the taxpayer.

43 § 11-1791 Mailing rules; holidays; miscellaneous. (a) Timely mail-
44 ing. (1) If any return, claim, statement, notice, petition, or other
45 document required to be filed, or any payment required to be made, with-
46 in a prescribed period or on or before a prescribed date under authority
47 of any provision of this chapter is, after such period or such date,
48 delivered by United States mail to the tax commission, bureau, office,
49 officer or person with which or with whom such document is required to
50 be filed, or to which or to whom such payment is required to be made,
51 the date of the United States postmark stamped on the envelope shall be
52 deemed to be the date of delivery. This subdivision shall apply only if
53 the postmark date falls within the prescribed period or on or before the
54 prescribed date for the filing of such document, or for making the
55 payment, including any extension granted for such filing or payment, and
56 only if such document or payment was deposited in the mail, postage

1 prepaid, properly addressed to the tax commission, bureau, office, offi-
2 cer or person with which or with whom the document is required to be
3 filed or to which or to whom such payment is required to be made. If any
4 document or payment is sent by United States registered mail, such
5 registration shall be prima facie evidence that such document or payment
6 was delivered to the tax commission, bureau, office, officer or person
7 to which or to whom addressed. To the extent that the tax commission
8 shall prescribe by regulation, certified mail may be used in lieu of
9 registered mail under this section. This subdivision shall apply in the
10 case of postmarks not made by the United States post office only if and
11 to the extent provided by regulations of the tax commission.

12 (2)(A) Any reference in paragraph one of this subdivision to the
13 United States mail shall be treated as including a reference to any
14 delivery service designated by the secretary of the treasury of the
15 United States pursuant to section seventy-five hundred two of the Inter-
16 nal Revenue Code and any reference in paragraph one of this subdivision
17 to a postmark by the United States mail shall be treated as including a
18 reference to any date recorded or marked in the manner described in
19 section seventy-five hundred two of the Internal Revenue Code by a
20 designated delivery service. If the commissioner of taxation and finance
21 finds that any delivery service designated by such secretary is inade-
22 quate for the needs of the state, such commissioner may withdraw such
23 designation for purposes of this article. Such commissioner may also
24 designate additional delivery services meeting the criteria of section
25 seventy-five hundred two of the Internal Revenue Code for purposes of
26 this article, or may withdraw any such designation if such commissioner
27 finds that a delivery service so designated is inadequate for the needs
28 of the state. Any reference in paragraph one of this subdivision to the
29 United States mail shall be treated as including a reference to any
30 delivery service designated by such commissioner and any reference in
31 paragraph one of this subdivision to a postmark by the United States
32 mail shall be treated as including a reference to any date recorded or
33 marked in the manner described in section seventy-five hundred two of
34 the Internal Revenue Code by a delivery service designated by the
35 commissioner.

36 (B) Any equivalent of registered or certified mail designated by the
37 United States secretary of the treasury, or as may be designated by the
38 commissioner of taxation and finance pursuant to the same criteria used
39 by the secretary for such designation pursuant to section seventy-five
40 hundred two of the Internal Revenue Code, shall be included within the
41 meaning of registered or certified mail as used in paragraph one of this
42 subdivision. If such commissioner finds that any equivalent of regis-
43 tered or certified mail designated by such secretary or such commission-
44 er is inadequate for the needs of the state, such commissioner may with-
45 draw such designation for purposes of this article.

46 (b) Last known address. For purposes of this chapter, a taxpayer's
47 last known address shall be the address given in the last return filed
48 by such taxpayer, unless subsequent to the filing of such return the
49 taxpayer shall have notified the tax commission of a change of address.

50 (c) Last day a Saturday, Sunday or legal holiday. When the last day
51 prescribed under authority of this chapter, including any extension of
52 time, for performing any act falls on Saturday, Sunday, or a legal holi-
53 day in the state of New York, the performance of such act shall be
54 considered timely if it is performed on the next succeeding day which is
55 not a Saturday, Sunday or a legal holiday.

1 (d) Certificate; unfiled return. For purposes of this chapter, the
2 certificate of the tax commission to the effect that a tax has not been
3 paid, that a return has not been filed, or that information has not been
4 supplied, as required by or under the provisions of this chapter, shall
5 be prima facie evidence that such tax has not been paid, that such
6 return has not been filed, or that such information has not been
7 supplied.

8 (e) Attorney general; jurisdiction. The attorney general shall have
9 concurrent jurisdiction with any district attorney in the prosecution of
10 any offenses arising under article thirty-seven of the tax law with
11 respect to the tax imposed under this chapter.

12 § 11-1792 Collection, levy and liens. (a) Collection procedures. The
13 taxes imposed by this chapter shall be collected by the tax commission,
14 and it may establish the mode or time for the collection of any amount
15 due it under this chapter if not otherwise specified. The tax commis-
16 sion shall, upon request, give a receipt for any sum collected under
17 this chapter. The tax commission may authorize banks or trust companies
18 which are depositaries or financial agents of the state to receive and
19 give a receipt for any tax imposed under this chapter in such manner, at
20 such times, and under such conditions as the tax commission may
21 prescribe; and the tax commission shall prescribe the manner, times and
22 conditions under which the receipt of such tax by such banks and trust
23 companies is to be treated as payment of such tax to the tax commission.

24 (b) Notice and demand for tax. The tax commission shall as soon as
25 practicable give notice to each person liable for any amount of tax,
26 addition to tax, penalty or interest, which has been assessed but
27 remains unpaid, stating the amount and demanding payment thereof. Such
28 notice shall be left at the dwelling or usual place of business of such
29 person or shall be sent by mail to such person's last known address.
30 Except where the tax commission determines that collection would be
31 jeopardized by delay, if any tax is assessed prior to the last date,
32 including any date fixed by extension, prescribed for payment of such
33 tax, payment of such tax shall not be demanded until after such date.

34 (c) Issuance of warrant after notice and demand. If any person liable
35 under this chapter for the payment of any tax, addition to tax, penalty
36 or interest neglects or refuses to pay the same within twenty-one calen-
37 dar days after notice and demand therefor is given to such person under
38 subdivision (b) of this section, ten business days if the amount for
39 which such notice and demand is made equals or exceeds one hundred thou-
40 sand dollars, the commissioner of taxation and finance may within six
41 years after the date of such assessment issue a warrant under such
42 commissioner's official seal directed to the sheriff of any county of
43 the state, or to any officer or employee of the department of taxation
44 and finance, commanding him or her to levy upon and sell such person's
45 real and personal property for the payment of the amount assessed, with
46 the cost of executing the warrant, and to return such warrant to such
47 commissioner and pay to him or her the money collected by virtue thereof
48 within sixty days after the receipt of the warrant. If such commissioner
49 finds that the collection of the tax or other amount is in jeopardy,
50 notice and demand for immediate payment of such tax may be made by such
51 commissioner and upon failure or refusal to pay such tax or other amount
52 such commissioner may issue a warrant without regard to the twenty-one
53 day period, or ten-day period if applicable, provided in this subdivi-
54 sion.

55 (d) Copy of warrant to be filed and lien to be created. Any sheriff
56 or officer or employee who receives a warrant under subdivision (c) of

1 this section shall within five days thereafter file a copy with the
2 clerk of the appropriate county. The clerk shall thereupon enter in the
3 judgment docket, in the column for judgment debtors, the name of the
4 taxpayer mentioned in the warrant, and in appropriate columns the tax or
5 other amounts for which the warrant is issued and the date when such
6 copy is filed; and such amount shall thereupon be a lien upon the title
7 to and interest in real, personal and other property of the taxpayer.
8 Such lien shall not apply to personal property unless such warrant is
9 filed in the department of state.

10 (e) Judgment. When a warrant has been filed with the county clerk
11 the tax commission shall, in the right of the city, be deemed to have
12 obtained judgment against the taxpayer for the tax or other amounts.

13 (f) Execution. The sheriff or officer or employee shall thereupon
14 proceed upon the warrant in all respects, with like effect, and in the
15 same manner prescribed by law in respect to executions issued against
16 property upon judgments of a court of record, and a sheriff shall be
17 entitled to the same fees for his or her services in executing the
18 warrant, to be collected in the same manner. An officer or employee of
19 the department of taxation and finance may proceed in any county or
20 counties of this state and shall have all the powers of execution
21 conferred by law upon sheriffs, but shall be entitled to no fee or
22 compensation in excess of actual expenses paid in connection with the
23 execution of the warrant.

24 (g) Taxpayer not a resident. Where a notice and demand under subdivi-
25 sion (b) of this section shall have been given to a taxpayer who is
26 not then a resident, and it appears to the tax commission that it is not
27 practicable to find in this state property of the taxpayer sufficient to
28 pay the entire balance of tax or other amount owing by such taxpayer who
29 is not then a resident, the tax commission may, in accordance with
30 subdivision (c) of this section, issue a warrant directed to an officer
31 or employee of the department of taxation and finance, a copy of which
32 warrant shall be mailed by certified or registered mail to the taxpayer
33 at his or her last known address, subject to the rules for mailing
34 provided in subdivision (a) of section 11-1781 of this subchapter. Such
35 warrant shall command the officer or employee to proceed in Albany coun-
36 ty, and he or she shall, within five days after receipt of the warrant,
37 file the warrant and obtain a judgment in accordance with this section.
38 Thereupon the tax commission may authorize the institution of any action
39 or proceeding to collect or enforce the judgment in any place and by any
40 procedure that a civil judgment of the supreme court of the state of New
41 York could be collected or enforced. The tax commission may also, in
42 its discretion, designate agents or retain counsel for the purpose of
43 collecting, outside the state of New York, any unpaid taxes, additions
44 to tax, penalties or interest which have been assessed under this chap-
45 ter against taxpayers who are not residents of this state, may fix the
46 compensation of such agents and counsel to be paid out of money appro-
47 priated or otherwise lawfully available for payment thereof, and may
48 require of them bonds or other security for the faithful performance of
49 their duties, in such form and in such amount as the tax commission
50 shall deem proper and sufficient.

51 (h) Action by state for recovery of taxes. Action may be brought by
52 the attorney general at the instance of the tax commission in the name
53 of the city or both to recover the amount of any unpaid taxes, additions
54 to tax, penalties or interest which have been assessed under this chap-
55 ter within six years prior to the date the action is commenced.

1 (i) Release of lien. The tax commission, if it finds that the inter-
2 ests of the city will not thereby be jeopardized, and upon such condi-
3 tions as it may require, may release any property from the lien of any
4 warrant for unpaid taxes, additions to tax, penalties and interest filed
5 pursuant to this section, and such release may be recorded in the office
6 of any recording officer in which such warrant has been filed.

7 § 11-1793 Transferees. (a) General. The liability, at law or in
8 equity, of a transferee of property of a taxpayer for any tax, additions
9 to tax, penalty or interest due under this chapter, shall be assessed,
10 paid, and collected in the same manner and subject to the same
11 provisions and limitations as in the case of the tax to which the
12 liability relates, except that the period of limitations for assessment
13 against the transferee shall be extended by one year for each successive
14 transfer, in order, from the original taxpayer to the transferee
15 involved, but not by more than three years in the aggregate. The term
16 transferee includes donee, heir, legatee, devisee and distributee.

17 (b) Exceptions.

18 (1) If before the expiration of the period of limitations for assess-
19 ment of liability of the transferee, a claim has been filed by the tax
20 commission in any court against the original taxpayer or the last
21 preceding transferee based upon the liability of the original taxpayer,
22 then the period of limitation for assessment of liability of the trans-
23 feree shall in no event expire prior to one year after such claim has
24 been finally allowed, disallowed or otherwise disposed of.

25 (2) If, before the expiration of the time prescribed in subdivision
26 (a) or the immediately preceding paragraph of this subdivision for the
27 assessment of the liability, the tax commission and the transferee have
28 both consented in writing to its assessment after such time, the liabil-
29 ity may be assessed at any time prior to the expiration of the period
30 agreed upon. The period so agreed upon may be extended by subsequent
31 agreements in writing made before the expiration of the period previous-
32 ly agreed upon. For the purpose of determining the period of limitation
33 on credit or refund to the transferee of overpayments of tax made by
34 such transferee or overpayments of tax made by the transferor as to
35 which the transferee is legally entitled to credit or refund, such
36 agreement and any extension thereof shall be deemed an agreement and
37 extension thereof referred to in subdivision (b) of section 11-1787 of
38 this subchapter. If the agreement is executed after the expiration of
39 the period of limitation for assessment against the original taxpayer,
40 then in applying the limitations under subdivision (b) of section
41 11-1787 of this subchapter on the amount of the credit or refund, the
42 periods specified in subdivision (a) of section 11-1787 of this subchap-
43 ter shall be increased by the period from the date of such expiration to
44 the date of the agreement.

45 (c) Deceased transferor. If any person is deceased, the period of
46 limitation for assessment against such person shall be the period that
47 would be in effect if he or she had lived.

48 (d) Evidence. Notwithstanding the provisions of subdivision (e) of
49 section 11-1797 of this subchapter the tax commission shall use its
50 powers to make available to the transferee evidence necessary to enable
51 the transferee to determine the liability of the original taxpayer and
52 of any preceding transferees, but without undue hardship to the original
53 taxpayer or preceding transferee. See subdivision (e) of section
54 11-1789 of this subchapter for rule as to burden of proof.

55 § 11-1794 Jeopardy assessment. (a) Authority for making. If the tax
56 commission believes that the assessment or collection of a deficiency

1 will be jeopardized by delay, it shall, notwithstanding the provisions
2 of sections 11-1781 and 11-1796 of this subchapter, immediately assess
3 such deficiency, together with all interest, penalties and additions to
4 tax provided for by law, and notice and demand shall be made by the tax
5 commission for the payment thereof.

6 (b) Notice of deficiency. If the jeopardy assessment is made before
7 any notice in respect of the tax to which the jeopardy assessment
8 relates has been mailed under section 11-1781 of this subchapter, then
9 the tax commission shall mail a notice under such section within sixty
10 days after the making of the assessment.

11 (c) Amount assessable before decision of tax commission. The jeopardy
12 assessment may be made in respect of a deficiency greater or less than
13 that of which notice is mailed to the taxpayer and whether or not the
14 taxpayer has theretofore filed a petition with the tax commission. The
15 tax commission may, at any time before rendering its decision, abate
16 such assessment, or any unpaid portion thereof, to the extent that it
17 believes the assessment to be excessive in amount. The tax commission
18 may in its decision redetermine the entire amount of the deficiency and
19 of all amounts assessed at the same time in connection therewith.

20 (d) Amount assessable after decision of tax commission. If the
21 jeopardy assessment is made after the decision of the tax commission is
22 rendered, such assessment may be made only in respect of the deficiency
23 determined by the tax commission in its decision.

24 (e) Expiration of right to assess. A jeopardy assessment may not be
25 made after the decision of the tax commission has become final or after
26 the taxpayer has made an application for review of the decision of the
27 tax commission.

28 (f) Collection of unpaid amounts. When a petition has been filed with
29 the tax commission and when the amount which should have been assessed
30 has been determined by a decision of the tax commission which has become
31 final, then any unpaid portion, the collection of which has been stayed
32 by bond, shall be collected as part of the tax upon notice and demand
33 from the tax commission, and any remaining portion of the assessment
34 shall be abated. If the amount already collected exceeds the amount
35 determined as the amount which should have been assessed, such excess
36 shall be credited or refunded to the taxpayer as provided in section
37 11-1786 of this subchapter without the filing of claim therefor. If the
38 amount determined as the amount which should have been assessed is
39 greater than the amount actually assessed, then the difference shall be
40 assessed and shall be collected as part of the tax upon notice and
41 demand from the tax commission.

42 (g) Abatement if jeopardy does not exist. The tax commission may
43 abate the jeopardy assessment if it finds that jeopardy does not exist.
44 Such abatement may not be made after a decision of the tax commission in
45 respect of the deficiency has been rendered or, if no petition is filed
46 with the tax commission, after the expiration of the period for filing
47 such petition. The period of limitation on the making of assessments
48 and levy or a proceeding for collection, in respect of any deficiency,
49 shall be determined as if the jeopardy assessment so abated had not been
50 made, except that the running of such period shall in any event be
51 suspended for the period from the date of such jeopardy assessment until
52 the expiration of the tenth day after the day on which such jeopardy
53 assessment is abated.

54 (h) Bond to stay collection. The collection of the whole or any
55 amount of any jeopardy assessment may be stayed by filing with the tax
56 commission, within such time as may be fixed by regulation, a bond in an

1 amount equal to the amount as to which the stay is desired, conditioned
2 upon the payment of the amount, together with interest thereon, the
3 collection of which is stayed at the time at which, but for the making
4 of the jeopardy assessment, such amount would be due. Upon the filing
5 of the bond the collection of so much of the amount assessed as is
6 covered by the bond shall be stayed. The taxpayer shall have the right
7 to waive such stay at any time in respect of the whole or any part of
8 the amount covered by the bond, and if as a result of such waiver any
9 part of the amount covered by the bond is paid, then the bond shall at
10 the request of the taxpayer, be proportionately reduced. If any portion
11 of the jeopardy assessment is abated, or if a notice of deficiency under
12 section 11-1781 of this subchapter is mailed to the taxpayer in a lesser
13 amount, the bond shall, at the request of the taxpayer, be proportion-
14 ately reduced.

15 (i) Petition to tax commission. If the bond is given before the
16 taxpayer has filed his or her petition under section 11-1789 of this
17 subchapter, the bond shall contain a further condition that if a peti-
18 tion is not filed within the period provided in such section, then the
19 amount, the collection of which is stayed by the bond, will be paid on
20 notice and demand at any time after the expiration of such period,
21 together with interest thereon from the date of the jeopardy notice and
22 demand to the date of notice and demand under this subdivision. The
23 bond shall be conditioned upon the payment of so much of such assess-
24 ment, collection of which is stayed by the bond, as is not abated by a
25 decision of the tax commission which has become final. If the tax
26 commission determines that the amount assessed is greater than the
27 amount which should have been assessed, then the bond shall, at the
28 request of the taxpayer, be proportionately reduced when the decision of
29 the tax commission is rendered.

30 (j) Stay of sale of seized property pending tax commission decision.
31 Where a jeopardy assessment is made, the property seized for the
32 collection of the tax shall not be sold:

33 (1) if subdivision (b) of this section is applicable, prior to the
34 issuance of the notice of deficiency and the expiration of the time
35 provided in section 11-1789 of this subchapter for filing a petition
36 with the tax commission, and

37 (2) if a petition is filed with the tax commission, whether before or
38 after the making of such jeopardy assessment, prior to the expiration of
39 the period during which the assessment of the deficiency would be
40 prohibited if subdivision (a) of this section were not applicable.

41 Such property may be sold if the taxpayer consents to the sale, or if
42 the tax commission determines that the expenses of conservation and
43 maintenance will greatly reduce the net proceeds, or if the property is
44 perishable.

45 (k) Interest. For the purpose of subdivision (a) of section 11-1784
46 of this subchapter, the last date prescribed for payment shall be deter-
47 mined without regard to any notice and demand for payment issued under
48 this section prior to the last date otherwise prescribed for such
49 payment.

50 (l) Early termination of taxable year. If the tax commission finds
51 that a taxpayer designs quickly to depart from this state or to remove
52 his or her property therefrom, or to conceal himself or herself or his
53 or her property therein, or to do any other act tending to prejudice or
54 to render wholly or partly ineffectual proceedings to collect the city
55 personal income tax for the current or the preceding taxable year unless
56 such proceedings be brought without delay, the tax commission shall

1 declare the taxable period for such taxpayer immediately terminated, and
2 shall cause notice of such finding and declaration to be given the
3 taxpayer, together with a demand for immediate payment of the tax for
4 the taxable period so declared terminated and of the tax for the preced-
5 ing taxable year or so much of such tax as is unpaid, whether or not the
6 time otherwise allowed by law for filing return and paying the tax has
7 expired; and such taxes shall thereupon become immediately due and paya-
8 ble. In any proceeding brought to enforce payment of taxes made due and
9 payable by virtue of the provisions of this subdivision, the finding of
10 the tax commission made as herein provided, whether made after notice to
11 the taxpayer or not, shall be for all purposes presumptive evidence of
12 jeopardy.

13 (m) Reopening of taxable period. Notwithstanding the termination of
14 the taxable period of the taxpayer by the tax commission, as provided in
15 subdivision (1) of this section, the tax commission may reopen such
16 taxable period each time the taxpayer is found by the tax commission to
17 have received income, within the current taxable year, since the termi-
18 nation of such period. A taxable period so terminated by the tax
19 commission may be reopened by the taxpayer if he or she files with the
20 tax commission a true and accurate return of taxable income and credits
21 allowed under this chapter for such taxable period, together with such
22 other information as the tax commission may by regulations prescribe.

23 (n) Furnishing of bond where taxable year is closed by the tax
24 commission. Payment of taxes shall not be enforced by any proceedings
25 under the provisions of subdivision (1) of this section prior to the
26 expiration of the time otherwise allowed for paying such taxes if the
27 taxpayer furnishes, under regulations prescribed by the tax commission,
28 a bond to insure the timely making of returns with respect to, and
29 payment of, such taxes or any city personal income taxes for prior
30 years.

31 § 11-1795 Criminal penalties; cross-reference. For criminal penal-
32 ties, see article thirty-seven of the tax law.

33 § 11-1796 Income taxes of members of armed forces and victims of
34 certain terrorist attacks. (a) Time to be disregarded. In the case of
35 an individual serving in the armed forces of the United States, or serv-
36 ing in support of such armed forces, in an area designated by the presi-
37 dent of the United States by executive order as a "combat zone" at any
38 time during the period designated by the president by executive order as
39 the period of combatant activities in such zone, or hospitalized inside
40 or outside the state as a result of injury received while serving in
41 such an area during such time, the period of service in such area, plus
42 the period of continuous hospitalization inside or outside the state
43 attributable to such injury, and the next one hundred eighty days there-
44 after, shall be disregarded in determining, under this chapter, in
45 respect of the city personal income tax liability, including any inter-
46 est, penalty, or addition to the tax, of such individual:

47 (1) Whether any of the following acts was performed within the time
48 prescribed therefor:

49 (A) filing any return of income tax, except withholding tax;

50 (B) payment of any income tax, except withholding tax, or any install-
51 ment thereof or of any other liability in respect thereof;

52 (C) filing a petition with the tax commission for credit or refund or
53 for redetermination of a deficiency, or application for review of a
54 decision rendered by the tax commission;

55 (D) allowance of a credit or refund of city personal income tax;

56 (E) filing a claim for credit or refund of city personal income tax;

1 (F) assessment of city personal income tax;

2 (G) giving or making any notice or demand for the payment of any city

3 personal income tax, or with respect to any liability to the city in

4 respect of such income tax;

5 (H) collection, by the tax commission, by levy or otherwise of the

6 amount of any liability in respect of such income tax;

7 (I) bringing suit by the city, the state, or any officer, on their

8 behalf, in respect of any liability in respect of such income tax; and

9 (J) any other act required or permitted under this chapter or speci-

10 fied in regulations prescribed under this section by the tax commission.

11 (2) The amount of any credit or refund.

12 (b) Special rule for overpayments. (1) Subdivision (a) of this section

13 shall not apply for purposes of determining the amount of interest on

14 any overpayment of tax.

15 (2) If an individual is entitled to the benefits of subdivision (a) of

16 this section with respect to any return, amended return, or claim for

17 credit or refund, and such return, amended return or claim is timely

18 filed, determined after the application of such subdivision, paragraph

19 three of subdivision (a) and subdivision (c) of section 11-1788 of this

20 subchapter of this title shall not apply.

21 (c) Action taken before ascertainment of right to benefits. The

22 assessment or collection of the tax imposed by this chapter or of any

23 liability in respect of such tax, or any action or proceeding by or on

24 behalf of the city in connection therewith, may be made, taken, begun,

25 or prosecuted in accordance with law, without regard to the provisions

26 of subdivision (a) of this section, unless prior to such assessment,

27 collection, action, or proceeding it is ascertained that the person

28 concerned is entitled to the benefits of subdivision (a) of this

29 section.

30 (d) Members of armed forces dying in action. In the case of any person

31 who dies while in active service as a member of the armed forces of the

32 United States, if such death occurred while serving in a combat zone

33 during a period of combatant activities in such zone, as described in

34 subdivision (a) of this section, or as a result of wounds, disease or

35 injury incurred while so serving, the tax imposed by this chapter shall

36 not apply with respect to the taxable year in which falls the date of

37 his or her death, or with respect to any prior taxable year ending on or

38 after the first day so served in a combat zone, and no returns shall be

39 required in behalf of such person or his or her estate for such year;

40 and the tax for any such taxable year which is unpaid at the date of

41 death, including interest, additions to tax and penalties, if any, shall

42 not be assessed and, if assessed, the assessment shall be abated and, if

43 collected, shall be refunded to the legal representative of such estate

44 if one has been appointed and has qualified, or, if no legal represen-

45 tative has been appointed or has qualified, to the surviving spouse.

46 (e) Treatment of individuals performing Desert Shield services. (1)

47 Any individual who performed Desert Shield services shall be entitled to

48 the benefits of subdivisions (a) and (b) of this section in the same

49 manner as if such services were services referred to in subdivision (a)

50 of this section.

51 (2) For purposes of this subdivision, the term "Desert Shield

52 services" means any services in the armed forces of the United States or

53 in support of such armed forces if

54 (A) such services are performed in the area designated by the presi-

55 dent of the United States as the "Persian Gulf Desert Shield area", and

1 (B) such services are performed during the period beginning on August
2 second, nineteen hundred ninety, and ending on the date on which any
3 portion of the area referred to in subparagraph (A) of this paragraph is
4 designated by the president as a combat zone pursuant to section one
5 hundred twelve of the internal revenue code.

6 (f) Relief for personnel under hostile fire. For purposes of this
7 section, members of the armed forces of the United States who perform
8 military service in an area outside an area designated by the president
9 of the United States by executive order as a "combat zone", which
10 service is in direct support of military operations in such zone and is
11 performed under conditions which qualify such members for hostile fire
12 pay, as authorized under subdivision (a) of section nine of the federal
13 uniformed services pay act of nineteen hundred sixty-three, shall,
14 during the period of such qualifying service, be deemed to have served
15 in such combat zone.

16 (g) Application to spouse. The provisions of subdivisions (a), (b),
17 (c), (e) and (f) of this section shall apply to the spouse of any indi-
18 vidual entitled to the benefits of subdivision (a) of this section;
19 provided, however, that such subdivisions shall not apply for any spouse
20 for any taxable year beginning more than two years after the date desig-
21 nated under section one hundred twelve of the internal revenue code as
22 the date of termination of combatant activities in a combat zone.

23 (h) Individuals dying as a result of certain attacks. (1) General. In
24 the case of a specified terrorist victim, any tax imposed by this chap-
25 ter shall not apply: (A) with respect to the taxable year in which
26 falls the date of death; and (B) with respect to any prior taxable year
27 in the period beginning with the last taxable year ending before the
28 taxable year in which the wounds or injury referred to in paragraph
29 three of this subdivision were incurred.

30 (2) Taxation of certain benefits. Paragraph one of this subdivision
31 shall not apply to the amount of any tax imposed by this chapter which
32 would be computed by only taking into account the items of income, gain,
33 or other amounts determined by the United States secretary of the treas-
34 ury to be taxable pursuant to paragraph three of subdivision (d) of
35 section six hundred ninety-two of the internal revenue code.

36 (3) Specified terrorist victim. For purposes of this subdivision, the
37 term "specified terrorist victim" means any decedent who dies as a
38 result of wounds or injury incurred as a result of the terrorist attacks
39 against the United States on September eleventh, two thousand one,
40 provided, however, such term shall not include any individual identified
41 by the attorney general of the United States to have been a participant
42 or conspirator in any such attack or a representative of such an indi-
43 vidual.

44 § 11-1797 General powers of tax commission. (a) General. The tax
45 commission shall administer and enforce the tax imposed by this chapter
46 and it is authorized to make such rules and regulations, and to require
47 such facts and information to be reported, as it may deem necessary to
48 enforce the provisions of this chapter.

49 (b) Examination of books and witnesses. (1) The tax commission for the
50 purpose of ascertaining the correctness of any return, or for the
51 purpose of making an estimate of taxable income of any person, shall
52 have power to examine or to cause to have examined, by any agent or
53 representative designated by it for that purpose, any books, papers,
54 records or memoranda bearing upon the matters required to be included in
55 the return, and may require the attendance of the person rendering the
56 return or any officer or employee of such person, or the attendance of

1 any other person having knowledge in the premises, and may take testimo-
2 ny and require proof material for its information, with power to admin-
3 ister oaths to such person or persons.

4 (2) The tax commission may take any action under paragraph one of this
5 subdivision to inquire into the commission of any offense connected with
6 the administration or enforcement of this chapter, provided, however,
7 that notwithstanding the provisions of section 11-1774 of this chapter
8 no such action shall be taken after a referral by the department or the
9 tax commission to the attorney general, a district attorney or any other
10 prosecutorial agency is in effect.

11 (c) Abatement authority. The tax commission, of its own motion, may
12 abate any small unpaid balance of an assessment of city personal income
13 tax, or any liability in respect thereof, if the tax commission deter-
14 mines under uniform rules prescribed by it that the administration and
15 collection costs involved would not warrant collection of the amount
16 due. It may also abate, of its own motion, the unpaid portion of the
17 assessment of any tax or any liability in respect thereof, which is
18 excessive in amount, or is assessed after the expiration of the period
19 of limitation properly applicable thereto, or is erroneously or illegal-
20 ly assessed. No claim for abatement under this subdivision shall be
21 filed by a taxpayer.

22 (d) Special refund authority. Where no questions of fact or law are
23 involved and it appears from the records of the tax commission that any
24 moneys have been erroneously or illegally collected from any taxpayer or
25 other person, or paid by such taxpayer or other person under a mistake
26 of facts, pursuant to the provisions of this chapter, the tax commission
27 at any time, without regard to any period of limitations, shall have the
28 power, upon making a record of its reasons therefor in writing, to cause
29 such moneys so paid and being erroneously and illegally held to be
30 refunded and to issue therefor its certificate to the comptroller.

31 (e) Secrecy requirement and penalties for violation. (1) Except in
32 accordance with proper judicial order or as otherwise provided by law,
33 it shall be unlawful for the tax commission, any tax commissioner, any
34 officer or employee of the department of taxation and finance, any
35 person engaged or retained by such department on an independent contract
36 basis, any depository to which any return may be delivered as provided
37 in subdivision (h) or (i) of this section, any officer or employee of
38 such depository, or any person who, pursuant to this section, is permit-
39 ted to inspect any report or return or to whom a copy, an abstract or a
40 portion of any report or return is furnished, or to whom any information
41 contained in any report or return is furnished, to divulge or make known
42 in any manner the amount of income or any particulars set forth or
43 disclosed in any report or return required under this chapter.

44 (2) The officers charged with the custody of such reports and returns
45 shall not be required to produce any of them or evidence of anything
46 contained in them in any action or proceeding in any court, except on
47 behalf of the tax commission in an action or proceeding under the
48 provisions of this chapter, the tax law or in any other action or
49 proceeding involving the collection of a tax due under this chapter or
50 such tax law to which the city, state or the tax commission is a party
51 or a claimant, or on behalf of any party to any action or proceeding
52 under the provisions of this chapter when the reports, returns or facts
53 shown thereby are directly involved in such action or proceeding, in any
54 of which events the court may require the production of, and may admit
55 in evidence, so much of said reports, returns or of the facts shown
56 thereby, as are pertinent to the action or proceeding and no more. The

1 tax commission may, nevertheless, publish a copy or a summary of any
2 decision rendered after the hearing required under section 11-1789 of
3 this subchapter.

4 (3) Nothing in this section shall be construed to prohibit the deliv-
5 ery by the state commissioner of taxation and finance to the county
6 clerk of a county within the city of New York of a mailing list of indi-
7 viduals to whom income tax forms are mailed by the state commissioner of
8 taxation and finance for the sole purpose of compiling a list of
9 prospective jurors as provided in article sixteen of the judiciary law.
10 Provided, however, such delivery shall only be made pursuant to an order
11 of the chief administrator of the courts, appointed pursuant to section
12 two hundred ten of such law. No such order may be issued unless such
13 chief administrator is satisfied that such mailing list is needed to
14 compile a proper list of prospective jurors for the county for which
15 such order is sought and that, in view of the responsibilities imposed
16 by the various laws of the state on the department of taxation and
17 finance, it is reasonable to require the state commissioner of taxation
18 and finance to furnish such list. Such order shall provide that such
19 list shall be used for the sole purpose of compiling a list of prospec-
20 tive jurors and that such county clerk shall take all necessary steps to
21 insure that the list is kept confidential and that there is no unauthor-
22 ized use or disclosure of such list. Furthermore, nothing in this
23 section shall be construed to prohibit the delivery to a taxpayer or his
24 or her duly authorized representative of a certified copy of any return
25 or report filed in connection with his or her tax or to prohibit the
26 publication of statistics so classified as to prevent the identification
27 of particular reports or returns and the items thereof, or the
28 inspection by the attorney general or other legal representatives of the
29 state or city of the report or return of any taxpayer who shall bring
30 action to set aside or review the tax based thereon, or against whom an
31 action or proceeding under this chapter has been recommended by the
32 commissioner of taxation and finance, the corporation counsel or the
33 attorney general or has been instituted, or the inspection of the
34 reports or returns required under this chapter by the comptroller or
35 duly designated officer or employee of the state department of audit and
36 control, for purposes of the audit of a refund of any tax paid by a
37 taxpayer under this chapter, or the furnishing to the state department
38 of social services of the amount of an overpayment of tax and interest
39 thereon certified to the comptroller to be credited against past-due
40 support pursuant to section one hundred seventy-one-c of the tax law and
41 of the name and social security number of the taxpayer who made such
42 overpayment or the furnishing to the New York state higher education
43 services corporation of the amount of an overpayment of tax and interest
44 thereon certified to the comptroller to be credited against the amount
45 of a default in repayment of a guaranteed student loan pursuant to
46 section one hundred seventy-one-d of the tax law and of the name and
47 social security number of the taxpayer who made such overpayment or the
48 furnishing to the state university of New York or the city university of
49 New York or the attorney general on behalf of such state or city univer-
50 sity the amount of an overpayment of tax and interest thereon certified
51 to the comptroller to be credited against the amount of a default in
52 repayment of a state university loan or city university loan pursuant to
53 section one hundred seventy-one-e of the tax law and of the name and
54 social security number of the taxpayer who made such overpayment, or the
55 disclosing to a state agency, pursuant to section one hundred seventy-
56 one-f of the tax law, of the amount of an overpayment and interest ther-

1 eon certified to the comptroller to be credited against a past-due
2 legally enforceable debt owed to such agency and of the name and social
3 security number of the taxpayer who made such overpayment, or the
4 disclosing to the commissioner of finance of the city of New York,
5 pursuant to section one hundred seventy-one-1 of the tax law, of the
6 amount of an overpayment and interest thereon certified to the comp-
7 troller to be credited against a city of New York tax warrant judgment
8 debt and of the name and social security number of the taxpayer who made
9 such overpayment. Reports and returns shall be preserved for three years
10 and thereafter until the state commissioner of taxation and finance
11 orders them to be destroyed.

12 (3-a) Notwithstanding the provisions of paragraph one of this subdivi-
13 sion, the state commissioner of taxation and finance or the commissioner
14 of finance may disclose to a taxpayer or a taxpayer's related member, as
15 defined in subdivision (t) of section 11-1712 of this chapter, informa-
16 tion relating to any royalty paid, incurred or received by such taxpayer
17 or related member to or from the other, including the treatment of such
18 payments by the taxpayer or the related member in any report or return
19 transmitted to the state commissioner of taxation and finance under this
20 chapter or the New York state tax law or the commissioner of finance
21 under this title.

22 (4) (A) Any officer or employee of the state, who willfully violates
23 the provisions of this subdivision shall be dismissed from office and be
24 incapable of holding any public office in this state for a period of
25 five years thereafter.

26 (B) Cross-reference: For criminal penalties, see article thirty-seven
27 of the tax law.

28 (f) Cooperation with the United States and other states. Notwith-
29 standing the provisions of subdivision (e) of this section, the tax
30 commission may permit the secretary of the treasury of the United States
31 or his or her delegates, or the proper tax officer of any state imposing
32 an income tax upon the incomes of individuals, or the authorized repre-
33 sentative of either such officer, to inspect any return filed under this
34 chapter, or may furnish to such officer or his or her authorized repre-
35 sentative an abstract of any such return or supply him or her with
36 information concerning an item contained in any such return, or
37 disclosed by any investigation of tax liability under this chapter, but
38 such permission shall be granted or such information furnished to such
39 officer or his or her representative only if the laws of the United
40 States or of such other state, as the case may be, grant substantially
41 similar privileges to the commission or officer of this state charged
42 with the administration of the tax imposed by this chapter and such
43 information is to be used for tax purposes only; and provided further
44 the commissioner of taxation and finance may furnish to the commissioner
45 of internal revenue or his or her authorized representative such returns
46 filed under this chapter and other tax information, as he or she may
47 consider proper, for use in court actions or proceedings under the
48 internal revenue code, whether civil or criminal, where a written
49 request therefor has been made to the commissioner of taxation and
50 finance by the secretary of the treasury of the United States or his or
51 her delegates, provided the laws of the United States grant substantial-
52 ly similar powers to the secretary of the treasury of the United States
53 or his or her delegates. Where the commissioner of taxation and finance
54 has so authorized use of returns and other information in such actions
55 or proceedings, officers and employees of the department of taxation and

1 finance may testify in such actions or proceedings in respect to such
2 returns or other information.

3 (g) Cooperation with the cities of the state of New York. Notwith-
4 standing the provisions of subdivision (e) of this section, the tax
5 commission may permit the proper city officer of any city of the state
6 of New York imposing a personal income tax upon the incomes of resi-
7 dents, or an unincorporated business income tax, or an earnings tax on
8 nonresidents, or the authorized representative of any such officer, to
9 inspect any return filed under this chapter, or may furnish to such
10 officer or his or her authorized representative an abstract of any such
11 return or supply him or her with information concerning an item
12 contained in any such return, or disclosed by any investigation of tax
13 liability under this chapter, but such permission shall be granted or
14 such information furnished to such officer or his or her representative
15 only if the local laws of such city grant substantially similar privi-
16 leges to the commission or officer of this state charged with the admin-
17 istration of the tax imposed by this chapter and such information is to
18 be used for tax purposes only; and provided further the commissioner of
19 taxation and finance may furnish to such city officer or the legal
20 representative of such city such returns filed under this chapter and
21 other tax information, as he or she may consider proper, for use in
22 court actions or proceedings under such local law, whether civil or
23 criminal, where a written request therefor has been made to the commis-
24 sioner of taxation and finance by such city officer or his or her dele-
25 gate, provided the local law of such city grants substantially similar
26 powers to such city officer or his or her delegate. Where the commis-
27 sioner of taxation and finance has so authorized use of returns and
28 other information in such actions or proceedings, officers and employees
29 of the department of taxation and finance may testify in such actions or
30 proceedings in respect to such returns or other information.

31 (h) Withholding returns. Notwithstanding the provisions of subdivision
32 (e) of this section the tax commission in its discretion, when making
33 deposits, pursuant to section 11-1798 of this subchapter, of taxes with-
34 held by employers, may deliver to the depository the withholding returns
35 filed by such employers as provided in section 11-1774 of this chapter,
36 for the purpose of insuring that all money so deposited shall be
37 correctly credited to taxpayers' accounts.

38 (i) Filing returns and making payments to depository banks. Notwith-
39 standing the provisions of subdivision (e) of this section, the tax
40 commission, in its discretion, may require or permit any or all individ-
41 uals, estates or trusts liable for any tax imposed by this chapter, to
42 make payments on account of estimated tax and payment of any tax, penal-
43 ty or interest imposed by this chapter to banks, banking houses or trust
44 companies designated by the tax commission and to file reports and
45 returns with such banks, banking houses or trust companies as agents of
46 the tax commission, in lieu of making any such payment to the tax
47 commission. However, the tax commission shall designate only such banks,
48 banking houses or trust companies as are or shall be designated by the
49 comptroller as depositories pursuant to section 11-1798 of this subchap-
50 ter.

51 (j) (1) Authority to set interest rates. The commissioner of taxation
52 and finance shall set the overpayment and underpayment rates of interest
53 to be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this
54 subchapter, but if no such rates of interest are set, such overpayment
55 rate shall be deemed to be set at six percent per annum and the under-
56 payment rate shall be deemed to be set at seven and one-half per annum.

1 Such rates shall be the rates prescribed by paragraphs two and four of
2 this subdivision, but shall not be less than seven and one-half percent
3 per annum. Any such rates set by such commissioner shall apply to taxes,
4 or any portion thereof, which remain or become due or overpaid on or
5 after the date on which such rates become effective and shall apply only
6 with respect to interest computed or computable for periods or portions
7 of periods occurring in the period during which such rates are in
8 effect.

9 (1) Authority to set interest rates. The commissioner of taxation and
10 finance shall set the overpayment and underpayment rates of interest to
11 be paid pursuant to sections 11-1784, 11-1785 and 11-1788 of this
12 subchapter, but if no such rates of interest are set, such rates shall
13 be deemed to be set at six percent per annum. Such rates shall be the
14 rates prescribed by paragraphs two and four of this subdivision, but the
15 underpayment rate shall not be less than six percent per annum. Any such
16 rates set by such commissioner shall apply to taxes, or any portion
17 thereof, which remain or become due or overpaid on or after the date on
18 which such rates become effective and shall apply only with respect to
19 interest computed or computable for periods or portions of periods
20 occurring in the period during which such rates are in effect.

21 (2) Rates of interest. (A) Overpayment rate. The overpayment rate of
22 interest set under this subdivision shall be the sum of (i) the federal
23 short-term rate as provided under paragraph three of this subdivision,
24 plus (ii) two percentage points.

25 (B) Underpayment rate. The underpayment rate of interest set under
26 this subdivision shall be the sum of (i) the federal short-term rate as
27 provided under paragraph three of this subdivision, plus (ii) five and
28 one-half percentage points.

29 (3) Federal short-term rate. For the purposes of this subdivision:

30 (A) The federal short-term rate for any month shall be the federal
31 short-term rate determined by the United States secretary of the treas-
32 ury during such month in accordance with subsection (d) of section
33 twelve hundred seventy-four of the internal revenue code for use in
34 connection with section six thousand six hundred twenty-one of the
35 internal revenue code. Any such rate shall be rounded to the nearest
36 full percent, or, if a multiple of one-half of one percent, such rate
37 shall be increased to the next highest full percent.

38 (B) Period during which rate applies.

39 (i) In general. Except as provided in clauses (ii) and (iii) of this
40 subparagraph, the federal short-term rate for the first month in each
41 calendar quarter shall apply during the first calendar quarter beginning
42 after such month.

43 (ii) Special rule for individual estimated tax. In determining the
44 addition to tax under subdivision (c) of section 11-1785 of this
45 subchapter for failure to pay estimated tax for any taxable year, the
46 federal short-term rate which applies during the third month following
47 the taxable year shall also apply during the first fifteen days of the
48 fourth month following such taxable year.

49 (iii) Special rule for the month of September, nineteen hundred eight-
50 y-nine. The federal short-term rate for the month of April, nineteen
51 hundred eighty-nine shall apply with respect to setting the rate of
52 interest for the month of September, nineteen hundred eighty-nine.

53 (4) Notwithstanding the provisions of paragraph two of this subdivi-
54 sion to the contrary, in the case of interest payable by an employer
55 with respect to income taxes required to be withheld and paid over by
56 him or her pursuant to the provisions of subchapter four of this chapter

1 and with respect to interest payable to an employer pursuant to subdivi-
2 sion (c) of section 11-1786 of this subchapter, the rates of interest
3 prescribed by this section shall be the overpayment and underpayment
4 rates of interest prescribed in paragraph two of subsection (e) of
5 section one thousand ninety-six of the tax law.

6 (5) In computing the amount of any interest required to be paid under
7 this article by the commissioner of taxation and finance or by the
8 taxpayer, or any other amount determined by reference to such amount of
9 interest, such interest and such amount shall be compounded daily. The
10 provisions of this paragraph shall not apply for purposes of computing
11 the amount of any addition to tax for failure to pay estimated tax under
12 subdivision (c) of section 11-1785 of this subchapter.

13 (6) Publication of interest rates. The commissioner of taxation and
14 finance shall cause to be published in the section for miscellaneous
15 notices in the state register, and give other appropriate general notice
16 of, the interest rates to be set under this subdivision no later than
17 twenty days preceding the first day of the calendar quarter during which
18 such interest rates apply. The setting and publication of such interest
19 rates shall not be included within paragraph (a) of subdivision two of
20 section one hundred two of the state administrative procedure act relat-
21 ing to the definition of a rule.

22 (7) Cross-reference. For provisions relating to the power of the
23 commissioner of taxation and finance to abate small amounts of interest,
24 see subdivision (c) of this section.

25 (k) Disclosure of collection activities with respect to joint return.
26 Notwithstanding the provisions of subdivision (e) of this section, if
27 any deficiency of tax with respect to a joint return is assessed and the
28 individuals filing such return are no longer married or no longer reside
29 in the same household, upon request in writing by either of such indi-
30 viduals, the commissioner of taxation and finance shall disclose in
31 writing to the individual making the request whether such commissioner
32 has attempted to collect such deficiency from such other individual, the
33 general nature of such collection activities, and the amount collected.

34 The opening paragraph of this subdivision shall not apply to any defi-
35 ciency which may not be collected by reason of expiration of time within
36 which to issue a warrant under subdivision (c) of section 11-1792 of
37 this subchapter or within which to collect such tax by execution and
38 levy or by court proceeding.

39 (l) Disclosure of certain information where more than one person is
40 subject to penalty. If the commissioner of taxation and finance deter-
41 mines that a person is liable for a penalty under subdivision (g) of
42 section 11-1785 of this subchapter with respect to any failure, upon
43 request in writing of such person, such commissioner shall disclose in
44 writing to such person (1) the name of any other person whom such
45 commissioner has determined to be liable for such penalty with respect
46 to such failure, and (2) whether such commissioner has attempted to
47 collect such penalty from such other person, the general nature of such
48 collection activities, and the amount collected.

49 (m) (1) Notwithstanding the provisions of subdivision (e) of this
50 section, upon written request from the chairperson of the committee on
51 ways and means of the United States House of Representatives, the chair-
52 person of the committee on finance of the United States Senate, or the
53 chairperson of the joint committee on taxation of the United States
54 Congress, the commissioner of taxation and finance shall furnish such
55 committee with any current or prior year returns specified in such
56 request that were filed under this article by the president of the

1 United States, vice-president of the United States, member of the United
2 States Congress representing New York state, or any person who served in
3 or was employed by the executive branch of the government of the United
4 States on the executive staff of the president, in the executive office
5 of the president, or in an acting or confirmed capacity in a position
6 subject to confirmation by the United States senate; or, in New York
7 state: a statewide elected official, as defined in paragraph (a) of
8 subdivision one of section seventy-three-a of the public officers law; a
9 state officer or employee, as defined in subparagraph (i) of paragraph
10 (c) of subdivision one of such section seventy-three-a; a political
11 party chairperson, as defined in paragraph (h) of subdivision one of
12 such section seventy-three-a; a local elected official, as defined in
13 subdivisions one and two of section eight hundred ten of the general
14 municipal law; a person appointed, pursuant to law, to serve due to
15 vacancy or otherwise in the position of a local elected official, as
16 defined in subdivisions one and two of section eight hundred ten of the
17 general municipal law; a member of the state legislature; or a judge or
18 justice of the unified court system; provided however that, prior to
19 furnishing any return, the commissioner shall redact any copy of a
20 federal return, or portion thereof, attached to, or any information on a
21 federal return that is reflected on, such return, and any social securi-
22 ty numbers, account numbers and residential address information.

23 (2) No returns shall be furnished pursuant to this subdivision unless
24 the chairperson of the requesting committee certifies in writing that
25 such returns have been requested related to, and in furtherance of, a
26 legitimate task of the Congress, that the requesting committee has made
27 a written request to the United States secretary of the treasury for
28 related federal reports or returns or report or return information,
29 pursuant to 26 U.S.C. Section 6103(f), and that if such requested
30 returns are inspected by and/or submitted to another committee, to the
31 United States House of Representatives, or to the United States Senate,
32 then such inspection and/or submission shall occur in a manner consist-
33 ent with federal law as informed by the requirements and procedures
34 established in 26 U.S.C. Section 6103(f).

35 § 11-1798 Deposit and disposition of revenues. All revenue collected
36 by the state commissioner of taxation and finance from the taxes imposed
37 pursuant to this chapter or chapter nineteen of this title shall be
38 deposited daily with such responsible banks, banking houses or trust
39 companies, as may be designated by the state comptroller, to the credit
40 of the comptroller, in trust for the city. Such deposits shall be kept
41 in trust and separate and apart from all other moneys in the possession
42 of the comptroller. The state comptroller shall require adequate securi-
43 ty from all such depositories of such revenue collected by the state
44 commissioner of taxation and finance. The state comptroller shall retain
45 in his or her hands such amounts as the commissioner of taxation and
46 finance may determine to be necessary for refunds in respect to the
47 taxes imposed by this chapter and such chapter nineteen and for reason-
48 able costs of the state commissioner of taxation and finance in adminis-
49 tering, collecting and distributing such taxes, out of which the comp-
50 troller shall pay any refunds of such taxes to which taxpayers shall be
51 entitled under this chapter and such chapter nineteen and except further
52 that he or she shall pay to a non-obligated spouse that amount of over-
53 payment of tax imposed pursuant to the authority of article thirty of
54 the tax law or former article two-E of the general city law and the
55 interest on such amount which has been credited pursuant to section one
56 hundred seventy-one-c, one hundred seventy-one-d, one hundred seventy-

1 one-e, one hundred seventy-one-f or one hundred seventy-one-l of the tax
2 law and which is certified to him or her by the commissioner of taxation
3 and finance as the amount due such non-obligated spouse pursuant to
4 paragraph six of subsection (b) of section six hundred fifty-one of the
5 tax law, and he or she shall deduct a like amount which he shall pay
6 into the treasury to the credit of the general fund from amounts subse-
7 quently payable to the department of social services, the state univer-
8 sity of New York, the city university of New York, the higher education
9 services corporation, or to the revenue arrearage account or special
10 offset fiduciary account pursuant to section ninety-one-a or
11 ninety-one-c of the state finance law, as the case may be, whichever had
12 been credited the amount originally withheld from such overpayment and,
13 with respect to amounts originally withheld from such overpayment pursu-
14 ant to section one hundred seventy-one-l of the tax law and paid to the
15 city of New York, the comptroller shall collect a like amount from the
16 city of New York. The state comptroller, after reserving such refund
17 fund and such costs shall, on or before the fifteenth day of each month,
18 pay to the chief fiscal officer of the city the balance of such taxes
19 collected, to be paid into the treasury of the city to the credit of the
20 general fund except that he or she shall pay to the state department of
21 social services that amount of overpayments of the taxes imposed pursu-
22 ant to this chapter or chapter nineteen of this title and the interest
23 on such amount which is certified to him or her by the state commission-
24 er of taxation and finance as the amount to be credited against past-due
25 support pursuant to subdivision six of section one hundred seventy-one-c
26 of the tax law and except that he or she shall pay to the New York state
27 higher education services corporation that amount of overpayments of the
28 taxes imposed pursuant to this chapter or chapter nineteen of this title
29 and the interest on such amount which is certified to him or her by the
30 state commissioner of taxation and finance as the amount to be credited
31 against the amount of defaults in repayment of guaranteed student loans
32 pursuant to subdivision five of section one hundred seventy-one-d of the
33 tax law and except that he or she shall pay to the state university of
34 New York or the city university of New York, respectively, that amount
35 of overpayments of the taxes imposed pursuant to this chapter or chapter
36 nineteen of this title and the interest on such amount which is certi-
37 fied to him or her by the state commissioner of taxation and finance as
38 the amount to be credited against the amount of defaults in repayment of
39 state university or city university loans pursuant to subdivision six of
40 section one hundred seventy-one-e of the tax law, and except further
41 that, notwithstanding any other provision of law, he or she shall credit
42 to the revenue arrearage account, pursuant to section ninety-one-a of
43 the state finance law, that amount of overpayments of the taxes imposed
44 pursuant to this chapter or chapter nineteen of this title and the
45 interest on such amount which is certified to him or her by the state
46 commissioner of taxation and finance as the amount to be credited
47 against a past-due legally enforceable debt owed to a state agency
48 pursuant to paragraph (a) of subdivision six of section one hundred
49 seventy-one-f of the tax law, provided, however, he or she shall credit
50 to the special offset fiduciary account, pursuant to section
51 ninety-one-c of the state finance law, any such amount creditable as a
52 liability as set forth in paragraph (b) of subdivision six of section
53 one hundred seventy-one-f of the tax law, and except further that he or
54 she shall pay to the city of New York that amount of overpayments of tax
55 imposed pursuant to this chapter or chapter nineteen of this title and
56 the interest on such amount which is certified to him or her by the

1 state commissioner of taxation and finance as the amount to be credited
2 against city of New York tax warrant judgment debt pursuant to section
3 one hundred seventy-one-1 of the tax law. The amount deducted for admin-
4 istering, collecting and distributing such taxes during such monthly
5 period shall be paid by the state comptroller into the general fund of
6 the state treasury to the credit of the state purposes fund therein. The
7 first payment to such chief fiscal officer shall be made on or before
8 March fifteenth, nineteen hundred seventy-six, which payment shall
9 represent the balance of revenue after provision for refund and such
10 reasonable costs, with respect to taxes collected from January first,
11 nineteen hundred seventy-six through February twenty-ninth, nineteen
12 hundred seventy-six. Subsequent payments shall be made on or before
13 April fifteenth, nineteen hundred seventy-six and on or before the
14 fifteenth day of each succeeding month thereafter, and shall represent
15 the balance of revenue with respect to taxes collected the preceding
16 calendar month. The amounts so payable shall be certified to the state
17 comptroller by the state commissioner of taxation and finance or his or
18 her delegate, either of whom shall not be held liable for any inaccuracy
19 in such certificate. Where the amount so paid over to such chief fiscal
20 officer is more or less than the amount then due such city, the amount
21 of overpayment or underpayment shall be certified to the state comp-
22 troller by the state commissioner of taxation and finance or his or her
23 delegate, either of whom shall not be held liable for any inaccuracy in
24 such certificate. The amount of overpayment or underpayment shall be so
25 certified to the state comptroller as soon after the discovery of the
26 overpayment or underpayment as reasonably possible and subsequent
27 payments by the state comptroller to such chief fiscal officer shall be
28 adjusted by subtracting the amount of any such overpayment from, or by
29 adding the amount of any such underpayment to such number of subsequent
30 payments and distributions as the state comptroller and the state
31 commissioner of taxation and finance shall consider reasonable in view
32 of the amount of the overpayment or underpayment and all other facts and
33 circumstances.

34 § 11-1800 Enforcement with other taxes. (a) If there is assessed a
35 tax under this chapter and there is also assessed a tax or taxes against
36 the same taxpayer pursuant to article twenty-two of the tax law or under
37 chapter nineteen of this title and if the tax commission takes action
38 under such article twenty-two or under such chapter nineteen with
39 respect to the enforcement and collection of the tax or taxes assessed
40 under such articles or chapter, the tax commission shall, wherever
41 possible, accompany such action with a similar action under similar
42 enforcement and collection provisions of this chapter.

43 (b) Any moneys collected as a result of such joint action shall be
44 deemed to have been collected in proportion to the amounts due, includ-
45 ing tax, penalties, interest and additions to tax, under article twen-
46 ty-two of the tax law and this city income tax.

47 (c) Whenever the tax commission takes any action with respect to a
48 deficiency of income tax under article twenty-two of the tax law or
49 under chapter nineteen of this title, other than the action set forth in
50 subdivision (a) of this section, it may in its discretion accompany such
51 action with a similar action under such city income tax.

52 § 11-1801 Administration, collection and review. (a) Except as other-
53 wise provided in this chapter, any tax imposed by this chapter shall be
54 administered and collected by the tax commission in the same manner as
55 the tax imposed by article twenty-two of the tax law is administered and
56 collected by such commission. Whenever there is joint collection of

1 state and city personal income taxes, it shall be deemed that such
2 collections shall represent proportionately the applicable state and
3 city personal income taxes in determining the amount to be remitted to
4 the city.

5 (b) The tax commission, in its discretion, may require or permit any
6 or all persons liable for any tax imposed by this chapter to make
7 payments on account of estimated tax and payment of any tax, penalty or
8 interest to such banks, banking houses or trust companies designated by
9 the tax commission and to file returns with such banks, banking houses
10 or trust companies, as agent of the tax commission, in lieu of paying a
11 tax imposed by this chapter directly to the tax commission. However,
12 the tax commission shall designate only such banks, banking houses or
13 trust companies which are designated by the comptroller as depositories
14 of the state.

15 (c) Notwithstanding any other provisions of this chapter, the tax
16 commission may require:

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

18 (A) a combined return which, in addition to the return provided for in
19 section 11-1751 of this chapter, may also include any or both of the
20 returns required to be filed by a resident individual of New York state
21 pursuant to the provisions of section six hundred fifty-one of the tax
22 law and which may be required to be filed by such individual pursuant to
23 chapter nineteen of this title and

24 (B) a combined employer's return which, in addition to the employer's
25 return provided for by this chapter, may also include any or both of the
26 employer's returns required to be filed by the same employer pursuant to
27 the provisions of section six hundred seventy-four of such law and
28 required to be filed by such employer pursuant to such chapter nineteen
29 of this title and

30 (2) where a combined return or employer's return is required, and with
31 respect to the payment of estimated tax, the tax commission may also
32 require the payment to it of a single amount which shall equal the total
33 of the amounts which would have been required to be paid with the
34 returns or employer's returns or in payment of estimated tax pursuant to
35 the provisions of article twenty-two of the tax law, and the provisions
36 of this chapter as if no combined return or employer's return were
37 required.

38 § 11-1802 Construction. This chapter shall be construed and enforced
39 in conformity with article thirty of the tax law, as added to such law
40 by chapter eight hundred eighty-one of the laws of nineteen hundred
41 seventy-five, pursuant to which article it is enacted.

42 CHAPTER 19
43 EARNINGS TAX ON NONRESIDENTS
44 SUBCHAPTER 1
45 GENERAL

46 § 11-1901 Meaning of terms. As used in this chapter, the following
47 terms shall mean and include:

48 (a) "Commissioner" means the commissioner of finance of the city
49 except that with respect to taxes imposed for any taxable year beginning
50 on or after January first, nineteen hundred seventy-six, such term shall
51 mean state tax commission.

52 (b) "Payroll period" and "employer" mean the same as payroll period
53 and employer as defined in subsections (b) and (d) of section thirty-
54 four hundred one of the internal revenue code, and "employee" shall also

1 include all those included as employees in subsection (c) of such
2 section of such code.

3 (c) "Commissioner of finance" means the commissioner of finance of the
4 city.

5 (d) "This state" means the state of New York.

6 (e) "Wages" means wages as defined in subsection (a) of section thir-
7 ty-four hundred one of the internal revenue code, except that (1) wages
8 shall not include payments for active service as a member of the armed
9 forces of the United States and shall not include, in the case of a
10 nonresident individual or partner of a partnership doing an insurance
11 business as a member of the New York insurance exchange described in
12 section six thousand two hundred one of the insurance law, any item of
13 income, gain, loss or deduction of such business which is such individ-
14 ual's distributive or pro rata share for federal income tax purposes or
15 which such individual is required to take into account separately for
16 federal income tax purposes, and (2) wages shall include (i) the amount
17 of member or employee contributions to a retirement system or pension
18 fund picked up by the employer pursuant to subdivision f of section five
19 hundred seventeen or subdivision d of section six hundred thirteen of
20 the retirement and social security law or section 13-225.1, 13-327.1,
21 13-125.1, 13-125.2 or 13-521.1 of title thirteen of the code of the
22 preceding municipality or subdivision nineteen of section twenty-five
23 hundred seventy-five of the education law, (ii) the amount deducted or
24 deferred from an employee's salary under a flexible benefits program
25 established pursuant to section twenty-three of the general municipal
26 law or section twelve hundred ten-a of the public authorities law, (iii)
27 the amount by which an employee's salary is reduced pursuant to the
28 provisions of subdivision b of section 12-126.1 and subdivision b of
29 section 12-126.2 of title twelve of the code of the preceding munic-
30 ipality, and (iv) the amount of member or employee contributions to a
31 retirement system or pension fund picked up or paid by the employer for
32 members of the Manhattan and Bronx surface transportation authority
33 pension plan and treated as employer contributions in determining income
34 tax treatment under subdivision (h) of section four hundred fourteen of
35 the Internal Revenue Code.

36 (f) "Net earnings from self-employment" means the same as net earnings
37 from self-employment as defined in subsection (a) of section fourteen
38 hundred two of the internal revenue code, except that the deduction for
39 wages and salaries paid or incurred for the taxable year which is not
40 allowed pursuant to section two hundred eighty-c of such code shall be
41 allowed, and except that an estate or trust shall be deemed to have net
42 earnings from self-employment determined in the same manner as if it
43 were an individual subject to the tax on self-employment income imposed
44 by section fourteen hundred one of the internal revenue code diminished
45 by: (1) the amount of any deduction allowed by subsection (c) of
46 section six hundred forty-two of the internal revenue code and (2) the
47 deductions allowed by sections six hundred fifty-one and six hundred
48 sixty-one of such code to the extent that they represent distributions
49 or payments to a resident of the city. However, "trade or business" as
50 used in subsection (a) of section fourteen hundred two of such code
51 shall mean the same as trade or business as defined in subsection (c) of
52 section fourteen hundred two of such code, except that paragraphs four,
53 five and six of such subsection shall not apply in determining net earn-
54 ings from self-employment taxable under this chapter. Provided, however,
55 in the case of a nonresident individual or partner of a partnership
56 doing an insurance business described in section six thousand two

1 hundred one of the insurance law, any item of income, gain, loss or
2 deduction of such business which is the individual's distributive or pro
3 rata share for federal income tax purposes or which the individual is
4 required to take into account separately for federal income tax purposes
5 shall not be considered to be "net earnings from self-employment".

6 (g) "Taxable year" means the taxpayer's taxable year for federal
7 income tax purposes.

8 (h) Resident individual. A resident individual means an individual:

9 (1) who is domiciled in the city, unless (A) he or she maintains no
10 permanent place of abode in the city, maintains a permanent place of
11 abode elsewhere, and spends in the aggregate not more than thirty days
12 of the taxable year in the city, or (B) (i) within any period of five
13 hundred forty-eight consecutive days he or she is present in a foreign
14 country or countries for at least four hundred fifty days, and (ii)
15 during such period of five hundred forty-eight consecutive days he or
16 she is not present in the city for more than ninety days and does not
17 maintain a permanent place of abode in the city at which his or her
18 spouse, unless such spouse is legally separated, or minor children are
19 present for more than ninety days, and (iii) during any period of less
20 than twelve months which would be treated as a separate taxable period
21 pursuant to section 11-1919 of this chapter, and which period is
22 contained within such period of five hundred forty-eight consecutive
23 days, he or she is present in the city for a number of days which does
24 not exceed an amount which bears the same ratio to ninety as the number
25 of days contained in such period of less than twelve months bears to
26 five hundred forty-eight, or

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

31 (i) Nonresident individual. A nonresident individual means an individ-
32 ual who is not a resident.

33 (j) Resident estate or trust. A resident estate or trust means:

34 (1) the estate of a decedent who at his or her death was domiciled in
35 the city,

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

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

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

44 (B) a person domiciled in the city at the time such trust, or portion
45 of a trust, became irrevocable, if it was revocable when such property
46 was transferred to the trust but has subsequently become irrevocable.

47 For the purposes of this subdivision, a trust or portion of a trust is
48 revocable if it is subject to a power, exercisable immediately or at any
49 future time, to revest title in the person whose property constitutes
50 such trust or portion of a trust, and a trust or portion of a trust
51 becomes irrevocable when the possibility that such power may be exer-
52 cised has been terminated.

53 (k) Nonresident estate or trust. A nonresident estate or trust means
54 an estate or trust which is not a resident.

55 (l) Unless a different meaning is clearly required, any terms used in
56 this chapter shall have the same meaning as when used in a comparable

1 context in the laws of the United States relating to federal taxes but
2 such meaning shall be subject to the exceptions or modifications
3 prescribed in or pursuant to article two-E of the general city law or by
4 the laws of this state. Any reference in this chapter to the internal
5 revenue code, the internal revenue code of nineteen hundred eighty-six
6 or to the laws of the United States shall mean the provisions of the
7 internal revenue code of nineteen hundred eighty-six, unless a reference
8 to the internal revenue code of nineteen hundred fifty-four is clearly
9 intended, and amendments thereto, and other provisions of the laws of
10 the United States relating to federal taxes, as the same are included in
11 the appendix and supplement to the appendix to this chapter. The quota-
12 tion of such laws of the United States is intended to make them a part
13 of this chapter and to avoid constitutional uncertainties which might
14 result if such laws were merely incorporated by reference. The quota-
15 tion of a provision of the federal internal revenue code or of any other
16 law of the United States shall not necessarily mean that it is applica-
17 ble to or has relevance to this chapter.

18 (m) With respect to any taxable year beginning in nineteen hundred
19 seventy, until and including the thirty-first day of December, nineteen
20 hundred seventy-one, "administrator" shall be read as "state tax commis-
21 sion"; "administrative agencies of the city" shall be read as "adminis-
22 trative agencies of the state"; "depositories or financial agents of the
23 city" shall be read as "depositories or financial agents of the state";
24 "officers or employees of the department of finance of the city" shall
25 be read as "officers or employees of the state department of taxation
26 and finance"; in sections 11-1934, 11-1936, 11-1939, and 11-1942 of this
27 chapter "city" shall be read as "state"; "corporation counsel or other
28 appropriate officer of the city" or "corporation counsel of the city"
29 shall be read as "state attorney general"; and the words "it" or "its"
30 shall apply instead of the pronouns used where the reference is to tax
31 commission. Provided, however, with respect to declarations of estimated
32 tax and payments of such tax and the withholding tax requirements, until
33 and including the thirty-first day of December, nineteen hundred seven-
34 ty-one, any such terms shall be so read with respect to any taxable year
35 or other period beginning in nineteen hundred seventy-one.

36 (n) The term "partnership" shall include, unless a different meaning
37 is clearly required, a subchapter K limited liability company. The term
38 "subchapter K limited liability company" shall mean a limited liability
39 company classified as a partnership for federal income tax purposes. The
40 term "limited liability company" means a domestic limited liability
41 company or a foreign limited liability company, as defined in section
42 one hundred two of the limited liability company law, a limited liabil-
43 ity investment company formed pursuant to section five hundred seven of
44 the banking law, or a limited liability trust company formed pursuant to
45 section one hundred two-a of the banking law.

46 § 11-1902 Persons subject to tax. (a) Imposition of tax. (1) A tax is
47 hereby imposed for each taxable year ending on or after July first,
48 nineteen hundred sixty-six and on or before December thirty-first, nine-
49 teen hundred seventy and for each taxable year beginning after December
50 thirty-first, nineteen hundred ninety-nine, on the wages earned and net
51 earnings from self-employment, within the city, of every nonresident
52 individual, estate and trust which shall comprise: (i) A tax at the
53 rate of one-fourth of one percent on all wages.

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

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

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

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

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

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

Total of wages and net earnings	
from self-employment	Exclusion allowable
Not over \$10,000	\$3,000
Over \$10,000 but not over \$20,000	\$2,000
Over \$20,000 but not over \$30,000	\$1,000
Over \$30,000	None

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

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

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

§ 11-1903 Taxable years to which tax imposed by this chapter applies; tax for taxable years beginning prior to and ending after July first, nineteen hundred sixty-six. (a) General. The tax imposed by this chapter is imposed for each taxable year beginning with taxable years ending on or after July first, nineteen hundred sixty-six.

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

1 major portions thereof, of the taxable year occurring after July first,
2 nineteen hundred sixty-six is of the number of months, or major portions
3 thereof, in the taxable year.

4 (2)(i) In lieu of the method of computation of tax prescribed in para-
5 graph one of this subdivision, if the taxpayer maintains adequate
6 records for any taxable year ending on or after July first, nineteen
7 hundred sixty-six and on or before June thirtieth, nineteen hundred
8 sixty-seven, the tax for such taxable year, at the election of the
9 taxpayer, may be computed on the basis of the wages which the taxpayer
10 would have reported had he or she filed a federal income tax return for
11 a taxable year beginning July first, nineteen hundred sixty-six, and
12 ending with the close of such taxable year ending on or before June
13 thirtieth, nineteen hundred sixty-seven, and the net earnings from self-
14 employment which the taxpayer would have reported for federal income tax
15 purposes had he or she filed a self-employment tax return for a taxable
16 year beginning July first, nineteen hundred sixty-six and ending with
17 the close of such taxable year ending on or before June thirtieth, nine-
18 teen hundred sixty-seven.

19 (ii) For purposes of this paragraph, the exclusions allowable under
20 section 11-1902 of this subchapter shall be reduced by a fraction, the
21 numerator of which is the number of months, or major portions thereof,
22 of the taxable year occurring before July first, nineteen hundred
23 sixty-six, and the denominator of which is the number of months, or
24 major portions thereof, in the taxable year. Except as provided in this
25 paragraph, the tax for such period ending on or before June thirtieth,
26 nineteen hundred sixty-seven, shall be computed in accordance with the
27 other provisions of this chapter.

28 § 11-1904 Allocation to the city. (a) General. If net earnings from
29 self-employment are derived from services performed, or from sources,
30 within and without the city, there shall be allocated to the city a fair
31 and equitable portion of such earnings.

32 (b) Allocation of net earnings from self-employment.

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

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

42 (3) Allocation by formula. If paragraph two of this subdivision does
43 not apply to the taxpayer, the portion of net earnings from self-employ-
44 ment allocable to the city shall be determined by multiplying (A) net
45 earnings from self-employment within and without the city, by (B) the
46 average of the following three percentages:

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

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

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

20 (c) Other allocation methods. The portion of net earnings from self-
21 employment allocable to the city shall be determined in accordance with
22 rules and regulations of the commissioner if it shall appear to the
23 commissioner that the net earnings from self-employment are not fairly
24 and equitably reflected under the provisions of subdivision (b) of this
25 section.

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

32 § 11-1905 Accounting periods and methods. (a) Accounting periods. A
33 taxpayer's taxable year under this chapter shall be the same as his or
34 her taxable year for federal income tax purposes.

35 (b) Change of accounting periods. If a taxpayer's taxable year is
36 changed for federal income tax purposes, his or her taxable year for
37 purposes of this chapter shall be similarly changed. If a taxable peri-
38 od of less than twelve months results from a change of taxable year, the
39 exclusion allowable under section 11-1902 of this subchapter shall be
40 prorated under regulations of the commissioner.

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

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

51 (2) If a taxpayer's method of accounting is changed, other than from
52 an accrual to an installment method, any additional tax which results
53 from adjustments determined to be necessary solely by reason of the
54 change shall not be greater than if such adjustments were ratably allo-
55 cated and included for the taxable year of the change and the preceding
56 taxable years, beginning after July first, nineteen hundred sixty-six,

1 not in excess of two, during which the taxpayer used the method of
2 accounting from which the change is made.

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

10 § 11-1908 Withholding of tax on wages. On or after the first payroll
11 period beginning August twenty-seventh, nineteen hundred sixty-six,
12 every employer maintaining an office or transacting business within this
13 state and making payment of any wages taxable under this chapter shall
14 deduct and withhold from such wages for each payroll period a tax
15 computed in such manner as to result, so far as practicable, in with-
16 holding from the employee's wages during each calendar year an amount
17 substantially equivalent to the tax reasonably estimated to be due from
18 the employee under this chapter. The method of determining the amount to
19 be withheld shall be prescribed by regulations of the commissioner.

20 § 11-1909 Withholding of tax on wages for taxable periods commencing
21 on or after January first, nineteen hundred seventy-six. The provisions
22 contained in sections 11-1908, 11-1910, 11-1911, 11-1912, 11-1913 and
23 11-1914 of this subchapter shall not be applicable to taxes imposed for
24 taxable periods commencing on or after January first, nineteen hundred
25 seventy-six provided however, with respect to such periods, the
26 provisions contained in part V of article twenty-two of the tax law
27 shall be applicable with the same force and effect as if those
28 provisions had been incorporated in full in this section except that the
29 term "aggregate amount" contained in paragraphs one, two and three of
30 subsection (a) of section six hundred seventy-four of the tax law shall
31 mean the aggregate amounts of New York state personal income tax, city
32 earnings tax on nonresidents and city personal income tax on residents
33 authorized pursuant to article thirty of the tax law required to be
34 deducted and withheld and provided, however, that the provisions of such
35 paragraphs shall not be applicable to employer's returns required to be
36 filed with respect to taxes required to be deducted and withheld during
37 the calendar year nineteen hundred seventy-six, but such returns shall
38 be required to be filed with the tax commission at the times and in the
39 manner provided for in subdivision (a) of section 11-1912 of this
40 subchapter, except the term "commission" in such subdivision shall be
41 read as "tax commission." This section shall not apply to payments by
42 the United States for service in the armed forces of the United States
43 so long as the right to require deduction and withholding of tax from
44 such payments is prohibited by the laws of the United States. Service in
45 the armed forces of the United States shall have the same meaning as
46 when used in a comparable context in the laws of the United States
47 relating to withholding of city income taxes.

48 § 11-1910 Information statement for employee. Every employer required
49 to deduct and withhold tax under this chapter from the wages of an
50 employee, shall furnish to each such employee in respect of the wages
51 paid by such employer to such employee during the calendar year on or
52 before February fifteenth of the succeeding year, or, if his or her
53 employment is terminated before the close of such calendar year, within
54 thirty days from the date on which the last payment of the wages is
55 made, a written statement as prescribed by the commissioner showing the
56 total amount of wages paid by the employer to the employee, the amount

1 of wages paid for services performed within the city, the amount
2 deducted and withheld as tax, and such other information as the commis-
3 sioner may prescribe. The written statement required under this
4 section may be furnished to such employee in an electronic format.

5 § 11-1911 Credit for tax withheld. Wages upon which tax is required to
6 be withheld shall be taxable under this chapter as if no withholding
7 were required, but any amount of tax actually deducted and withheld
8 under this chapter in any calendar year shall be deemed to have been
9 paid on behalf of the employee from whom withheld, and such employee
10 shall be credited with having paid that amount of tax in such calendar
11 year. For a taxable year of less than twelve months, the credit shall be
12 made under regulations of the commissioner.

13 § 11-1912 Employer's return and payment of withheld taxes. (a) Gener-
14 al. On or after the first payroll period beginning August twenty-sev-
15 enth, nineteen hundred sixty-six, every employer required to deduct and
16 withhold tax under this chapter shall, for each calendar month, on or
17 before the fifteenth day of the month following the close of such calen-
18 dar month file a withholding return as prescribed by the commissioner
19 and pay over to the commissioner or to the depository designated by the
20 commissioner, the taxes so required to be deducted and withheld, except
21 that for the month of December in any year the returns shall be filed
22 and the taxes paid on or before January thirty-first of the succeeding
23 year. Where the aggregate amount required to be deducted and withheld
24 by any employer under this chapter and under chapter seventeen of this
25 title is less than twenty-five dollars in a calendar month and the
26 aggregate of such taxes for the semi-annual period ending on June thir-
27 tieth and December thirty-first can reasonably be expected to be less
28 than one hundred fifty dollars, the commissioner may, by regulation,
29 permit an employer to file a return on or before July thirty-first for
30 the semi-annual period ending on June thirtieth and on or before January
31 thirty-first for the semi-annual period ending on December thirty-first.
32 The commissioner may, if he or she believes such action necessary for
33 the protection of the revenues, require any employer to make a return
34 and pay to him or her the tax deducted and withheld at any time, or from
35 time to time. Where the amount of wages paid by an employer is not
36 sufficient under this chapter and under chapter seventeen of this title
37 to require the withholding of tax from the wages of any of his or her
38 employees, the commissioner may, by regulation, permit such employer to
39 file an annual return on or before February twenty-eighth of the follow-
40 ing calendar year.

41 (b) Combined returns. The commissioner may by regulation provide for
42 the filing of one return which shall include the return required to be
43 filed under this section, together with the employer's return required
44 to be filed under chapter seventeen of this title.

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

54 § 11-1913 Employer's liability for withheld taxes. Every employer
55 required to deduct and withhold the tax under this chapter is hereby
56 made liable for such tax. For purposes of assessment and collection,

1 any amount required to be withheld and paid over to the commissioner,
2 and any additions to tax, penalties and interest with respect thereto
3 shall be considered the tax of the employer. Any amount of tax actually
4 deducted and withheld under this chapter shall be held to be a special
5 fund in trust for the city. No employee shall have any right of action
6 against his or her employer in respect to any monies deducted and with-
7 held from his or her wages and paid over to the commissioner in compli-
8 ance or in intended compliance with this chapter.

9 § 11-1914 Employer's failure to withhold. If an employer fails to
10 deduct and withhold the tax, as required, and thereafter the tax against
11 which such tax may be credited is paid, the tax so required to be
12 deducted and withheld shall not be collected from the employer, but the
13 employer shall not be relieved from liability for any penalties, inter-
14 est or additions to the tax otherwise applicable in respect of such
15 failure to deduct and withhold.

16 § 11-1915 Combined returns, employer's returns and payments. The
17 state tax commission may require:

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

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

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

27 (2) Where a combined return or employer's return is required, and
28 with respect to the payment of estimated tax, the state tax commission
29 may also require payment of a single amount which shall be the total of
30 the amounts, total taxes less any credits or refunds, required to be
31 paid with the returns or employer's returns or in payment of estimated
32 tax pursuant to the provisions of this chapter, a law authorized by
33 article thirty of the tax law and pursuant to the provisions of article
34 twenty-two of the tax law.

35 SUBCHAPTER 2

36 RETURNS AND PAYMENT OF TAX

37 § 11-1916 Returns and payment of tax. (a) General. On or before the
38 fifteenth day of the fourth month following the close of the taxable
39 year, every person subject to the tax shall make and file a return and
40 any balance of the tax shown due on the face of such return shall be
41 paid therewith. The commissioner may, by regulation, provide for the
42 filing of returns and payment of the tax at such other times as he or
43 she deems necessary for the proper enforcement of this chapter. The
44 commissioner may also provide by regulation that any return otherwise
45 required to be made and filed under this chapter by any nonresident
46 individual need not be made and filed if such nonresident individual
47 had, during the taxable year to which the return would relate, no net
48 earnings from self-employment within the city. Any regulation allowing
49 such waiver of return may provide for additional limitations on and
50 conditions and prerequisites to the privilege of not filing a return.

51 (b) Decedents. The return for any deceased individual shall be made
52 and filed by his or her executor, administrator, or other person charged
53 with his or her property. If a final return of a decedent is for a
54 fractional part of a year, the due date of such return shall be the

1 fifteenth day of the fourth month following the close of the twelve-
2 month period which began with the first day of such fractional part of
3 the year.

4 (c) Individuals under a disability. The return for an individual who
5 is unable to make a return by reason of minority or other disability
6 shall be made and filed by his or her guardian, committee, fiduciary or
7 other person charged with the care of his or her person or property,
8 other than a receiver in possession of only a part of his or her proper-
9 ty, or by his or her duly authorized agent.

10 (d) Estates and trust. The return for an estate or trust shall be made
11 and filed by the fiduciary.

12 (e) Joint fiduciaries. If two or more fiduciaries are acting jointly,
13 the return may be made by any one of them.

14 (f) Cross reference. For provisions as to information returns by part-
15 nerships, employers and other persons, see section 11-1921 of this
16 subchapter.

17 § 11-1917 Time and place for filing returns and paying tax. A person
18 required to make and file a return under this chapter shall, without
19 assessment, notice or demand, pay any tax due thereon to the commis-
20 sioner on or before the date fixed for filing such return, determined with-
21 out regard to any extension of time for filing the return. The commis-
22 sioner shall prescribe by regulation the place for filing any return,
23 statement, or other document required pursuant to this chapter and for
24 payment of any tax.

25 § 11-1918 Signing of returns and other documents. (a) General. Any
26 return, statement or other document required to be made pursuant to this
27 chapter shall be signed in accordance with regulations or instructions
28 prescribed by the commissioner. The fact that an individual's name is
29 signed to a return, statement, or other document, shall be prima facie
30 evidence for all purposes that the return, statement or other document
31 was actually signed by such individual.

32 (b) Partnerships. Any return, statement or other document required of
33 a partnership shall be signed by one or more partners. The fact that a
34 partner's name is signed to a return, statement, or other document,
35 shall be prima facie evidence for all purposes that such partner is
36 authorized to sign on behalf of the partnership.

37 (c) Certifications. The making or filing of any return, statement or
38 other document or copy thereof required to be made or filed pursuant to
39 this chapter, including a copy of a federal return, shall constitute a
40 certification by the person making or filing such return, statement or
41 other document or copy thereof that the statements contained therein are
42 true and that any copy filed is a true copy.

43 § 11-1919 Change of residence status during year. (a) General. If an
44 individual changes his or her status during his or her taxable year from
45 resident to nonresident, or from nonresident to resident, he or she
46 shall file a return as a nonresident for the portion of the year during
47 which he or she is a nonresident if he or she is subject to the tax
48 imposed by this chapter or, if not subject to such tax, an information
49 return for the portion of the year during which he or she is a nonresi-
50 dent, subject to such exceptions as the commissioner may prescribe by
51 regulation. Such information return shall be due at the same time as
52 the return required by chapter seventeen of this title for the portion
53 of the year during which such individual is a resident.

54 (b) City taxable wages and net earnings from self-employment for
55 portion of year individual is a nonresident. The city taxable wages and
56 net earnings from self-employment for the portion of the year during

1 which he or she is a nonresident shall be determined, except as provided
2 in subdivision (c) of this section, under this chapter as if his or her
3 taxable year for federal income tax purposes were limited to the period
4 of his or her nonresident status.

5 (c) Special accruals. (1) If an individual changes his or her status
6 from resident to nonresident, he or she shall, regardless of his or her
7 method of accounting, accrue for the portion of the taxable year prior
8 to such change of status any items of income, gain, loss or deduction
9 accruing prior to the change of status, if not otherwise properly inclu-
10 dible, whether or not because of an election to report on an installment
11 basis, or allowable for city earnings tax purposes for such portion of
12 the taxable year for a prior taxable year. The amounts of such accrued
13 items shall be determined as if such accrued items were includible or
14 allowable for federal self-employment tax purposes.

15 (2) If an individual changes his or her status from nonresident to
16 resident, he or she shall, regardless of his or her method of account-
17 ing, accrue for the portion of the taxable year prior to such change of
18 status any items of income, gain, loss or deduction accruing prior to
19 the change of status, if not otherwise properly includible, whether or
20 not because of an election to report on an installment basis, or allow-
21 able for federal self-employment tax purposes for such portion of the
22 taxable year or for prior taxable year. The amounts of such accrued
23 items shall be determined if such accrued items were includible or
24 allowable for federal self-employment tax purposes.

25 (3) No item of income, gain, loss or deduction which is accrued under
26 this subdivision shall be taken into account in determining city
27 adjusted wages earned, or net earnings from self-employment, within the
28 city, for any subsequent taxable period.

29 (4) Where an individual changes his or her status from resident to
30 nonresident, the accruals under this subdivision shall not be required
31 if the individual files with the commissioner a bond or other security
32 acceptable to the commissioner, conditioned upon the inclusion of
33 amounts accruable under this subdivision in city adjusted gross income
34 under chapter seventeen of this title for one or more subsequent taxable
35 years as if the individual has not changed his or her resident status.
36 In such event, the tax under this chapter shall not apply to such
37 amounts.

38 (d) Prorations. Where an individual changes his or her status during
39 his or her taxable year from resident to nonresident or from nonresident
40 to resident, the exclusion allowable under subdivision (b) of section
41 11-1902 of this chapter shall be prorated, under regulations of the
42 commissioner, to reflect the portions of the entire taxable year during
43 which the individual was a resident and a nonresident.

44 § 11-1920 Extension of time. (a) General. The commissioner may grant a
45 reasonable extension of time for payment of tax or estimated tax, or any
46 installment, or for filing any return, statement, or other document
47 required pursuant to this chapter, on such terms and conditions as he or
48 she may require. Except for a taxpayer who is outside the United States
49 or who intends to claim nonresident status pursuant to subparagraphs
50 (i), (ii) and (iii) of paragraph one of subdivision (h) of section
51 11-1901 of this chapter, no such extension for filing any return, state-
52 ment or other document, shall exceed six months.

53 (b) Furnishing of security. If any extension of time is granted for
54 payment of any amount of tax, the commissioner may require the taxpayer
55 to furnish a bond or other security in an amount not exceeding twice the

1 amount for which the extension of time for payment is granted, on such
2 terms and conditions as the commissioner may require.

3 § 11-1921 Requirements concerning returns, notices, records and state-
4 ments. (a) General. The commissioner may prescribe regulations as to the
5 keeping of records, the content and form of returns and statements, and
6 the filing of copies of federal income tax returns and determinations.
7 The commissioner may require any person, by regulation or notice served
8 upon such person, to make such returns, render such statements, or keep
9 such records, as the commissioner may deem sufficient to show whether or
10 not such person is liable under this chapter for tax or for collection
11 of tax.

12 (b) Partnerships. Every partnership doing business in the city and
13 having no partners who are residents shall make a return for the taxable
14 year setting forth all items of income, gain, loss and deduction and
15 such other pertinent information as the commissioner may by regulations
16 and instructions prescribe. Such return shall be filed on or before the
17 fifteenth day of the fourth month following the close of each taxable
18 year. For purposes of this subdivision, "taxable year" means year or
19 period which would be a taxable year of the partnership if it were
20 subject to tax under this chapter.

21 (c) Information at source. The commissioner may prescribe regulations
22 and instructions requiring returns of information to be made and filed
23 on or before February twenty-eighth of each year as to the payment or
24 crediting in any calendar year of amounts of six hundred dollars or more
25 to any taxpayer under this chapter. Such returns may be required of any
26 person, including lessees or mortgagors of real or personal property,
27 fiduciaries, employers, and all officers and employees of this state, or
28 any municipal corporation or political subdivision of this state, having
29 the control, receipt, custody, disposal or payment of interest, rents,
30 salaries, wages, premiums, annuities, compensations, remunerations,
31 emoluments or other fixed or determinable gains, profits or income,
32 except interest coupons payable to bearer. A duplicate of the statement
33 as to tax withheld on wages, required to be furnished by an employer to
34 an employee, shall constitute the return of information required to be
35 made under this section with respect to such wages.

36 (d) Notice of qualification as receiver, etc. Every receiver, trustee
37 in bankruptcy, assignee for benefit of creditors, or other like fiduci-
38 ary shall give notice of his or her qualifications as such to the
39 commissioner, as may be required by regulation.

40 § 11-1922 Report of change in federal or New York state taxable
41 income. If the amount of a taxpayer's federal or New York state taxable
42 income or self-employment income reported on his or her federal or New
43 York state tax return for any taxable year is changed or corrected by
44 the United States internal revenue service or the New York state commis-
45 sioner of taxation and finance or other competent authority, or as the
46 result of a renegotiation of a contract or subcontract with the United
47 States or New York state or if a taxpayer, pursuant to subsection (d) of
48 section six thousand two hundred thirteen of the internal revenue code,
49 executes a notice of waiver of the restrictions provided in subsection
50 (a) of said section or if a taxpayer, pursuant to subdivision (f) of
51 section six hundred eighty-one of the tax law executes a notice of waiv-
52 er of the restrictions provided in subdivision (c) of said section, or
53 if any tax on self-employment income in addition to that shown on his or
54 her return is assessed, the taxpayer shall report such change or
55 correction in federal or New York state taxable income or such execution
56 of such notice of waiver or such assessment and the changes or

1 corrections of his or her federal or New York state taxable income or
2 self-employment income on which it is based, within ninety days after
3 the final determination of such change, correction, or renegotiation, or
4 such execution of such notice of waiver or the making of such assessment
5 as otherwise required by the commissioner, and shall concede the accuracy
6 of such determination or state wherein it is erroneous. Any taxpayer
7 filing an amended federal or New York state income or self-employment
8 income tax return shall also file within ninety days thereafter an
9 amended return under this chapter, and shall give such information as
10 the commissioner may require. The commissioner may by regulation
11 prescribe such exceptions to the requirements of this section as he or
12 she deems appropriate. For purposes of this section, (i) the term
13 "taxpayer" shall include a partnership having any income derived from
14 city sources, and (ii) the term "federal income tax return" shall
15 include the returns of income required under section six thousand thirty-
16 ty-one of the internal revenue code. Reports made under this section by
17 a partnership shall indicate the portion of the change in each item of
18 income, gain, loss or deduction allocable to each partner and shall set
19 forth such identifying information with respect to such partner as may
20 be prescribed by the commissioner.

21
22

SUBCHAPTER 3
PROCEDURE AND ADMINISTRATION

23 § 11-1923 Notice of deficiency. (a) General. If upon examination of a
24 taxpayer's return under this chapter the commissioner determines that
25 there is a deficiency of tax, he or she may mail a notice of deficiency
26 to the taxpayer. If a taxpayer fails to file a return required under
27 this chapter, the commissioner is authorized to estimate the taxpayer's
28 wages and net earnings from self-employment or the wages from which
29 taxes are required to be deducted and withheld and the tax thereon, from
30 any information in the commissioner's possession, and to mail a notice
31 of deficiency to the taxpayer. A notice of deficiency shall be mailed
32 by certified or registered mail to the taxpayer at such taxpayer's last
33 known address in or out of the city. If the taxpayer is deceased last
34 under a legal disability, a notice of deficiency may be mailed to his or
35 her last known address in or out of the city, unless the commissioner
36 has received notice of the existence of a fiduciary relationship with
37 respect to the taxpayer.

38 (b) Notice of deficiency as assessment. The notice of deficiency shall
39 be an assessment of the amount of tax specified in such notice, together
40 with the interest, additions to tax and penalties stated in such notice.

41 (c) Restrictions on collection and levy. No notice and demand for
42 payment of an assessment of a deficiency in tax made by a notice of
43 deficiency and no levy or proceeding in court for its collection shall
44 be made, begun or prosecuted, except as otherwise provided in section
45 11-1937 of this subchapter, until the expiration of the time for filing
46 a petition contesting such notice, nor, if a petition with respect to
47 the taxable year has been filed with the commissioner, until the deci-
48 sion of the commissioner has become final. After a petition has been
49 filed the restriction provided herein shall not apply to such part of
50 the deficiency as is not contested by the petition. For exception in
51 the case of judicial review of the decision of the commissioner, see
52 subdivision (c) of section 11-1932 of this subchapter.

53 (d) Exceptions for mathematical errors. If a mathematical error
54 appears on a return, including an overstatement of the credit for tax

1 withheld at the source or of the amount paid as estimated tax, the
2 commissioner shall notify the taxpayer that an amount of tax in excess
3 of that shown upon the return is due, and that such excess has been
4 assessed. Such notice shall not be considered as a notice of deficiency
5 for the purposes of this section, subdivision (f) of section 11-1929 of
6 this subchapter, limiting credits or refunds after petition to the
7 commissioner, or subdivision (b) of section 11-1931 of this subchapter,
8 authorizing the filing of a petition with the commissioner based on a
9 notice of deficiency, nor shall collection of such assessment be prohib-
10 ited by the provisions of subdivision (c) of this section.

11 (e) Exception where change in federal or New York state taxable income
12 is not reported (1) If the taxpayer fails to comply with section 11-1922
13 of this chapter in not reporting a change or correction increasing his
14 or her federal or New York state taxable income or self-employment
15 income as reported on such taxpayer's federal or New York state tax
16 return or in not reporting a change or correction which is treated in
17 the same manner as if it were a deficiency for federal or New York state
18 tax purposes or in not filing an amended return or in not reporting the
19 execution of a notice of waiver or an assessment described in such
20 section, instead of the mode and time of assessment and collection
21 provided for in subdivision (b) of this section, the commissioner may
22 assess a deficiency based upon such changed or corrected federal or New
23 York state taxable income or self-employment income by mailing to the
24 taxpayer a notice of additional tax due specifying the amount of the
25 deficiency, and such deficiency, together with the interest, additions
26 to tax and penalties stated in such notice, shall be deemed assessed and
27 subject to collection procedures on the date such notice is mailed
28 unless within thirty days after the mailing of such notice a report of
29 the federal or New York state change or correction or an amended return,
30 where such return was required by section 11-1922 of this chapter is
31 filed accompanied by a statement showing wherein such federal or New
32 York state determination of such notice of additional tax due are erro-
33 neous.

34 (2) Such notice shall not be considered as a notice of deficiency for
35 the purposes of this section, subdivision (f) of section 11-1929 of this
36 subchapter, limiting credits or refunds after petition to the commis-
37 sioner, or subdivision (b) of section 11-1931 of this subchapter,
38 authorizing the filing of a petition with the commissioner based on a
39 notice of deficiency, nor shall the collection of such assessment be
40 prohibited by the provisions of subdivision (c) of this section.

41 If the taxpayer is deceased or under a legal disability, a notice of
42 additional tax due may be mailed to his or her last known address in or
43 out of the city, unless the commissioner has received notice of the
44 existence of a fiduciary relationship with respect to the taxpayer.

45 (f) Waiver of restrictions. The taxpayer shall at any time have the
46 right to waive the mailing of a notice of deficiency or restriction on
47 collection of the whole or any part of the deficiency, or both, by a
48 signed notice in writing filed with the commissioner.

49 (g) Deficiency defined. For purposes of this chapter, a deficiency
50 means the amount of the tax imposed by this chapter, less (1) the amount
51 shown as the tax upon the taxpayer's return, whether the return was made
52 or the tax computed by the taxpayer or by the commissioner, and less,
53 (2) the amounts previously assessed, or collected without assessment, as
54 a deficiency and plus (3) the amount of any rebates. For the purpose of
55 this definition, the tax imposed by this chapter and the tax shown on
56 the return shall both be determined without regard to payments on

1 account of estimated tax or the credit for withholding tax; and a rebate
2 means so much of an abatement, refund or other repayment, whether or not
3 erroneous, made on the ground that the amounts entering into the defi-
4 nition of a deficiency showed a balance in favor of the taxpayer.

5 § 11-1924 Assessment. (a) Assessment date. The amount of tax which a
6 return shows to be due, or the amount of tax which a return would have
7 shown to be due but for a mathematical error, shall be deemed to be
8 assessed on the date of filing of the return, including any amended
9 return showing an increase of tax. In the case of a return properly
10 filed without computation of tax, the tax computed by the commissioner
11 shall be deemed to be assessed on the date on which payment is due. If
12 a notice of deficiency has been mailed, the amount of the deficiency
13 shall be deemed to be assessed on the date on which it is mailed. If an
14 amended return or report filed pursuant to section 11-1922 of this chap-
15 ter concedes the accuracy of a federal or New York state adjustment,
16 change or correction, any deficiency in tax under this chapter resulting
17 therefrom shall be deemed to be assessed on the date of filing such
18 report or amended return, and such assessment shall be timely notwith-
19 standing section 11-1925 of this subchapter. If a notice of additional
20 tax due, as prescribed in subdivision (e) of section 11-1923 of this
21 subchapter, has been mailed, the amount of the deficiency shall be
22 deemed to be assessed on the date specified in such subdivision unless
23 within thirty days after the mailing of such notice a report of the
24 federal or New York state change or correction or an amended return,
25 where such return was required by section 11-1922 of this chapter, is
26 filed accompanied by a statement showing wherein such federal or New
27 York state determination and such notice of additional tax due are erro-
28 neous. Any amount paid as a tax or in respect of a tax, other than
29 amounts withheld at the source or paid as estimated income tax, shall be
30 deemed to be assessed upon the date of receipt of payment, notwithstand-
31 ing any other provisions.

32 (b) Other assessment powers. If the mode or time for the assessment
33 of any tax under this chapter, including interest, additions to tax and
34 assessable penalties, is not otherwise provided for, the commissioner
35 may establish the same by regulations.

36 (d) Supplemental assessment. The commissioner may, at any time within
37 the period prescribed for assessment, make a supplemental assessment,
38 subject to the provisions of section 11-1923 of this subchapter where
39 applicable, whenever it is ascertained that any assessment is imperfect
40 or incomplete in any material respect.

41 (e) Cross reference. For assessment in case of jeopardy, see section
42 11-1937 of this subchapter.

43 § 11-1925 Limitations on assessment. (a) General. Except as otherwise
44 provided in this section, any tax under this chapter shall be assessed
45 within three years after the return was filed, whether or not such
46 return was filed on or after the date prescribed.

47 (b) Exceptions. (1) Assessment at any time. The tax may be assessed at
48 any time if:

49 (A) no return is filed,

50 (B) a false or fraudulent return is filed with intent to evade tax, or

51 (C) the taxpayer fails to comply with section 11-1922 of this chapter
52 in not reporting a change or correction increasing his or her federal or
53 New York state taxable income or self-employment income as reported on
54 the taxpayer's federal or New York state tax return, or the execution of
55 a notice of waiver and the changes or corrections on which it is based
56 or in not reporting an assessment or a change or correction which is

1 treated in the same manner as if it were a deficiency for federal or New
2 York state income tax purposes, or in not filing an amended return.

3 (2) Extension by agreement. Where, before the expiration of the time
4 prescribed in this section for the assessment of tax, both the commis-
5 sioner and the taxpayer have consented in writing to its assessment
6 after such time, the tax may be assessed at any time prior to the expi-
7 ration of the period agreed upon. The period so agreed upon may be
8 extended by subsequent agreements in writing made before the expiration
9 of the period previously agreed upon.

10 (3) Report of changed or corrected federal or New York state income.
11 If the taxpayer shall, pursuant to section 11-1922 of this chapter,
12 report a change or correction or file an amended return increasing the
13 taxpayer's federal or New York state taxable income or earnings from
14 self-employment or report an assessment or a change or correction which
15 is treated in the same manner as if it were a deficiency for federal or
16 New York state income tax purposes, the assessment, if not deemed to
17 have been made upon the filing of the report or amended return, may be
18 made at any time within two years after such report or amended return
19 was filed. The amount of such assessment of tax shall not exceed the
20 amount of the increase in city tax on earnings attributable to such
21 federal or New York state change or correction. The provisions of this
22 paragraph shall not affect the time within which or the amount for which
23 an assessment may otherwise be made.

24 (4) Recovery of erroneous refund. An erroneous refund shall be consid-
25 ered an underpayment of tax on the date made, and an assessment of a
26 deficiency arising out of an erroneous refund may be made at any time
27 within two years from the making of the refund, except that the assess-
28 ment may be made within five years from the making of the refund if it
29 appears that any part of the refund was induced by fraud or misrepresen-
30 tation of a material fact.

31 (5) Request for prompt assessment. If a return is required for a dece-
32 dent or for the decedent's estate during the period of administration,
33 the tax shall be assessed within eighteen months after written request
34 therefor, made after the return is filed, by the executor, administrator
35 or other person representing the estate of such decedent, but not more
36 than three years after the return was filed, except as otherwise
37 provided in this subdivision and subdivision (c) of this section.

38 (c) Omission of income on return. The tax may be assessed at any time
39 within six years after the return was filed if a taxpayer omits from a
40 return an amount properly includible therein which is in excess of twen-
41 ty-five per centum of the amount of the gross income derived by the
42 taxpayer from any trade or business.

43 For purposes of this subdivision there shall not be taken into account
44 any amount which is omitted in the return if such amount is disclosed in
45 the return, or in a statement attached to the return, in a manner
46 adequate to apprise the commissioner of the nature and amount of such
47 item.

48 (d) Suspension of running of period of limitation. The running of the
49 period of limitations on or collection of tax or other amount, or of a
50 transferee's liability, shall, after the mailing of a notice of defi-
51 ciency, be suspended for the period during which the commissioner is
52 prohibited under subdivision (c) of section 11-1923 of this subchapter
53 collecting by levy or proceeding in court.

54 § 11-1926 Interest on underpayment. (a) General. If any amount of tax
55 is not paid on or before the last date prescribed in this chapter for
56 payment, interest on such amount at the appropriate rates prescribed for

1 underpayments of tax under chapter seventeen of this title shall be paid
2 for the period from such last date to the date paid, whether or not any
3 extension of time for payment was granted. Interest under this subdivi-
4 sion shall not be paid if the amount thereof is less than one dollar.
5 If the time for filing a return of tax withheld by an employer is
6 extended, the employer shall pay interest for the period for which the
7 extension is granted and may not charge such interest to the employee.

8 (c) Exception for mathematical error. No interest shall be imposed on
9 any underpayment of tax due solely to mathematical error if the taxpayer
10 files a return within the time prescribed in this chapter, including any
11 extension of time, and pays the amount of underpayment within three
12 months after the due date of such return, as it may be extended.

13 (d) No interest on interest. No interest under this chapter shall be
14 imposed on any interest provided by this chapter.

15 (e) Suspension of interest on deficiencies. If a waiver of
16 restrictions on collection of an assessment of a deficiency has been
17 filed by the taxpayer, and if notice and demand by the commissioner for
18 payment of such assessed deficiency is not made within thirty days after
19 the filing of such waiver, interest shall not be imposed on such defi-
20 ciency for the period beginning immediately after such thirtieth day and
21 ending with the date of notice and demand.

22 (f) Interest treated as tax. Interest under this section shall be
23 paid upon notice and demand and shall be assessed, collected and paid in
24 the same manner as tax. Any reference in this chapter to the tax
25 imposed by this chapter shall be deemed also to refer to interest
26 imposed by this section on such tax.

27 (g) Interest on penalties or additions to tax. Interest shall be
28 imposed under subdivision (a) of this section in respect of any assess-
29 able penalty or addition to tax only if such assessable penalty or addi-
30 tion to tax is not paid within ten days from the date of the notice and
31 demand therefor under subdivision (b) of section 11-1934 of this
32 subchapter, and in such case interest shall be imposed only for the
33 period from such date of the notice and demand to the date of payment.

34 (h) Payment prior to notice of deficiency. If, prior to the mailing
35 to the taxpayer of a notice of deficiency under subdivision (b) of
36 section 11-1923 of this subchapter, the commissioner mails to the
37 taxpayer a notice of proposed increase of tax and within thirty days
38 after the date of the notice of proposed increase the taxpayer pays all
39 amounts shown on the notice to be due to the commissioner, no interest
40 under this section on the amount so paid shall be imposed for the period
41 after the date of such notice of proposed increase.

42 (i) Payment within ninety days after notice of deficiency. If a
43 notice of deficiency under section 11-1923 of this subchapter is mailed
44 to the taxpayer, and the total amount specified in such notice is paid
45 on or before the ninetieth day after the date of mailing, interest under
46 this section shall not be imposed for the period after the date of the
47 notice.

48 (j) Payment within ten days after notice and demand. If notice and
49 demand is made for payment of any amount under subdivision (b) of
50 section 11-1934 of this subchapter, and if such amount is paid within
51 ten days after the date of such notice and demand, interest under this
52 section on the amount so paid shall not be imposed for the period after
53 the date of such notice and demand.

54 (k) Limitation on assessment and collection. Interest prescribed
55 under this section may be assessed and collected at any time during the

1 period within which the tax or other amount to which such interest
2 relates may be assessed and collected, respectively.

3 (l) Interest on erroneous refund. Any portion of tax or other amount
4 which has been erroneously refunded, and which is recoverable by the
5 commissioner, shall bear interest at the rate of six per centum per
6 annum from the date of the payment of the refund, but only if it appears
7 that any part of the refund was induced by fraud or a misrepresentation
8 of a material fact.

9 (m) Satisfaction by credits. If any portion of a tax is satisfied by
10 credit of an overpayment, then no interest shall be imposed under this
11 section on the portion of the tax so satisfied for any period during
12 which, if the credit had not been made, interest would have been allow-
13 able with respect to such overpayment.

14 § 11-1927 Additions to tax and civil penalties. (a) Failure to file
15 tax return. In case of failure to file a tax return under this chapter
16 on or before the prescribed date, determined with regard to any exten-
17 sion of time for filing, unless it is shown that such failure is due to
18 reasonable cause and not due to willful neglect, there shall be added to
19 the amount required to be shown as tax on such return five percent of
20 the amount of such tax if the failure is for not more than one month,
21 with an additional five percent for each additional month or fraction
22 thereof during which such failure continues, not exceeding twenty-five
23 percent in the aggregate. For this purpose, the amount of tax required
24 to be shown on the return shall be reduced by the amount of any part of
25 the tax which is paid on or before the date prescribed for payment of
26 the tax and by the amount of any credit against the tax which may be
27 claimed upon the return.

28 (b) Deficiency due to negligence. If any part of a deficiency is due
29 to negligence or intentional disregard of this chapter or rules or regu-
30 lations hereunder, but without intent to defraud, there shall be added
31 to the tax an amount equal to five percent of the deficiency.

32 (c) Failure to file declaration or underpayment of estimated tax. If
33 any taxpayer fails to file a declaration of estimated tax or fails to
34 pay all or any part of an installment of estimated tax, the taxpayer
35 shall be deemed to have made an underpayment of estimated tax. There
36 shall be added to the tax for the taxable year an amount at the rate of
37 six per centum upon the amount of the underpayment for the period of the
38 underpayment but not beyond the fifteenth day of the fourth month
39 following the close of the taxable year. The amount of underpayment
40 shall be the excess of the amount of the installment which would be
41 required to be paid if the estimated tax were equal to seventy percent
42 of the tax attributable to net earnings from self employment shown on
43 the tax return for the taxable year, or if no return was filed, of the
44 tax so attributable for such year, over the amount, if any, of the
45 installment paid on or before the last day prescribed for such payment.
46 No underpayment shall be deemed to exist with respect to a declaration
47 or installment otherwise due on or after the taxpayer's death.

48 (d) Exception to addition for underpayment of estimated tax. The addi-
49 tion to tax under subdivision (c) of this section with respect to any
50 underpayment of any installment shall not be imposed if the total amount
51 of all payments of estimated tax made on or before the last date
52 prescribed for the payment of such installment equals or exceeds which-
53 ever of the following is the lesser:

54 (1) The amount which would have been required to be paid on or before
55 such date if the estimated tax were whichever of the following is the
56 lesser:

1 (A) The tax attributable to net earnings from self-employment shown on
2 the return of the individual for the preceding taxable year, if a return
3 showing a liability for tax was filed by the individual for the preced-
4 ing taxable year and such preceding year was a taxable year of twelve
5 months, or

6 (B) An amount equal to seventy percent of the tax so attributable for
7 the taxable year computed by placing on an annualized basis the taxable
8 net earnings from self-employment for the months in the taxable year
9 ending before the month in which the installment is required to be paid.

10 For purposes of this subparagraph, the taxable net earnings from self-
11 employment shall be placed on an annualized basis by:

12 (i) multiplying by twelve, or, in the case of a taxable year of less
13 than twelve months, the number of months in the taxable year, the taxa-
14 ble net earnings from self-employment for the months in the taxable year
15 ending before the month in which the installment is required to be
16 paid,

17 (ii) dividing the resulting amount by the number of months in the
18 taxable year ending before the month in which such installment date
19 falls, and

20 (iii) deducting from such amount the proper proportion of the exclu-
21 sion allowable for the taxable year by subdivision (b) of section
22 11-1902 of this chapter; or

23 (2) An amount equal to ninety percent of the tax computed, at the
24 rates applicable to the taxable year, on the basis of the actual taxable
25 net earnings from self-employment for the months in the taxable year
26 ending before the month in which the installment is required to be paid.

27 (e) Deficiency due to fraud. If any part of a deficiency is due to
28 fraud, there shall be added to the tax an amount equal to fifty percent
29 of the deficiency. This amount shall be in lieu of any other addition
30 to tax imposed by subdivision (a) or (b) of this section.

31 (f) Non-willful failure to pay withholding tax. If any employer, with-
32 out intent to evade or defeat any tax imposed by this chapter or the
33 payment thereof, shall fail to make a return and pay a tax withheld by
34 him or her at the time required by or under provisions of section
35 11-1912 of this chapter, such employer shall be liable for such tax and
36 shall pay the same together with interest thereon and the addition to
37 tax provided in subdivision (a) of this section, and such interest and
38 addition to tax shall not be charged to or collected from the employee
39 by the employer. The commissioner shall have the same rights and powers
40 for the collection of such tax, interest and addition to tax against
41 such employer as are now prescribed by this chapter for the collection
42 of tax against an individual taxpayer.

43 (g) Willful failure to collect and pay over tax. Any person required
44 to collect, truthfully account for, and pay over the tax imposed by this
45 chapter who willfully fails to collect such tax or truthfully account
46 for and pay over such tax or willfully attempts in any manner to evade
47 or defeat the tax or the payment thereof, shall, in addition to other
48 penalties provided by law, be liable to a penalty equal to the total
49 amount of the tax evaded, or not collected, or not accounted for and
50 paid over. No addition to tax under subdivision (b) or (e) of this
51 section shall be imposed for any offense to which this subdivision
52 applies.

53 (h) Failure to file certain information returns. In case of each fail-
54 ure to file a statement of a payment to another person, required under
55 authority of subdivision (c) of section 11-1921 of this chapter, relat-
56 ing to information at source, including the duplicate statement of tax

1 withheld on wages, on the date prescribed therefor, determined with
2 regard to any extension of time for filing, unless it is shown that such
3 failure is due to reasonable cause and not willful neglect, there shall,
4 upon notice and demand by the commissioner and in the same manner as
5 tax, be paid by the person so failing to file the statement, a penalty
6 of one dollar for each statement not so filed, but the total amount
7 imposed on the delinquent person for all such failures during any calen-
8 dar year shall not exceed one thousand dollars.

9 (i) Additional penalty. Any person who with fraudulent intent shall
10 fail to pay, or to deduct or withhold and pay, any tax, or to make,
11 render, sign or certify any return or declaration of estimated tax, or
12 to supply any information within the time required by or under this
13 chapter, shall be liable to a penalty of not more than one thousand
14 dollars, in addition to any other amounts required under this chapter,
15 to be imposed, assessed and collected by the commissioner. The commis-
16 sioner shall have the power, in his or her discretion, to waive, reduce
17 or compromise any penalty under this subdivision.

18 (j) Additions treated as tax. The additions to tax and penalties
19 provided by this section shall be paid upon notice and demand and shall
20 be assessed, collected and paid in the same manner as taxes, and any
21 reference in this chapter to tax or tax imposed by this chapter, shall
22 be deemed also to refer to the additions to tax and penalties provided
23 by this section. For purposes of section 11-1923 of this subchapter,
24 this subdivision shall not apply to:

25 (1) any addition to tax under subdivision (a) of this section except
26 as to that portion attributable to a deficiency;

27 (2) any addition to tax under subdivision (c) of this section; and

28 (3) any additional penalty under subdivision (i) of this section.

29 (k) Determination of deficiency. For purposes of subdivisions (b) and
30 (e) of this section, the amount shown as the tax by the taxpayer upon
31 his or her return shall be taken into account in determining the amount
32 of the deficiency only if such return was filed on or before the last
33 day prescribed for the filing of such return, determined with regard to
34 any extension of time for such filing.

35 (l) Person defined. For purposes of subdivisions (g) and (i) of this
36 section, the term "person" includes an individual, corporation or part-
37 nership or an officer or employee of any corporation, including a
38 dissolved corporation, or a member or employee of any partnership, who
39 as such officer, employee, or member is under a duty to perform the act
40 in respect of which the violation occurs.

41 § 11-1928 Overpayment. (a) General. The commissioner, within the
42 applicable period of limitations, may credit an overpayment of tax and
43 interest on such overpayment against any liability in respect of any tax
44 imposed by this chapter or by another chapter or chapters of this title
45 on the person who made the overpayment, and the balance shall be
46 refunded. Any refund under this section shall be made only upon the
47 filing of a return.

48 (b) Excessive withholding. If the amount allowable as a credit for tax
49 withheld from the taxpayer exceeds his or her tax to which the credit
50 relates, the excess shall be considered an overpayment.

51 (c) Overpayment by employer. If there has been an overpayment of tax
52 required to be deducted and withheld under section 11-1908 of this chap-
53 ter, refund shall be made to the employer only to the extent that the
54 amount of the overpayment was not deducted and withheld by the employer.

55 (d) Credits against estimated tax. The commissioner may prescribe
56 regulations providing for the crediting against the estimated tax for

1 any taxable year of the amount determined to be an overpayment of the
2 tax for a preceding taxable year. If any overpayment of tax is so
3 claimed as a credit against estimated tax for the succeeding taxable
4 year, such amount shall be considered as a payment of the tax for the
5 succeeding taxable year, whether or not claimed as a credit in the
6 declaration of estimated tax for such succeeding taxable year, and no
7 claim for credit or refund of such overpayment shall be allowed for the
8 taxable year for which the overpayment arises.

9 (e) Rule where no tax liability. If there is no tax liability for a
10 period in respect of which an amount is paid as tax, such amount shall
11 be considered an overpayment.

12 (f) Assessment and collection after limitation period. If any amount
13 of tax is assessed or collected after the expiration of the period of
14 limitations properly applicable thereto, such amount shall be considered
15 an overpayment.

16 (g) Notwithstanding any provision of law in article fifty-two of the
17 civil practice law and rules to the contrary, the procedures for the
18 enforcement of money judgments shall not apply to the department of
19 finance, or to any officer or employee of the department of finance, as
20 a garnishee, with respect to any amount of money to be refunded or cred-
21 ited to a taxpayer under this chapter.

22 § 11-1929 Limitations on credit or refund. (a) General. Claim for
23 credit or refund of an overpayment of tax shall be filed by the taxpayer
24 within three years from the time the return was filed or two years from
25 the time the tax was paid, whichever of such periods expires the later,
26 or if no return was filed, within two years from the time the tax was
27 paid. If the claim is filed within the three year period, the amount of
28 the credit or refund shall not exceed the portion of the tax paid within
29 the three years immediately preceding the filing of the claim plus the
30 period of any extension of time for filing the return. If the claim is
31 not filed within the three year period, but is filed within the two year
32 period, the amount of the credit or refund shall not exceed the portion
33 of the tax paid during the two years immediately preceding the filing of
34 the claim. Except as otherwise provided in this section, if no claim is
35 filed, the amount of a credit or refund shall not exceed the amount
36 which would be allowable if a claim had been filed on the date the cred-
37 it or refund is allowed.

38 (b) Extension of time by agreement. If an agreement under the
39 provisions of paragraph two of subdivision (b) of section 11-1925 of
40 this subchapter, extending the period for assessment of tax, is made
41 within the period prescribed in subdivision (a) of this section for the
42 filing of a claim for credit or refund, the period for filing a claim
43 for credit or refund, or for making credit or refund if no claim is
44 filed, shall not expire prior to six months after the expiration of the
45 period within which an assessment may be made pursuant to the agreement
46 or any extension thereof. The amount of such credit or refund shall not
47 exceed the portion of the tax paid after the execution of the agreement
48 and before the filing of the claim or the making of the credit or
49 refund, as the case may be, plus the portion of the tax paid within the
50 period which would be applicable under subdivision (a) of this section
51 if a claim had been filed on the date the agreement was executed.

52 (c) Notice of change or correction of federal or New York state
53 income. If a taxpayer is required by section 11-1922 of this chapter to
54 report a change or correction in federal or New York state taxable
55 income or self-employment income reported on his or her federal or New
56 York state tax return, or to report an assessment or a change or

1 correction which is treated in the same manner as if it were an overpay-
2 ment for federal or New York state income tax purposes, or to file an
3 amended return with the commissioner, claim for credit or refund of any
4 resulting overpayment of tax shall be filed by the taxpayer within two
5 years from the time the notice of such change or correction or such
6 amended return was required to be filed with the commissioner. If the
7 report or amended return required by section 11-1922 of this chapter is
8 not filed within the ninety day period therein specified, interest on
9 any resulting refund or credit shall cease to accrue after such nineti-
10 eth day. The amount of such credit or refund shall not exceed the
11 amount of the reduction in tax attributable to such federal or New York
12 state change, correction or items amended on the taxpayer's amended
13 federal or New York state income tax or self-employment tax return.
14 This subdivision shall not affect the time within which or the amount
15 for which a claim for credit or refund may be filed apart from this
16 subdivision.

17 (d) Failure to file claim within prescribed period. No credit or
18 refund shall be allowed or made, except as provided in subdivision (e)
19 of this section or subdivision (d) of section 11-1932 of this subchapter
20 after the expiration of the applicable period of limitation specified in
21 this chapter unless a claim for credit or refund is filed by the taxpay-
22 er within such period. Any later credit shall be void and any later
23 refund erroneous. No period of limitations specified in any other law
24 shall apply to the recovery by a taxpayer of moneys paid in respect of
25 taxes under this chapter.

26 (e) Effect of petition to commissioner. If a notice of deficiency for
27 a taxable year has been mailed to the taxpayer under section 11-1923 of
28 this subchapter and if the taxpayer files a timely petition with the
29 commissioner under section 11-1931 of this subchapter, the commissioner
30 may determine that the taxpayer has made an overpayment for such year,
31 whether or not the commissioner also determines a deficiency for such
32 year. No separate claim for credit or refund for such year shall be
33 filed, and no credit or refund for such year shall be allowed or made,
34 except:

35 (1) as to overpayments determined by a decision of the commissioner
36 which has become final;

37 (2) as to any amount collected in excess of an amount computed in
38 accordance with the decision of the commissioner which has become final;

39 (3) as to any amount collected after the period of limitation upon the
40 making of levy for collection has expired; and

41 (4) as to any amount claimed as a result of a change or correction
42 described in subdivision (c) of this section.

43 (f) Limit on amount of credit or refund. The amount of overpayment
44 determined under subdivision (e) of this section shall, when the deci-
45 sion of the commissioner has become final, be credited or refunded in
46 accordance with subdivision (a) of section 11-1928 of this subchapter
47 and shall not exceed the amount of tax which the commissioner determines
48 as part of his or her decision was paid:

49 (1) after the mailing of the notice of deficiency, or

50 (2) within the period which would be applicable under subdivision (a),
51 (b) or (c) of this section, if on the date of the mailing of the notice
52 of deficiency a claim has been filed, whether or not filed, stating the
53 grounds upon which the commissioner finds that there is an overpayment.

54 (g) Early return. For purposes of this section, any return filed
55 before the last day prescribed for the filing thereof shall be consid-

1 ered as filed on such last day, determined without regard to any exten-
2 sion of time granted the taxpayer.

3 (h) Prepaid tax. For purposes of this section, any tax paid by the
4 taxpayer before the last day prescribed for its payment, any tax with-
5 held from the taxpayer during any calendar year, and any amount paid by
6 the taxpayer as estimated tax for a taxable year shall be deemed to have
7 been paid by the taxpayer on the fifteenth day of the fourth month
8 following the close of his or her taxable year with respect to which
9 such amount constitutes a credit or payment.

10 (i) Return and payment of withholding tax. Notwithstanding subdivision
11 (g) of this section, for purposes of this section with respect to any
12 withholding tax:

13 (1) if a return for any period ending with or within a calendar year
14 is filed before April fifteenth of the succeeding calendar year, such
15 return shall be considered filed on April fifteenth of such succeeding
16 calendar year; and

17 (2) if a tax with respect to remuneration paid during any period
18 ending with or within a calendar year is paid before April fifteenth of
19 the succeeding calendar year, such tax shall be considered paid on April
20 fifteenth of such succeeding calendar year.

21 (j) Cross reference. For provision barring refund of overpayment cred-
22 ited against tax of a succeeding year, see subdivision (d) of section
23 11-1928 of this subchapter.

24 § 11-1930 Interest on overpayment. (a) General. Notwithstanding the
25 provisions of section three-a of the general municipal law, interest
26 shall be allowed and paid as follows at the appropriate rates prescribed
27 for overpayments of tax under chapter seventeen of this title upon any
28 overpayment in respect of the tax imposed by this chapter:

29 (1) from the date of the overpayment to the due date of an amount
30 against which a credit is taken; or

31 (2) from the date of the overpayment to a date, to be determined by
32 the commissioner, preceding the date of a refund check by not more than
33 thirty days, whether or not such refund check is accepted by the taxpay-
34 er after tender of such check to the taxpayer. The acceptance of such
35 check shall be without prejudice to any right of the taxpayer to claim
36 any additional overpayment and interest thereon.

37 No interest shall be allowed or paid if the amount thereof is less
38 than one dollar.

39 (b) Advance payment of tax, payment of estimated tax, and credit for
40 tax withholding. The provisions of subdivisions (g), (h) and (i) of
41 section 11-1929 of this subchapter applicable in determining the date of
42 payment of tax for purposes of determining the period of limitations on
43 credit or refund, shall be applicable in determining the date of payment
44 for purposes of this section.

45 (c) Refund within three months of due date of tax. If any overpayment
46 of tax imposed by this chapter is refunded within three months after the
47 last date prescribed, or permitted by extension of time, for filing the
48 return of such tax or within three months after the return was filed,
49 whichever is later, no interest shall be allowed under this section on
50 such overpayment.

51 (d) Cross-reference. For provision terminating interest after failure
52 to file notice of federal or New York state change under section 11-1922
53 of this chapter, see subdivision (c) of 11-1929 of this subchapter.

54 § 11-1931 Petition to commissioner. (a) General. The form of a peti-
55 tion to the commissioner, and further proceedings before the commission-
56 er in any case initiated by the filing of a petition, shall be governed

1 by such rules as the commissioner shall prescribe. No petition shall be
2 denied in whole or in part without opportunity for a hearing on reason-
3 able prior notice. Such hearing shall be conducted by the commissioner,
4 or by a hearing officer designated by the commissioner to take evidence
5 and report to the commissioner. The commissioner shall decide the case
6 as quickly as practicable. Notice of the decision shall be mailed
7 promptly to the taxpayer by certified or registered mail at his or her
8 last known address and such notice shall set forth the commissioner's
9 findings of fact and a brief statement of the grounds of decision in
10 each case decided in whole or in part adversely to the taxpayer. Any
11 portion of an assessment of a deficiency disallowed by the commission-
12 er's decision, shall be forthwith abated, or if paid, credited or
13 refunded to the taxpayer without the making of a claim therefor.

14 (b) Petition for redetermination of a deficiency. Within ninety days,
15 or one hundred fifty days if the notice is addressed to a person outside
16 of the United States, after the mailing of the notice of deficiency
17 authorized by section 11-1923 of this subchapter, the taxpayer may file
18 a petition with the commissioner for a redetermination of the deficien-
19 cy. Such petition may also assert a claim for refund for the same taxa-
20 ble year or years, subject to the limitations of subdivision (f) of
21 section 11-1929 of this subchapter.

22 (c) Petition for refund. A taxpayer may file a petition with the
23 commissioner for the amounts asserted in a claim for refund if:

24 (1) the taxpayer has filed a timely claim for refund with the commis-
25 sioner,

26 (2) the taxpayer has not previously filed with the commissioner a
27 timely petition under subdivision (b) of this section for the same
28 taxable year unless the petition under this subdivision relates to a
29 separate claim for credit or refund properly filed under subdivision (e)
30 of section 11-1929 of this subchapter, and

31 (3) either: (A) six months have expired since the claim was filed, or
32 (B) the commissioner has mailed to the taxpayer, by registered or certi-
33 fied mail, a notice of disallowance of such claim in whole or in part.
34 No petition under this subdivision shall be filed more than two years
35 after the date of mailing of a notice of disallowance, unless prior to
36 the expiration of such a two-year period it has been extended by writ-
37 ten agreement between the taxpayer and the commissioner. If a taxpayer
38 files a written waiver of the requirement that he or she be mailed a
39 notice of disallowance, the two year period prescribed by this subdivi-
40 sion for filing a petition for refund shall begin on the date such waiv-
41 er is filed.

42 (d) Assertion and assessment of deficiency after filing petition.

43 (1) Petition for redetermination of deficiency. If a taxpayer files
44 with the commissioner a petition for redetermination of a deficiency,
45 the commissioner shall have power to determine and assess a greater
46 deficiency than asserted in the notice of deficiency and to determine
47 and assess any addition to tax or penalty provided in section 11-1927 of
48 this subchapter, if claim therefor is asserted at or before the hearing
49 and within the period in which an assessment would be timely under
50 section 11-1925 of this subchapter under the rules of the commissioner.

51 (2) Petition for refund. If the taxpayer files with the commissioner a
52 petition for credit or refund for a taxable year, the commissioner may:

53 (A) determine and assess a deficiency for such year as to any amount
54 of deficiency claim, which shall be an assessment, for which is asserted
55 at or before the hearing under rules of the commissioner, and within the

1 period in which an assessment would be timely under section 11-1925 of
2 this subchapter, or

3 (B) deny so much of the amount for which credit or refund is sought in
4 the petition, as is offset by other issues pertaining to the same taxa-
5 ble year which are asserted at or before the hearing under rules of the
6 commissioner.

7 (3) Opportunity to respond. A taxpayer shall be given a reasonable
8 opportunity to respond to any matters asserted by the commissioner under
9 this subdivision.

10 (4) Restriction on further notices of deficiency. If the taxpayer
11 files a petition with the commissioner under this section, no notice of
12 deficiency under section 11-1923 of this subchapter may thereafter be
13 issued by the commissioner for the same taxable year, except in case of
14 fraud or with respect to a change or correction in federal or New York
15 state taxable income or self-employment income required to be reported
16 under section 11-1922 of this chapter.

17 (e) Burden of proof. In any case before the commissioner under this
18 chapter, the burden of proof shall be upon the petitioner except for the
19 following issues, as to which the burden of proof shall be upon the
20 commissioner:

21 (1) whether the petitioner has been guilty of fraud with intent to
22 evade tax;

23 (2) whether the petitioner is liable as the transferee of property of
24 a taxpayer, except where the petitioner's liability arises by reason of
25 section 11-1936 of this subchapter, but not to show that the taxpayer
26 was liable for the tax; and

27 (3) whether the petitioner is liable for any increase in a deficiency
28 where such increase is asserted initially after a notice of deficiency
29 was mailed and a petition under this section filed, unless such increase
30 in deficiency is the result of a change or correction of federal or New
31 York state taxable income or self-employment income required to be
32 reported under section 11-1922 of this chapter, and of which change or
33 correction the commissioner had no notice at the time he or she mailed
34 the notice of deficiency.

35 (f) Evidence of related federal determination. Evidence of a federal
36 determination relating to issues raised in a case before the commission-
37 er under this section shall be admissible, under rules established by
38 the commissioner.

39 (g) Jurisdiction over other years. The commissioner shall consider
40 such facts with relation to the taxes for other years as may be neces-
41 sary correctly to determine the tax for the taxable year, but in so
42 doing shall have no jurisdiction to determine whether or not the tax for
43 any other year has been overpaid or underpaid.

44 § 11-1932 Review of commissioner's decision. (a) General. A decision
45 of the commissioner shall be subject to judicial review for error, ille-
46 gality or unconstitutionality at the instance of any taxpayer affected
47 thereby in the manner provided by law for the review of a final decision
48 or action of administrative agencies of the city. An application by a
49 taxpayer for such review must be made within four months after notice of
50 the decision is sent by certified or registered mail to the taxpayer.

51 (b) Judicial review exclusive remedy of taxpayer. The review of a
52 decision of the commissioner provided by this section shall be exclusive
53 remedy available to any taxpayer for the judicial determination of the
54 liability of the taxpayer for the taxes imposed by this chapter.

55 (c) Collection pending review; review bond. Irrespective of any
56 restrictions on the collection of assessments for deficiencies, the

1 commissioner may collect by levy or, otherwise any assessment of a defi-
2 ciency after the expiration of the period specified in subdivision (a)
3 of this section, notwithstanding that an application for judicial review
4 in respect of such deficiency has been duly made by the taxpayer, unless
5 the taxpayer, at or before the time his or her application for review is
6 made, has paid the assessed deficiency, has deposited with the commis-
7 sioner the amount of the assessed deficiency, or has filed with the
8 commissioner a bond, which may be a jeopardy bond under subdivision (h)
9 of section 11-1937 of this subchapter, in the amount of the portion of
10 the assessed deficiency, including interest and other amounts, in
11 respect of which the application for review is made with surety approved
12 by a justice of the supreme court of the state of New York, conditioned
13 upon the payment of the assessed deficiency, including interest and
14 other amounts, as finally determined. If as a result of a waiver of the
15 restrictions on the collection of a deficiency any part of the amount
16 determined by the commissioner is paid after the filing of the review
17 bond, such bond shall, at the request of the taxpayer, be proportionate-
18 ly reduced. A similar bond for all costs and charges which may accrue
19 against the taxpayer in the prosecution of such judicial review proceed-
20 ing must be filed with the commissioner before any such proceeding is
21 instituted.

22 (d) Credit, refund or abatement after review. If the amount of a defi-
23 ciency assessed and determined by the commissioner is disallowed in
24 whole or in part by the court of review, the amount so disallowed shall
25 be credited or refunded to the taxpayer, without the making of claim
26 therefor, or, if payment has not been made, shall be abated.

27 (e) Date of finality of commissioner's decision. A decision of the
28 commissioner shall become final upon the expiration of the period speci-
29 fied in subdivision (a) of this section for making an application for
30 review, if no such application has been duly made within such time, or
31 if such application has been duly made, upon expiration of the time for
32 all further judicial review, or upon the rendering by the commissioner
33 of a decision in accordance with the mandate of the court on review.
34 Provided, however, for the purpose of making an application for review,
35 the decision of the commissioner shall be deemed final on the date the
36 notice of decision is sent by certified or registered mail to the
37 taxpayer.

38 § 11-1933 Mailing rules; holidays. (a) Timely mailing. If any claim,
39 statement, notice, petition, or other document, including to the extent
40 authorized by the commissioner, a return or declaration of estimated
41 tax, required to be filed within a prescribed period or on or before a
42 prescribed date under authority of any provision of this chapter is,
43 after such period or such date, delivered by the United States mail to
44 the commissioner, bureau, office, officer or person with which or with
45 whom such document is required to be filed, the date of the United
46 States postmark stamped on the envelope shall be deemed to be the date
47 of delivery. This subdivision shall apply only if the postmark date
48 falls within the prescribed period or on or before the prescribed date
49 for the filing of such document, determined with regard to any extension
50 granted for such filing, and only if such document was deposited in the
51 mail, postage prepaid, properly addressed to the commissioner, bureau,
52 office, officer or person with which or with whom the document is
53 required to be filed. If any document is sent by United States regis-
54 tered mail, such registration shall be prima facie evidence that such
55 document was delivered to the commissioner, bureau, office, officer or
56 person to which or to whom addressed. To the extent that the commis-

1 sioner shall prescribe by regulation, certified mail may be used in lieu
2 of registered mail under this section. This subdivision shall apply in
3 the case of postmarks not made by the United States post office only if
4 and to the extent provided by regulations of the commissioner.

5 (b) Last known address. For purposes of this chapter, a taxpayer's
6 last known address shall be the address given in the last return filed
7 by the taxpayer, unless subsequent to the filing of such return the
8 taxpayer shall have notified the commissioner of a change of address.

9 (c) Last day a Saturday, Sunday or legal holiday. When the last day
10 prescribed under authority of this chapter, including any extension of
11 time, for performing any act falls on Saturday, Sunday, or a legal holi-
12 day in the state of New York, the performance of such act shall be
13 considered timely if it is performed on the next succeeding day which is
14 not a Saturday, Sunday or a legal holiday.

15 § 11-1934 Collection, levy and liens. (a) Collection procedures. The
16 taxes imposed by this chapter shall be collected by the commissioner,
17 and he or she may establish the mode or time for the collection of any
18 amount due the commissioner under this chapter if not otherwise speci-
19 fied. The commissioner shall, upon request, give a receipt for any sum
20 collected under this chapter. The commissioner may authorize banks or
21 trust companies which are depositories or financial agents of the city
22 to receive and give a receipt for any tax imposed under this chapter in
23 such manner, at such times, and under such conditions as the commis-
24 sioner may prescribe; and the commissioner shall prescribe the manner, times
25 and conditions under which the receipt of such tax by such banks and
26 trust companies is to be treated as payment of such tax to the commis-
27 sioner.

28 (b) Notice and demand for tax. The commissioner shall as soon as prac-
29 ticable and, in the case of an assessment the collection of which is
30 restricted by the provisions of subdivision (c) of section 11-1923 of
31 this subchapter, as soon as practicable after the expiration of such
32 restrictions give notice to each person liable for any amount of tax,
33 addition to tax, penalty or interest, which has been assessed but
34 remains unpaid, stating the amount and demanding payment thereof. Such
35 notice shall be left at the dwelling or usual place of business of such
36 person or shall be sent by mail to such person's last known address.
37 Except where the commissioner determines that collection would be jeop-
38 ardized by delay, if any tax is assessed prior to the last date, includ-
39 ing any date fixed by extension, prescribed for payment of such tax,
40 payment of such tax shall not be demanded until after such date.

41 (c) Issuance of warrant after notice and demand. If any person liable
42 under this chapter for the payment of any tax, addition to tax, penalty
43 or interest neglects or refuses to pay the same within ten days after
44 notice and demand therefor is given to such person under subdivision (b)
45 of this section, the commissioner may within six years after the date of
46 the expiration of the period of restriction on the collection of such
47 assessment issue a warrant directed to the sheriff of any county of the
48 state, or to any officer or employee of the department of finance of the
49 city, commanding the sheriff or such officer or employee to levy upon
50 and sell such person's real and personal property for the payment of the
51 amount assessed, with the cost of executing the warrant, and to return
52 such warrant to the commissioner and pay to him or her the money
53 collected by virtue thereof within sixty days after the receipt of the
54 warrant. If the commissioner finds that the collection of tax or other
55 amount is in jeopardy, notice and demand for immediate payment of such
56 tax may be made by the commissioner and upon failure or refusal to pay

1 such tax or other amount the commissioner may issue a warrant without
2 regard to the ten-day period provided in this subdivision.

3 (d) Copy of warrant to be filed and lien to be created. Any sheriff or
4 officer or employee who receives a warrant under subdivision (c) of this
5 section shall within five days thereafter file a copy with the clerk of
6 the appropriate county. The clerk shall thereupon enter in the judgment
7 docket, in the column for judgment debtors, the name of the taxpayer
8 mentioned in the warrant, and in appropriate columns the tax or other
9 amounts for which the warrant is issued and the date when such copy is
10 filed; and such amount shall thereupon be a binding lien upon the real,
11 personal and other property of the taxpayer.

12 (e) Judgment. When a warrant has been filed with the county clerk the
13 commissioner shall, on behalf of the city, be deemed to have obtained
14 judgment against the taxpayer for the tax or other amounts.

15 (f) Execution. The sheriff or officer or employee shall thereupon
16 proceed upon the judgment in all respects, with like effect, and in the
17 same manner prescribed by law in respect to executions issued against
18 property upon judgments of a court of record, and a sheriff shall be
19 entitled to the same fees for such sheriff's services in executing the
20 warrant, to be collected in the same manner. An officer or employee of
21 the department of finance of the city may proceed in any county or coun-
22 ties of this state and shall have all the powers of execution conferred
23 by law upon sheriffs, but shall be entitled to no fee or compensation in
24 excess of actual expenses paid in connection with the execution of the
25 warrant.

26 (g) Taxpayer not then a resident. Where a notice and demand under
27 subdivision (b) of this section shall have been given to a taxpayer who
28 is not then a resident of this state, and it appears to the commissioner
29 that it is not practicable to find in this state property of the taxpay-
30 er sufficient to pay the entire balance of tax or other amount owing by
31 such taxpayer who is not then a resident of this state, the commissioner
32 may, in accordance with subdivision (c) of this section, issue a warrant
33 directed to an officer or employee of the department of finance of the
34 city a copy of which warrant shall be mailed by certified or registered
35 mail to the taxpayer at his or her last known address, subject to the
36 rules for mailing provided in subdivision (a) of section 11-1933 of this
37 subchapter. Such warrant shall command the officer or employee to
38 proceed in the city, and such officer or employee shall, within five
39 days after receipt of the warrant, file the warrant and obtain a judg-
40 ment in accordance with this section. Thereupon the commissioner may
41 authorize the institution of any action or proceeding to collect or
42 enforce the judgment in any place and by any procedure where and by
43 which a civil judgment of the supreme court of the state of New York
44 could be collected or enforced. The commissioner may also, in his or
45 her discretion, designate agents or retain counsel for the purpose of
46 collecting, outside the state of New York, any unpaid taxes, additions
47 to tax, penalties or interest which have been assessed under this chap-
48 ter against taxpayers who are not then residents of this state, may fix
49 the compensation of such agents and counsel to be paid out of money
50 appropriated or otherwise lawfully available for payment thereof, and
51 may require of them bonds or other security for the faithful performance
52 of their duties, in such form and in such amount as the commissioner
53 shall deem proper and sufficient.

54 (h) Action by the city for recovery of taxes. Action may be brought by
55 the corporation counsel or other appropriate officer of the city at the
56 insistence of the commissioner to recover the amount of any unpaid

1 taxes, additions to tax, penalties or interest which have been assessed
2 under this chapter within six years prior to the date the action is
3 commenced. The period during which collection of any assessment is
4 prohibited by subdivision (c) of section 11-1923 of this subchapter,
5 shall be added to such six years.

6 (i) Release of lien. The commissioner, if he or she finds that the
7 interest of the city will not thereby be jeopardized, and upon such
8 conditions as may require, may release any property from the lien of any
9 warrant for unpaid taxes, additions to tax, penalties and interest filed
10 pursuant to this section, and such release may be recorded in the office
11 of any recording officer in which such warrant has been filed.

12 § 11-1935 Transferees. (a) General. The liability, at law or in equi-
13 ty, of a transferee of property of a taxpayer for any tax, additions to
14 tax, penalty or interest due to the city under this chapter, shall be
15 assessed, paid, and collected in the same manner and subject to the same
16 provisions and limitations as in the case of the tax to which liability
17 relates, except that the period of limitations for assessment against
18 the transferee shall be extended by one year for each successive trans-
19 fer, in order, from the original taxpayer to the transferee involved,
20 but not by more than three years in the aggregate. The term "transfer-
21 ee" includes donee, heir, legatee, devisee and distributee; and also
22 includes a person liable for the amount of any tax, additions to tax,
23 penalty or interest under the provisions of section 11-1936 of this
24 subchapter.

25 (b) Exceptions. (1) If before the expiration of the period of limita-
26 tions for assessment of liability of the transferee, a claim has been
27 filed by the commissioner in any court against the original taxpayer or
28 the last preceding transferee based upon the liability of the original
29 taxpayer, then the period of limitation for assessment of liability of
30 the transferee shall in no event expire prior to one year after such
31 claim has been finally allowed, disallowed or otherwise disposed of.

32 (2) If, before the expiration of the time prescribed in subdivision
33 (a) of this section or paragraph one of this subdivision for the assess-
34 ment of the liability, the commissioner and the transferee have both
35 consented in writing to its assessment after such time, the liability
36 may be assessed at any time prior to the expiration of the period agreed
37 upon. The period so agreed upon may be extended by subsequent agree-
38 ments in writing made before the expiration of the period previously
39 agreed upon. For the purpose of determining the period of limitation on
40 credit or refund to the transferee of overpayments of tax made by such
41 transferee or overpayments of tax made by the transferor as to which the
42 transferee is legally entitled to credit or refund, such agreement and
43 any extension thereof shall be deemed an agreement and extension thereof
44 referred to in subdivision (b) of section 11-1929 of this subchapter.
45 If the agreement is executed after the expiration of the period of limi-
46 tation for assessment against the original taxpayer, then in applying
47 the limitations under subdivision (b) of section 11-1929 of this
48 subchapter on the amount of the credit or refund, the periods specified
49 in subdivision (a) of section 11-1929 of this subchapter shall be
50 increased by the period from the date of such expiration to the date of
51 the agreement.

52 (c) Deceased transferor. If any person is deceased, the period of
53 limitation for assessment against such person shall be the period that
54 would be in effect if he or she had lived.

55 (d) Evidence. Notwithstanding the provisions of section 11-1942 of
56 this subchapter, the commissioner shall use his or her powers to make

1 available to the transferee evidence necessary to enable the transferee
2 to determine the liability of the original taxpayer and of any preceding
3 transferees, but without undue hardship to the original taxpayer or
4 preceding transferee. See subdivision (e) of section 11-1931 of this
5 subchapter for rule as to burden of proof.

6 § 11-1936 Liability of bulk transferees. Whenever there is made a
7 sale, transfer or assignment in bulk of any part or the whole of a stock
8 of merchandise or of fixtures, or merchandise and of fixtures pertaining
9 to the conducting of the business of the seller, transferor or assignor,
10 otherwise than in the ordinary course of trade and in the regular prose-
11 cution of said business, the purchaser, transferee or assignee shall at
12 least ten days before taking possession of such merchandise, fixtures,
13 or merchandise and fixtures, or paying therefor, notify the commissioner
14 by registered mail of the proposed sale and of the price, terms and
15 conditions thereof, whether or not the seller, transferor or assignor,
16 has represented to, or informed the purchaser, transferee or assignee,
17 that it owes any tax pursuant to this chapter, whether or not the
18 purchaser, transferee or assignee has knowledge that such taxes are
19 owing, and whether or not any such taxes are in fact owing.

20 Whenever the purchaser, transferee or assignee shall fail to give the
21 notice to the commissioner required by this section, or whenever the
22 commissioner shall inform the purchaser, transferee or assignee that a
23 possible claim for such tax or taxes exists, any sums of money, property
24 or choses in action, or other consideration, which the purchaser, trans-
25 feree or assignee is required to transfer over to the seller, transferor
26 or assignor shall be subject to a first priority right and lien for any
27 such taxes theretofore or thereafter determined to be due from the sell-
28 er, transferor or assignor to the city, and the purchaser, transferee or
29 assignee is forbidden to transfer to the seller, transferor or assignor
30 any such sums of money, property or choses in action to the extent of
31 the amount of the city's claim. For failure to comply with the
32 provisions of this subdivision the purchaser, transferee or assignee, in
33 addition to being subject to the liabilities and remedies imposed under
34 the provisions of article six of the uniform commercial code, shall be
35 personally liable for the payment to the city of any such taxes, there-
36 tofore or thereafter determined to be due to the city from the seller,
37 transferor or assignor and such liability may be assessed and enforced
38 in the same manner as the liability for tax is imposed under this chap-
39 ter.

40 § 11-1937 Jeopardy determination or assessment. (a) Authority for
41 making. If the commissioner believes that the assessment or collection
42 of a deficiency will be jeopardized by delay, he or she shall, notwith-
43 standing the provisions of sections 11-1923 and 11-1939 of this subchap-
44 ter, immediately assess or proceed to collect such deficiency, together
45 with all interest, penalties and additions to tax provided for by law,
46 and notice and demand shall be made by the commissioner for the payment
47 thereof.

48 (b) Notice of deficiency. If the jeopardy assessment is made before
49 any notice in respect of the tax to which the jeopardy assessment
50 relates has been mailed under section 11-1923 of this subchapter, then
51 the commissioner shall mail a notice under such section within sixty
52 days after making of the assessment.

53 (c) Amount assessable before decision of commissioner. The jeopardy
54 assessment may be made in respect of a deficiency greater or less than
55 that of which notice is mailed to the taxpayer and whether or not the
56 taxpayer has therefor filed a petition with the commissioner. The

1 commissioner may, at any time before rendering his or her decision,
2 abate such assessment or any unpaid portion thereof, to the extent that
3 he or she believes the assessment to be excessive in amount. The
4 commissioner may in his or her decision redetermine the entire amount of
5 the deficiency and of all amounts assessed at the same time in
6 connection therewith.

7 (d) Amount assessable after decision of commissioner. If the jeopardy
8 assessment of determination of jeopardy is made after the decision of
9 the commissioner is rendered, such assessment or determination may be
10 made only in respect of the deficiency determined by the commissioner in
11 his or her decision.

12 (e) Expiration of right to assess. A jeopardy determination may not be
13 made after the decision of the commissioner has become final or after
14 the taxpayer has made an application for review of the decision of the
15 commissioner.

16 (f) Collection of unpaid amounts. When a petition has been filed with
17 the commissioner and when the amount which should have been assessed has
18 been determined by a decision of the commissioner which has become
19 final, then any unpaid portion, the collection of which has been stayed
20 by bond, shall be collected as part of the tax upon notice and demand
21 from the commissioner, and any remaining portion of the assessment shall
22 be abated. If the amount already collected exceeds the amount deter-
23 mined as the amount which should have been assessed, such excess shall
24 be credited or refunded to the taxpayer as provided in section 11-1928
25 of this subchapter without the filing of claim therefor. If the amount
26 determined as the amount which should have been assessed is greater than
27 the amount actually assessed, then the difference shall be assessed and
28 shall be collected as part of the tax upon notice and demand from the
29 commissioner.

30 (g) Abatement if jeopardy does not exist. The commissioner may abate
31 the jeopardy determination if he or she finds that jeopardy does not
32 exist. Such abatement may not be made after a decision of the commis-
33 sioner in respect of the deficiency has been rendered or, if no petition
34 is filed with the commissioner, after the expiration of the period for
35 filing such petition. The period of limitation on the making of a levy
36 or a proceeding for collection, in respect of any deficiency, shall be
37 determined as if the jeopardy assessment so abated has not been made,
38 except that the running of such period shall in any event be suspended
39 for the period from the date of such jeopardy determination until the
40 expiration of the tenth day after the day on which such jeopardy deter-
41 mination is abated.

42 (h) Bond to stay collection. The collection of the whole or any amount
43 of any assessment determined to be in jeopardy may be stayed by filing
44 with the commissioner, within such time as may be fixed by regulation, a
45 bond in an amount equal to the amount as to which the stay is desired
46 conditioned upon the payment of the amount, together with interest ther-
47 eon, the collection of which is stayed at the time at which, but for the
48 making of the jeopardy assessment, such amount would be due. Upon the
49 filing of the bond, the collection of so much of the amount assessed as
50 is covered by the bond shall be stayed. The taxpayer shall have the
51 right to waive such stay at any time in respect of the whole or any part
52 of the amount covered by the bond and, if as a result of such waiver any
53 part of the amount covered by the bond is paid, then the bond shall, at
54 the request of the taxpayer, be proportionately reduced. If any portion
55 of the jeopardy assessment is abated, or if a notice of deficiency under
56 section 11-1923 of this subchapter is mailed to the taxpayer in a lesser

1 amount, the bond shall, at the request of the taxpayer, be proportion-
2 ately reduced.

3 (i) Petition to commissioner. If the bond is given before the taxpayer
4 has filed his or her petition under section 11-1931 of this subchapter,
5 the bond shall contain a further condition that if a petition is not
6 filed within the period provided in such section, then the amount, the
7 collection of which is stayed by the bond, will be paid on notice and
8 demand at any time after the expiration of such period, together with
9 interest thereon from the date of the jeopardy notice and demand to the
10 date of notice and demand under this subdivision. The bond shall be
11 conditioned upon the payment of so much of such assessment, collection
12 of which is stayed by the bond, as is not abated by a decision of the
13 commissioner which has become final. If the commissioner determines
14 that the amount assessed is greater than the amount which should have
15 been assessed, then the bond shall, at the request of the taxpayer, be
16 proportionately reduced when the decision of the commissioner is
17 rendered.

18 (j) Stay of sale of seized property pending commissioner's decision.
19 Where a jeopardy assessment or a determination of jeopardy is made, the
20 property seized for the collection of the tax shall not be sold:

21 (1) if subdivision (b) of this section is applicable, prior to the
22 issuance of the notice of deficiency and the expiration of the time
23 provided in section 11-1931 of this subchapter for filing a petition
24 with the commissioner, and

25 (2) if a petition is filed with the commissioner, whether before or
26 after the making of such jeopardy assessment or determination, prior to
27 the expiration of the period during which the collection of the defi-
28 ciency assessed would be prohibited if subdivision (a) of this section
29 were not applicable.

30 Such property may be sold if the taxpayer consents to the sale, or if
31 the commissioner determines that the expenses of conservation and main-
32 tenance will greatly reduce the net proceeds, or if the property is
33 perishable.

34 (k) Interest. For the purpose of subdivision (a) of section 11-1926 of
35 this subchapter, the last date prescribed for payment shall be deter-
36 mined without regard to any notice and demand for payment issued under
37 this section prior to the last date otherwise prescribed for such
38 payment.

39 (l) Early termination of taxable year. If the commissioner finds that
40 a taxpayer designs quickly to depart from this state or to remove his or
41 her property therefrom, or to conceal himself or herself or his or her
42 property therein, or to do any other act tending to prejudice or to
43 render wholly or partly ineffectual proceedings to collect the tax for
44 the current or the preceding taxable year unless such proceedings be
45 brought without delay, the commissioner shall declare the taxable period
46 for such taxpayer immediately terminated, and shall cause notice of such
47 finding and declaration to be given the taxpayer, together with a demand
48 for immediate payment of the tax for the taxable period so declared
49 terminated and of the tax for the preceding taxable year or so much of
50 such tax as is unpaid, whether or not the time otherwise allowed by law
51 for filing return and paying the tax has expired; and such taxes shall
52 thereupon become immediately due and payable. In any proceeding brought
53 to enforce payment of taxes made due and payable by virtue of the
54 provisions of this subdivision, the finding of the commissioner made as
55 herein provided, whether made after notice to the taxpayer or not, shall
56 be for all purposes presumptive evidence of jeopardy.

1 (m) Reopening of taxable period. Notwithstanding the termination of
2 the taxable period of the taxpayer by the commissioner as provided in
3 subdivision (1) of this section, the commissioner may reopen such taxa-
4 ble period each time the taxpayer is found by the commissioner to have
5 received wages or net earnings from self-employment, within the current
6 taxable year, since the termination of such period. A taxable period so
7 terminated by the commissioner may be reopened by the taxpayer if he or
8 she files with the commissioner a true and accurate return of taxable
9 wages and net earnings from self-employment under this chapter for such
10 taxable period, together with such other information as the commissioner
11 may by regulation prescribe.

12 (n) Furnishing of bond where taxable year is closed by the commis-
13 sioner. Payment of taxes shall not be enforced by any proceedings under
14 the provisions of subdivision (1) of this section prior to the expira-
15 tion of the time otherwise allowed for paying such taxes if the taxpayer
16 furnishes, under regulations prescribed by the commissioner, a bond to
17 insure the timely making of returns with respect to, and payment of,
18 such taxes or any taxes for prior years.

19 § 11-1938 Criminal penalties. (a) Attempt to evade tax. Any individ-
20 ual, corporation or partnership or any officer or employee of any corpo-
21 ration, or member or employee of any partnership, who, with intent to
22 evade any tax or any requirement of this chapter or any lawful require-
23 ment of the commissioner thereunder, shall fail to pay the tax, or to
24 make, render, sign or certify any return or declaration of estimated
25 tax, or to supply any information within the time required by or under
26 the provisions of this chapter, or who, with like intent, shall make,
27 render, sign or certify any false or fraudulent return, declaration or
28 statement, or shall supply any false or fraudulent information, or who
29 shall fail to comply with the provisions of subdivision (b) of section
30 11-1912 of this chapter after the service of a notice by the commis-
31 sioner thereunder, shall be guilty of a misdemeanor and shall, upon
32 conviction, be fined not to exceed five thousand dollars or be impris-
33 oned not to exceed one year, or both, at the discretion of the court.

34 (b) Limitations. Notwithstanding the provisions of section 30.10 of
35 the criminal procedure law or of any other law of this state, a prose-
36 cution for any offense under this section may be commenced at any time
37 not later than three years after the commission of such offense provided
38 that, if such offense is the failure to do an act required by or under
39 any provision of this chapter to be done before a certain date, a prose-
40 cution for such offense may be commenced not later than three years
41 after such date.

42 (c) Willful failure to withhold. Any individual, corporation or part-
43 nership or any officer or employee of any corporation, including a
44 dissolved corporation, or member or employee of any partnership, who
45 willfully fails to collect or pay over any withholding tax as required,
46 shall, in addition to other penalties provided by law, be guilty of a
47 misdemeanor, and, upon conviction thereof, shall be fined not to exceed
48 five thousand dollars or imprisoned not to exceed one year, or both.

49 (d) Two or more charges. In the prosecution of offenses under this
50 section, if there are two or more charges against any person or corpo-
51 ration, involving a violation or violations of any provision or
52 provisions of this chapter, whether for the same or different taxable
53 years, instead of returning several indictments or filing several infor-
54 mations, all of such charges may be joined in one indictment or informa-
55 tion, in separate counts, and if two or more indictments are found, or
56 two or more informations are filed, the court may order them to be

1 consolidated. If a person or corporation shall be convicted of two or
2 more offenses constituting different crimes set forth in different
3 counts of one indictment or information, or in separate indictments or
4 informations consolidated as hereinbefore provided, the court may impose
5 a separate sentence for each offense, and if imprisonment is imposed,
6 the court may order any of such sentences to be served concurrently or
7 consecutively.

8 (e) Miscellaneous rules. Any prosecution under this section may be
9 conducted in any county where the person or corporation to whose tax
10 liability the proceeding relates resides, or has a place of business, or
11 in any county in which any such crime is committed. The corporation
12 counsel of the city shall have concurrent jurisdiction with any district
13 attorney in the prosecution of any offense under this section. If the
14 provisions of this section conflict with those contained in any other
15 law, this section shall control. The certificate of the commissioner to
16 the effect that a tax has not been paid, that a return or declaration of
17 estimated tax has not been filed, or that information has not been
18 supplied, as required by or under the provisions of this chapter, shall
19 be prima facie evidence that such tax has not been paid, that such
20 return or declaration has not been filed, or that such information has
21 not been supplied. All fines levied under this section shall be paid to
22 the commissioner and deposited in the same manner as revenues collected
23 or received under this chapter.

24 § 11-1939 Armed forces relief provisions. (a) Time to be disregarded.
25 In the case of an individual serving in the armed forces of the United
26 States or serving in support of such armed forces, in an area designated
27 by the president of the United States by executive order as a "combat
28 zone" at any time during the period designated by the president by exec-
29 utive order as the period of combatant activities in such zone, or
30 hospitalized outside the state as a result of injury received while
31 serving in such an area during such time, the period of service in such
32 area, plus the period of continuous hospitalization outside the state
33 attributable to such injury, and the next one hundred eighty days there-
34 after, shall be disregarded in determining, under this chapter in
35 respect of the tax liability, including any interest, penalty, or addi-
36 tion to the tax, of such individual:

37 (1) Whether any of the following acts was performed within the time
38 prescribed therefor:

39 (A) filing any return of tax, except withholding tax;

40 (B) payment of any tax, except withholding tax, or any installment
41 thereof or of any other liability to the commissioner, in respect there-
42 of;

43 (C) filing a petition with the commissioner for credit or refund or
44 for redetermination of a deficiency, or application for review of a
45 decision rendered by the commissioner;

46 (D) allowance of a credit or refund of tax;

47 (E) filing a claim for credit or refund of tax;

48 (F) giving or making any notice or demand for the payment of any tax,
49 or with respect to any liability to the commissioner in respect of tax;

50 (G) collection, by the commissioner, by levy or otherwise of the
51 amount of any liability in respect of tax;

52 (H) bringing suit by the city, or any officer, on its behalf, in
53 respect of any liability in respect of tax; and

54 (I) any other act required or permitted under this chapter or speci-
55 fied in the regulations prescribed under this section by the commission-
56 er.

1 (2) The amount of any credit or refund, including interest.

2 (b) Action taken before ascertainment of right to benefits. The
3 collection of the tax imposed by this chapter or of any liability to the
4 commissioner in respect of such tax, or any action or proceeding by or
5 on behalf of the commissioner in connection therewith, may be made,
6 taken, begun, or prosecuted in accordance with law, without regard to
7 the provisions of subdivision (a) of this section, unless prior to such
8 collection, action, or proceeding it is ascertained that the person
9 concerned is entitled to the benefit of subdivision (a) of this section.

10 (c) Members of armed forces dying in action. In the case of any person
11 who dies while in active service as a member of the armed forces of the
12 United States, if such death occurred while serving in a combat zone
13 during a period of combatant activities in such zone, as described in
14 subdivision (a) of this section, or as a result of wounds, disease or
15 injury incurred while so serving, the tax imposed by this chapter shall
16 not apply with respect to the taxable year in which falls the date of
17 his or her death, or with respect to any prior taxable year ending on or
18 after the first day so served in a combat zone, and no returns shall be
19 required in behalf of such person or his or her estate for such year;
20 and the tax for any such taxable year which is unpaid at the date of
21 death, including interest, additions to tax and penalties, if any, shall
22 not be assessed and, if assessed, the assessment shall be abated and, if
23 collected, shall be refunded to the legal representative of such estate
24 if one has been appointed and has qualified, or, if no legal represen-
25 tative has been appointed or has qualified, to the surviving spouse.

26 § 11-1940 General powers of commissioner. (a) General. The commission-
27 er shall administer and enforce the tax imposed by this chapter and the
28 commissioner is authorized to make such rules and regulations, and to
29 require such facts and information to be reported, as the commissioner
30 may deem necessary to enforce the provisions of this chapter and the
31 commissioner may delegate his or her powers and functions under all
32 subchapters of this chapter to one of his or her deputies or to any
33 employee or employees of his or her department.

34 (b) Examination of books and witnesses. The commissioner for the
35 purpose of ascertaining the correctness of any return, or for the
36 purpose of making an estimate of taxable wages and net earnings from
37 self-employment of any person, shall have power to examine or to cause
38 to have examined, by any agent or representative designated by him or
39 her for that purpose, any books, papers, records or memoranda bearing
40 upon the matters required to be included in the return, and may require
41 the attendance of the person rendering the return or any officer or
42 employee of such person, or the attendance of any other person having
43 knowledge in the premises, may take testimony and require proof material
44 for the commissioner's information, with power to administer oaths to
45 such person or persons and may issue commissions for the examination of
46 witnesses who are out of the state or unable to attend before the
47 commissioner or excused from attendance, and for the production of
48 books, papers, records or memoranda.

49 (c) Abatement authority. The commissioner, of his or her own motion,
50 may abate any small unpaid balance of an assessment of tax, or any
51 liability in respect thereof, if the commissioner determines under
52 uniform rules prescribed by him or her that the administration and
53 collection costs involved would not warrant collection of the amount
54 due. The commissioner may also abate, of his or her own motion, the
55 unpaid portion of the assessment of any tax or any liability in respect
56 thereof, which is excessive in amount, or is assessed after the expira-

1 tion of the period of limitation properly applicable thereto, or is
2 erroneously or illegally assessed. No claim for abatement under this
3 subdivision shall be filed by a taxpayer.

4 (d) Special refund authority. Where no questions of fact or law are
5 involved and it appears from the records of the commissioner that any
6 moneys have been erroneously or illegally collected from any taxpayer or
7 other person, or paid by such taxpayer or other person under a mistake
8 of facts, pursuant to the provisions of this chapter, the commissioner
9 at any time, without regard to any period of limitations, shall have the
10 power, upon making a record of his or her reasons therefor in writing,
11 to cause such moneys so paid and being erroneously and illegally held to
12 be refunded.

13 (e) Cooperation with the United States and other states. Notwith-
14 standing the provisions of section 11-1942 of this subchapter, the
15 commissioner may permit the secretary of the treasury of the United
16 States or such secretary's delegates, or the proper tax officer of any
17 other state imposing an income tax upon the income of individuals, or
18 the authorized representative of either such officer, to inspect any
19 return filed under this chapter, or may furnish to such officer or his
20 or her authorized representative an abstract of any such return or
21 supply him or her with information concerning an item contained in any
22 such return, or disclosed by any investigation of tax liability under
23 this chapter, but such permission shall be granted or such information
24 furnished to such officer or his or her representative only if the laws
25 of the United States or of such state, as the case may be, grant
26 substantially similar privileges to the commissioner and such informa-
27 tion is to be used for tax purposes only; and provided further the
28 commissioner may furnish to the commissioner of internal revenue or his
29 or her authorized representative such returns filed under this chapter
30 and other tax information as he or she may consider proper for the use
31 in court actions or proceedings under the internal revenue code, whether
32 civil or criminal, where a written request therefor has been made to the
33 commissioner by the secretary of the treasury of the United States or by
34 his or her delegates, provided the laws of the United States grant
35 substantially similar powers to the secretary of the treasury of the
36 United States or such secretary's delegates. Where the commissioner has
37 so authorized use of returns and other information in such actions or
38 proceedings, officers and employees of the department of taxation and
39 finance may testify in such actions or proceedings in respect to such
40 returns or other information.

41 § 11-1941 Joint enforcement. (1) If there is assessed a tax under this
42 chapter and there is also assessed a tax or taxes against the same
43 taxpayer pursuant to article twenty-two of the tax law and if the
44 commissioner of the tax imposed by this chapter takes action under the
45 tax law with respect to the enforcement and collection of the tax or
46 taxes assessed under such tax law, the commissioner shall, wherever
47 possible, accompany such action with a similar action under similar
48 enforcement and collection provisions of this chapter.

49 (2) Any monies collected as a result of such joint action shall be
50 deemed to have been collected in proportion in the amounts due, includ-
51 ing tax, penalties, interest and additions to tax under article twenty-
52 two of the tax law and under this chapter.

53 (3) Whenever the commissioner takes any action with respect to a defi-
54 ciency of personal income tax, under article twenty-two of the tax law
55 other than the action set forth in subdivision one of this section the

1 commissioner may, in his or her discretion, accompany such action with a
2 similar action under this chapter.

3 § 11-1942 Secrecy requirement and penalties for violation. 1. Except
4 in accordance with proper judicial order or as otherwise provided by
5 law, it shall be unlawful for the commissioner or any other officer or
6 employee of the department of finance of the city, any person engaged or
7 retained by such commissioner or department on an independent contract
8 basis, any depository to which any return may be delivered as provided
9 in subdivision two of this section, any officer or employee of such
10 depository, or any person who, pursuant to this section, is permitted to
11 inspect any report or return or to whom a copy, an abstract or a portion
12 of any report or return is furnished, or to whom any information
13 contained in any report or return is furnished, to divulge or make known
14 in any manner the amount of wages or earnings or any particulars set
15 forth or disclosed in any report or return required under this chapter.
16 The commissioner or any other officer and employee charged with the
17 custody of such reports and returns shall not be required to produce any
18 of them or evidence of anything contained in them in any action or
19 proceeding in any court, except on behalf of the city in an action or
20 proceeding under the provisions of this chapter or in any other action
21 or proceeding involving the collection of a tax due under this chapter
22 to which the city is a party or a claimant, or on behalf of any party to
23 any action or proceeding under the provisions of this chapter when the
24 reports, returns or facts shown thereby are directly involved in such
25 action or proceeding, in any of which events the court may require the
26 production of, and may admit in evidence, so much of said reports,
27 returns or of the facts shown thereby, as are pertinent to the action or
28 proceeding and no more; except as provided in subdivision (e) of section
29 11-1940 of this subchapter. The commissioner may, nevertheless, publish
30 a copy or a summary of any determination or decision rendered after the
31 hearing required under section 11-1931 of this subchapter of this chap-
32 ter. Nothing in this section shall be construed to prohibit the deliv-
33 ery to a taxpayer or the taxpayer's duly authorized representative of a
34 certified copy of any return or report filed in connection with his or
35 her tax or to prohibit the publication of statistics so classified as to
36 prevent the identification of particular reports or returns and the
37 items thereof, or the inspection by the legal representatives of the
38 city of the report or return of any taxpayer who shall bring action to
39 set aside or review the tax based thereon, or against whom an action or
40 proceeding under this chapter has been recommended by the commissioner.
41 Reports and returns shall be preserved for three years and thereafter
42 until the commissioner orders them to be destroyed. Any violation of
43 the provisions of this section shall be punished by a fine not exceeding
44 one thousand dollars or by imprisonment not exceeding one year, or both,
45 at the discretion of the court, and if the offender be the commissioner
46 or any other officer or employee of the city, he or she shall be
47 dismissed from office and be incapable of holding any public office in
48 the city or the state for a period of five years thereafter.

49 2. Notwithstanding the provisions of subdivision one of this section,
50 the commissioner of finance, in his or her discretion, may require or
51 permit any or all individuals, estates or trusts, liable for any tax
52 imposed by this chapter, to make payments on account of estimated tax
53 and payment of any tax, penalty or interest imposed by this chapter to
54 banks, banking houses or trust companies designated by the commissioner
55 of finance and to file declarations of estimated tax and reports and
56 returns with such banks, banking houses or trust companies as agents of

1 the commissioner of finance, in lieu of making any such payment directly
 2 to the commissioner of finance. However, the commissioner of finance
 3 shall designate only such banks, banking houses or trust companies as
 4 are depositories or financial agents of Staten Island.

5 § 11-1943 Provisions not applicable. The provisions contained in this
 6 subchapter shall not be applicable with respect to taxes imposed for
 7 taxable periods commencing on or after January first, nineteen hundred
 8 seventy-six but, with respect to the tax imposed for such periods the
 9 provisions contained in part VI of article twenty-two of the tax law and
 10 sections six hundred fifty-three, six hundred fifty-eight, six hundred
 11 sixty-two and thirteen hundred eleven of the tax law including the
 12 provisions of judicial review by a proceeding under article seventy-
 13 eight of the civil practice law and rules shall be applicable with the
 14 same force and effect as if those provisions had been incorporated in
 15 full in this section except where inconsistent with the provisions of
 16 this chapter.

17 § 11-1944 Deposit and disposition of revenues by commissioner. All
 18 taxes, penalties and interest imposed under this chapter which are paid
 19 to or collected by the commissioner of finance shall be deposited by the
 20 commissioner of finance in the general fund of the city.

21 § 11-1945 Effect of invalidity in part; inconsistencies with other
 22 laws. (a) If any clause, sentence, paragraph, subdivision, section,
 23 provision or other portion of this chapter or the application thereof to
 24 any person or circumstances shall be held to be invalid, such holding
 25 shall not affect, impair or invalidate the remainder of this chapter or
 26 the application of such portion held invalid, to any other person or
 27 circumstances, but shall be confined in its operation to the clause,
 28 sentence, paragraph, subdivision, section, provision or other portion
 29 thereof directly involved in such holding or to the person and circum-
 30 stances therein involved.

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

36 CHAPTER 20

37 SALES, EXCISE AND RELATED TAXES

38 SUBCHAPTER 1

39 GENERAL SALES AND COMPENSATING USE TAXES

40 § 11-2001 Imposition of general sales and compensating use taxes. (a)
 41 There are hereby imposed and there shall be paid all of the sales and
 42 compensating use taxes described in article twenty-eight of the tax law
 43 as authorized by subdivision (a) of section twelve hundred ten of the
 44 tax law, at the rate of four and one-half percent, provided that the
 45 taxes described in paragraph six of subdivision (c) of section eleven
 46 hundred five of the tax law shall be imposed and paid at the rate of six
 47 percent.

48 (b) Notwithstanding any contrary provision of this section or other
 49 law, this section: (1) does not impose tax on (i) receipts from the
 50 sale of the services of laundering, dry-cleaning, tailoring, weaving,
 51 pressing, shoe repairing and shoe shining described in subparagraph (ii)
 52 of paragraph three of subdivision (c) of section eleven hundred five of
 53 the tax law; (ii) receipts from the sale of services described in para-
 54 graph six of subdivision (c) of section eleven hundred five of the tax

1 law at facilities owned and operated by the city or an agency or instru-
2 mentality of the city or a public corporation the majority of whose
3 members are appointed by the mayor or the city council or both of them;
4 (2) for purposes of the tax described in subdivision (e) of section
5 eleven hundred five of the tax law, defines "permanent resident" to mean
6 any occupant of any room or rooms in a hotel for at least one hundred
7 eighty consecutive days with regard to the period of such occupancy; (3)
8 does not omit from the tax described in paragraph one of subdivision (f)
9 of section eleven hundred five of the tax law charges to a patron for
10 admission to, or use of, facilities for sporting activities in which
11 such patron is to be a participant, such as bowling alleys and swimming
12 pools; (4) provides the clothing and footwear exemption in paragraph
13 thirty of subdivision (a) of section eleven hundred fifteen of the tax
14 law; (5) omits the exemption provided in paragraph forty-one of subdivi-
15 sion (a) of section eleven hundred fifteen of the tax law; (6) omits the
16 exemption provided in subdivision (c) of section eleven hundred fifteen
17 of the tax law insofar as it applies to fuel, gas, electricity, refrig-
18 eration and steam, and gas, electric, refrigeration and steam service of
19 whatever nature for use or consumption directly and exclusively in the
20 production of gas, electricity, refrigeration or steam; and (7) omits
21 the provision for refund or credit contained in clause six of subdivi-
22 sion (a) of section eleven hundred nineteen of the tax law.

23 (c) The taxes imposed by this section shall be in addition to any and
24 all other taxes authorized or imposed under any other provision of law.

25 (d) The taxes imposed by this section shall be administered and
26 collected by the state commissioner of taxation and finance as provided
27 in articles twenty-eight and twenty-nine of the tax law.

28 (e) The provisions of articles twenty-eight and twenty-nine of the tax
29 law relating or applicable to the taxes imposed by this section, includ-
30 ing the applicable definitions, transitional provisions, limitations,
31 special provisions, exemptions, exclusions, refunds, credits and admin-
32 istrative provisions, so far as those provisions can be made applicable
33 to the taxes imposed by this section, shall apply to the taxes imposed
34 by this section with the same force and effect as if those provisions
35 had been incorporated in full into this section and had expressly
36 referred to the taxes imposed by this section, except to the extent that
37 any provision of article twenty-eight or twenty-nine of the tax law is
38 either inconsistent with or not relevant to the taxes imposed by this
39 section.

40 (f) Net collections from the taxes imposed by this section paid to
41 this city by the state comptroller shall be credited to and deposited in
42 the general fund of this city, but no part of such revenues may be
43 expended unless appropriated in the annual budget of this city.

44 (g) If any provision of this section or the application thereof shall
45 for any reason be adjudged by any court of competent jurisdiction to be
46 invalid, such judgment shall not affect, impair or invalidate the
47 remainder of this section but shall be confined in its operation to the
48 provision thereof directly involved in the controversy in which such
49 judgment shall have been rendered and the application of such provision
50 to other persons or circumstances shall not be affected thereby.

51 § 11-2002 Imposition of special sales taxes. (a) There are hereby
52 imposed and there shall be paid sales taxes at the rate of four and
53 one-half percent on receipts from every sale of the services of beauty,
54 barbering, hair restoring, manicuring, pedicuring, electrolysis, massage
55 services and similar services, and every sale of services by weight
56 control salons, health salons, gymnasiums, Turkish and sauna bath and

1 similar establishments and every charge for the use of such facilities,
 2 whether or not any tangible personal property is transferred in conjunc-
 3 tion therewith; but excluding services rendered by a physician, osteo-
 4 path, dentist, nurse, physiotherapist, chiropractor, podiatrist, optome-
 5 trist, ophthalmic dispenser or a person performing similar services
 6 licensed under title eight of the education law, as amended, and exclud-
 7 ing such services when performed on pets and other animals, as author-
 8 ized by subdivision (a) of section twelve hundred twelve-a of the tax
 9 law. Provided, however, that the tax hereby imposed shall not be imposed
 10 after November thirtieth, two thousand twenty-six.

11 (b) The taxes imposed by this section shall be in addition to any and
 12 all other taxes authorized or imposed under any other provision of law.

13 (c) The taxes imposed by this section shall be administered and
 14 collected by the state commissioner of taxation and finance as provided
 15 in articles twenty-eight and twenty-nine of the tax law.

16 (d) The provisions of articles twenty-eight and twenty-nine of the tax
 17 law relating or applicable to the taxes imposed by this section, includ-
 18 ing the applicable definitions, transitional provisions, limitations,
 19 special provisions, exemptions, exclusions, refunds, credits and admin-
 20 istrative provisions, so far as those provisions can be made applicable
 21 to the taxes imposed by this section, shall apply to the taxes imposed
 22 by this section with the same force and effect as if those provisions
 23 had been incorporated in full into this section and had expressly
 24 referred to the taxes imposed by this section, except to the extent that
 25 any provision of article twenty-eight or twenty-nine of the tax law is
 26 either inconsistent with or not relevant to the taxes imposed by this
 27 section.

28 (e) Net collections from the taxes imposed by this section paid to
 29 this city by the state comptroller shall be credited to and deposited in
 30 the general fund of this city, but no part of such revenues may be
 31 expended unless appropriated in the annual budget of this city.

32 (f) If any provision of this section or the application thereof shall
 33 for any reason be adjudged by any court of competent jurisdiction to be
 34 invalid, such judgment shall not affect, impair or invalidate the
 35 remainder of this section but shall be confined in its operation to the
 36 provision thereof directly involved in the controversy in which such
 37 judgment shall have been rendered and the application of such provision
 38 to other persons or circumstances shall not be affected thereby.

39 § 11-2032 Construction and enforcement. This subchapter shall be
 40 construed and enforced in conformity with articles twenty-eight and
 41 twenty-nine of the tax law of the state of New York pursuant to which
 42 the same is enacted.

43 SUBCHAPTER 3

44 SALES TAX ON CREDIT SERVICES, 45 PROTECTIVE AND DETECTIVE SERVICES, 46 INTERIOR DECORATING AND DESIGNING

47 SERVICES, AND INTERIOR CLEANING AND MAINTENANCE SERVICES

48 § 11-2039 Definitions. (a) "Person" includes an individual, partner-
 49 ship, society, association, joint-stock company, corporation, estate,
 50 receiver, trustee, assignee, referee, and any other person acting in a
 51 fiduciary or representative capacity, whether appointed by a court or
 52 otherwise, and any combination of the foregoing.

53 (b) When used in this subchapter for the purposes of the taxes imposed
 54 by this subchapter, the following terms shall mean:

1 (1) "Purchaser." A person who purchases property or to whom are
2 rendered services, the receipts from which are taxable under this
3 subchapter.

4 (2) "Receipt." The amount of the sale price of any property and the
5 charge for any service taxable under this subchapter, valued in money,
6 whether received in money or otherwise, including any amount for which
7 credit is allowed by the vendor to the purchaser, without any deduction
8 for expenses or early payment discounts, but excluding any credit for
9 tangible personal property accepted in part payment and intended for
10 resale.

11 (3) "Sale." Any transfer of title or possession or both, exchange or
12 barter, rental, lease or license to use or consume, conditional or
13 otherwise, in any manner or by any means whatsoever for a consideration,
14 or any agreement therefor, including the rendering of any service, taxa-
15 ble under this subchapter, for a consideration or any agreement there-
16 for.

17 (4) "Vendor." A person making sales of tangible personal property or
18 services, the receipts from which are taxed by this subchapter.

19 (5) "Tax commission." Tax commission of the state of New York.

20 (6) "Tax law." Tax law of the state of New York.

21 § 11-2040 Imposition of tax. (a) There is hereby imposed within the
22 city and there shall be paid a tax at the rate of four and one-half
23 percent upon the receipts from every sale, except for resale, of credit
24 rating and credit reporting services, including, but not limited to,
25 those services provided by mercantile and consumer credit rating or
26 reporting bureaus or agencies, whether rendered in written or oral form
27 or in any other manner, except to the extent otherwise taxable under
28 article twenty-eight of the tax law; provided, however, that the tax
29 hereby imposed shall not be imposed after November thirtieth, two thou-
30 sand twenty-six, on receipts from sales of the services specified in
31 this subdivision.

32 (b) Wages, salaries and other compensation paid by an employer to an
33 employee for performing as an employee the services described in subdivi-
34 sion (a) of this section are not receipts subject to the taxes imposed
35 by such subdivision.

36 (c) Any taxes imposed by this subchapter are in addition to any other
37 tax which the city may impose or may be imposing pursuant to any law.

38 § 11-2041 Transitional provisions. The taxes imposed under subdivision
39 (a) of section 11-2040 of this subchapter shall be paid with respect to
40 receipts from all sales of services on or after September first, nine-
41 teen hundred seventy-five although rendered or agreed to be rendered
42 under a prior contract. Where a service is sold on a monthly, quarterly,
43 yearly or other term basis, the charge for such service shall be subject
44 to tax under this subchapter to the extent that such charge is applica-
45 ble to any period on or after September first, nineteen hundred seven-
46 ty-five, and such charge shall be apportioned on the basis of the ratio
47 of the number of days falling within such period to the total number of
48 days in the full term or period.

49 § 11-2042 Exempt organizations. Except as otherwise provided in this
50 section, any sale by or to any of the following shall not be subject to
51 the taxes imposed by this subchapter:

52 (1) The state of New York, or any of its agencies, instrumentalities,
53 public corporations, including a public corporation created pursuant to
54 agreement or compact with another state or Canada, or political subdivi-
55 sions where it is the purchaser, user or consumer, or where it is a

1 vendor of services or property of a kind not ordinarily sold by private
2 persons;

3 (2) The United States of America, and any of its agencies and instru-
4 mentalities, insofar as it is immune from taxation where it is the
5 purchaser, user or consumer, or where it sells services or property of a
6 kind not ordinarily sold by private persons;

7 (3) The United Nations or any international organization of which the
8 United States of America is a member where it is the purchaser, user or
9 consumer, or where it sells services or property of a kind not ordinar-
10 ily sold by private persons;

11 (4) Any corporation, association, trust, or community chest, fund or
12 foundation, organized and operated exclusively for religious, charita-
13 ble, scientific, testing for public safety, literary or educational
14 purposes, or for the prevention of cruelty to children or animals, no
15 part of the net earnings of which inures to the benefit of any private
16 shareholder or individual, no substantial part of the activities of
17 which is carrying on propaganda, or otherwise attempting to influence
18 legislation, and which does not participate in, or intervene in, includ-
19 ing the publishing or distributing of statements any political campaign
20 on behalf of any candidate for public office;

21 (5) A post or organization of war veterans, or an auxiliary unit or
22 society of, or a trust or foundation for, any such post or organization:

23 (A) organized in this state,

24 (B) at least seventy-five percent of the members of which are war
25 veterans and substantially all of the other members of which are indi-
26 viduals who are veterans, but not war veterans, or are cadets, or are
27 spouses, widows or widowers of war veterans or such individuals, and

28 (C) no part of the net earnings of which inures to the benefit of any
29 private shareholder or individual.

30 § 11-2043 Refunds or credits based on proof of certain uses. A refund
31 or credit equal to the amount of the sales or compensating use tax
32 imposed by section eleven hundred seven of the tax law or by section
33 11-2001 of this chapter, as the case may be, and paid on the sale or use
34 of tangible personal property which is later used by such purchaser in
35 performing a service subject to tax under this subchapter shall be
36 allowed such purchaser against the tax imposed by this subchapter and
37 collected by such person on the sale of such services if such property
38 has become a physical component part of the property upon which the
39 service is performed or has been transferred to the purchaser of the
40 service in conjunction with the performance of the service subject to
41 tax; provided, however, that any such refund or credit shall be without
42 interest.

43 § 11-2044 Administration and collection. The taxes imposed by section
44 11-2040 of this subchapter shall be administered and collected by the
45 tax commission in the same manner as the taxes imposed by article twen-
46 ty-eight of the tax law are administered and collected by such commis-
47 sion. All of the provisions of such article relating to or applicable
48 to the administration and collection of the taxes imposed by that arti-
49 cle shall apply to the taxes imposed by this subchapter, including
50 sections eleven hundred one, eleven hundred eleven, and sections eleven
51 hundred thirty-one through eleven hundred forty-seven inclusive, with
52 the same force and effect as if those provisions had been incorporated
53 in full into this subchapter and had expressly referred to the taxes
54 imposed by this subchapter, except as otherwise provided in section
55 twelve hundred fifty of the tax law. For purposes of this subchapter,

1 the term "tax" in part IV of such article twenty-eight of the tax law
2 shall include the taxes imposed by this subchapter.

3 § 11-2045 Deposit and disposition of revenue. (a) The tax commission
4 shall deposit daily to the credit of the comptroller of the state of New
5 York, all taxes, penalties and interest collected under this subchapter
6 in such responsible banks, banking houses or trust companies as may be
7 designated by the comptroller. Such deposits shall be kept in trust for
8 the city and separate and apart from all other monies in the possession
9 of the comptroller. The comptroller shall require adequate security
10 from all such depositories. Of the revenue collected under this subchap-
11 ter the comptroller shall retain in his or her hands such amount as the
12 commissioner of taxation and finance of the state of New York may deter-
13 mine to be necessary for refunds under this subchapter and for reason-
14 able costs of the tax commission in administering, collecting and
15 distributing the taxes under this subchapter, out of which the comp-
16 troller shall pay any refunds made under the provisions of this subchap-
17 ter. The comptroller, after reserving such refund fund and such costs,
18 shall on or before the twelfth day of each month, pay to the commission-
19 er of finance of this city all taxes, interest and penalties collected
20 under this subchapter and remaining to the comptroller's credit in such
21 banks, banking houses or trust companies at the close of business on the
22 last day of the preceding month, provided, however, that the comptroller
23 shall on or before the last day of June and December make a partial
24 payment consisting of the collections made during and including the
25 first twenty-five days of said months to the commissioner of finance of
26 this city. The amount so payable shall be certified to the comptroller
27 by the president of the tax commission or such president's delegate, who
28 shall not be held liable for any inaccuracy in such certificate. Where
29 the amount so paid over in any such distribution is more or less than
30 the amount then due to this city, the amount of the overpayment or
31 underpayment shall be certified to the comptroller by the president of
32 the tax commission or such president's delegate, who shall not be held
33 liable for any inaccuracy in such certificate. The amount of the over-
34 payment shall be so certified to the comptroller as soon after the
35 discovery of the overpayment or underpayment as reasonably possible and
36 subsequent payments and distributions by the comptroller to this city
37 shall be adjusted by subtracting the amount of any such overpayment from
38 or by adding the amount of any such underpayment to such number of
39 subsequent payments and distributions as the comptroller and the presi-
40 dent of the state tax commission shall consider reasonable in view of
41 the amount of the overpayment or underpayment and all other facts and
42 circumstances.

43 (b) All payments to the commissioner of finance pursuant to subdivi-
44 sion (a) of this section shall be credited to and deposited in the
45 general fund of this city, but no part of such revenues may be expended
46 unless appropriated in the annual budget of this city.

47 § 11-2046 Construction and enforcement. This subchapter shall be
48 construed and enforced in conformity with articles twenty-eight and
49 twenty-nine of the tax law of the state of New York pursuant to which it
50 is enacted.

51 § 11-2047 Effective date. This subchapter shall take effect September
52 first, nineteen hundred seventy-five except that certificates of regis-
53 tration may be filed with the state tax commission and certificates of
54 authority to collect tax may be issued by the state tax commission prior
55 to such date.

SUBCHAPTER 4
ADDITIONAL PARKING TAX

§ 11-2048 Definitions. (a) "Person" includes an individual, partnership, society, association, joint-stock company, corporation, estate, receiver, trustee, assignee, referee, and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of the foregoing.

(b) When used in this subchapter for the purpose of the taxes imposed by this subchapter, the following terms shall mean:

(1) "Purchaser." A person who purchased property or to whom are rendered services, the receipts from which are taxable under this subchapter.

(2) "Receipt." The amount of the sale price of any property and the charge for any service taxable under this subchapter, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts, but excluding any credit for tangible personal property accepted in part payment and intended for resale.

(3) "Sale." Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this subchapter, for a consideration or any agreement therefor.

(4) "Vendor." A person making sales of tangible personal property or services, the receipts from which are taxed by this subchapter.

(5) "Tax commission." Tax commission of the state of New York.

(6) "Tax law." Tax law of the state of New York.

§ 11-2049 Imposition of tax. On and after September first, nineteen hundred eighty, there is hereby imposed within the city of New York, and there shall be paid, a tax at the rate of eight percent on receipts from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage, other than a garage which is part of premises occupied solely as a private one or two family dwelling, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles, in every county within the city of New York with a population density in excess of fifty thousand persons per square mile, as determined by reference to the latest federal census; provided, however, that receipts for such services paid to a homeowner's association by its members or receipts paid by members of a homeowner's association to a person leasing the parking facility from the homeowner's association shall not be subject to the tax imposed by this section. For purposes of this section, a homeowner's association is an association, including a cooperative housing or apartment corporation, (i) the membership of which is comprised exclusively of owners or residents of residential dwelling units, including owners of units in a condominium, and including shareholders in a cooperative housing or apartment corporation, where such units are located in a defined geographical area such as a housing development or subdivision; and (ii) which owns or operates a garage, parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles located in such area for use, whether or not exclusive, by such owners or residents. The tax imposed on the receipts described in this section is in addition to the tax imposed on such receipts under subchapter one

1 of this chapter or section eleven hundred seven of the tax law, as the
2 case may be.

3 § 11-2050 Transitional provisions. The taxes imposed by this subchap-
4 ter shall be paid with respect to receipts from all sales of services on
5 or after September first, nineteen hundred eighty although rendered or
6 agreed to be rendered under a prior contract. Where a service is sold
7 on a monthly, quarterly, yearly or other term basis, the charge for such
8 service shall be subject to tax under this subchapter to the extent that
9 such charge is applicable to any period on or after September first,
10 nineteen hundred eighty, and such charge shall be apportioned on the
11 basis of the ratio of the number of days falling within such period to
12 the total number of days in the full term or period.

13 § 11-2051 Exempt organizations and individuals. (a) Except as other-
14 wise provided in this section, any sale by or to any of the following
15 shall not be subject to the taxes imposed by this subchapter:

16 (1) The state of New York, or any of its agencies, instrumentalities,
17 public corporations, including a public corporation created pursuant to
18 agreement or compact with another state or Canada, or political subdivi-
19 sions where it is the purchaser, user or consumer, or where it is a
20 vendor of services of a kind not ordinarily sold by private persons;

21 (2) The United States of America, and any of its agencies and instru-
22 mentalities, insofar as it is immune from taxation where it is the
23 purchaser, user or consumer or where it sells services of a kind not
24 ordinarily sold by private persons;

25 (3) The United Nations or any international organization of which the
26 United States of America is a member where it is the purchaser, user or
27 consumer, or where it sells services of a kind not ordinarily sold by
28 private persons;

29 (4) Any corporation, association, trust, or community chest, fund or
30 foundation, organized and operated exclusively for religious, charita-
31 ble, scientific, testing for public safety, literary or educational
32 purposes, or to foster national or international amateur sports competi-
33 tion, but only if no part of its activities involve the provision of
34 athletic facilities or equipment, or for the prevention of cruelty to
35 children or animals, no part of the net earnings of which inures to the
36 benefit of any private shareholder or individual, no substantial part of
37 the activities of which is carrying on propaganda, or otherwise attempt-
38 ing to influence legislation, except as otherwise provided in subsection
39 (h) of section five hundred one of the United States internal revenue
40 code of nineteen hundred fifty-four, as amended, and which does not
41 participate in, or intervene in, including the publishing or distribut-
42 ing of statements, any political campaign on behalf of any candidate for
43 public office;

44 (5) A post or organization of past or present members of the armed
45 forces of the United States, or an auxiliary unit or society of, or a
46 trust or foundation for, any such post or organization:

47 (A) organized in this state,

48 (B) at least seventy-five percent of the members of which are past or
49 present members of the armed forces of the United States and substan-
50 tially all of the other members of which are individuals who are cadets
51 or are spouses, widows or widowers of past or present members of the
52 armed forces of the United States or of cadets, and

53 (C) no part of the net earnings of which inures to the benefit of any
54 private shareholder or individual;

55 (6) The following Indian nations or tribes residing in New York state:
56 Cayuga, Oneida, Onondaga, Poospatuck, Saint Regis Mohawk, Seneca, Shin-

1 necock, Tonawanda and Tuscarora, where it is the purchaser, user or
2 consumer;

3 (7) A not-for-profit corporation operating as a health maintenance
4 organization subject to the provisions of article forty-four of the
5 public health law; and

6 (8) Cooperative and foreign corporations doing business in this state
7 pursuant to the rural electric cooperative law.

8 (b) Nothing in this section shall exempt sales of the service of
9 providing parking, garaging or storing for motor vehicles by an organ-
10 ization described in paragraph four or paragraph five of subdivision (a)
11 of this section operating a garage, other than a garage which is part of
12 premises occupied solely as a private one-family or two-family dwelling,
13 parking lot or other place of business engaged in providing parking,
14 garaging or storing for motor vehicles.

15 (c) (1) For purposes of paragraph four of subdivision (a) of this
16 section, in the case of a qualified amateur sports organization (A) the
17 requirement of such paragraph that no part of its activities involve the
18 provision of athletic facilities or equipment shall not apply, and (B)
19 such organization shall not fail to meet the requirement of such para-
20 graph merely because its membership is local or regional in nature.

21 (2) For purposes of this subdivision, the term "qualified amateur
22 sports organization" means any organization organized and operated
23 exclusively to foster national or international amateur sports competi-
24 tion if such organization is also organized and operated primarily to
25 conduct national or international competition in sports or to support
26 and develop amateur athletes for national or international competition
27 in sports.

28 (d) The tax imposed by this subchapter shall not apply to any sale of
29 services to an individual resident of the county in which such tax is
30 imposed when such services are rendered on a monthly or longer-term
31 basis at the principal location for the parking, garaging or storing of
32 a motor vehicle owned or leased, but only in the case of a lease for a
33 term of one year or more, by such individual resident. For purposes of
34 this subdivision, the term "individual resident" means a natural person
35 who maintains in such county a permanent place of abode which is such
36 person's primary residence; the term "motor vehicle" means a motor vehi-
37 cle which is registered pursuant to the vehicle and traffic law at the
38 address of the primary residence referred to in this subdivision, or
39 which is registered pursuant to the vehicle and traffic law and leased
40 to an individual resident at the address of the primary residence
41 referred to in this subdivision, and which is not used in carrying on
42 any trade, business or commercial activity; and the term "lease for a
43 term of one year or more" shall not include any lease the term of which
44 is less than one year, irrespective of the fact that the cumulative
45 period for which such lease may be in effect is one year or more as the
46 result of the right to exercise an option to renew or other like
47 provision.

48 § 11-2052 Administration and collection; penalties; refunds. (a) The
49 taxes imposed by this subchapter shall be administered and collected by
50 the tax commission in the same manner as the taxes imposed by article
51 twenty-eight of the tax law are administered and collected by such
52 commission. All of the provisions of such article relating to or appli-
53 cable to the administration and collection of the taxes imposed by that
54 article shall apply to the taxes imposed by this subchapter, including
55 section eleven hundred one and sections eleven hundred thirty-one
56 through eleven hundred forty-seven inclusive, with the same force and

1 effect as if those provisions had been incorporated in full into this
2 subchapter and had expressly referred to the taxes imposed by this
3 subchapter, except to the extent that any provisions of such article
4 twenty-eight are either inconsistent with a provision of this subchap-
5 ter, or of article twenty-nine of the tax law, or are not relevant to
6 this subchapter or to article twenty-nine of the tax law. For purposes
7 of this subchapter, the term "tax" in part IV of such article twenty-
8 eight of the tax law shall include the taxes imposed by this subchapter.

9 (b) Notwithstanding subdivision (a) of this section or any other
10 provision of law to the contrary, the tax commission shall, subject to
11 such terms and conditions as it may consider necessary, delegate to the
12 commissioner of finance the power and authority to develop and adminis-
13 ter reasonable and necessary procedures, including the use of exemption
14 certificates for presentation to vendors, for determining entitlement to
15 exemption from tax under subdivision (d) of section 11-2051 of this
16 subchapter, and to prescribe, subject to the approval of the tax commis-
17 sion, rules and regulations necessary and appropriate in carrying out
18 such responsibilities.

19 (c) Any person who, in violation of any provision of subdivision (d)
20 of section 11-2051 of this subchapter or any rule or regulation promul-
21 gated thereunder, obtains or uses a certificate of exemption relating to
22 the exemption allowed by such subdivision, shall, if such violation was
23 due to negligence or intentional disregard of such provision or rule or
24 regulation, but without intent to defraud, be liable for a penalty of
25 not more than one hundred dollars for each such violation, and, if such
26 violation was due to fraud, be liable for a penalty of not more than
27 five hundred dollars for each such violation. The commissioner of
28 finance shall have the power, in his or her discretion, to waive, reduce
29 or compromise any penalty imposed pursuant to this subdivision. The
30 penalties authorized by this subdivision shall be in addition to any
31 penalty provided by section eleven hundred forty-five of the tax law,
32 and shall be paid and disposed of, and, if unpaid, shall be determined,
33 assessed, collected and enforced, in the same manner as the taxes
34 imposed by this subchapter.

35 (d) Notwithstanding subdivision (d) of section 11-2051 of this
36 subchapter, section eleven hundred thirty-nine of the tax law or any
37 other provision of law to the contrary, an individual resident shall not
38 be entitled to a refund or credit with respect to any amount of tax
39 which was paid to a vendor prior to the date such individual resident
40 presented to the vendor a valid certificate of exemption from such tax.

41 § 11-2053 Deposit and disposition of revenue. (a) The tax commission
42 shall deposit daily to the credit of the comptroller of the state of New
43 York, all taxes, penalties and interest collected under this subchapter
44 in such responsible banks, banking houses or trust companies as may be
45 designated by the comptroller. Such deposits shall be kept in trust for
46 the city and separate and apart from all other monies in the possession
47 of the comptroller. The comptroller shall require adequate security
48 from all such depositories. Of the revenue collected under this
49 subchapter the comptroller shall retain in his or her hands such amount
50 as the commissioner of taxation and finance of the state of New York may
51 determine to be necessary for refunds under this subchapter and for
52 reasonable costs of the tax commission in administering, collecting and
53 distributing the taxes under this subchapter, out of which the comp-
54 troller shall pay any refunds made under the provisions of this subchap-
55 ter. The comptroller, after reserving such refund fund and such costs
56 shall, on or before the twelfth day of each month, pay to the commis-

1 sioner of finance of this city all taxes, interest and penalties
2 collected under this subchapter during the next preceding calendar month
3 and remaining to the comptroller's credit in such banks, banking houses
4 or trust companies at the close of business on the last day of such
5 preceding month, provided, however, that the comptroller shall on or
6 before the last day of June and December make a partial payment consist-
7 ing of the collections made during and including the first twenty-five
8 days of said months to the commissioner of finance of this city. The
9 amount so payable shall be certified to the comptroller by the president
10 of the tax commission or such president's delegate, who shall not be
11 held liable for any inaccuracy in such certificate. Provided, however,
12 any such certification may be based on such information as may be avail-
13 able to the tax commission at the time such certificate must be made
14 under this section and may be estimated on the basis of percentages or
15 other indices calculated from distributions for prior periods. Where the
16 amount so paid over in any such distribution is more or less than the
17 amount then due to this city, the amount of the overpayment or underpay-
18 ment shall be certified to the comptroller by the president of the tax
19 commission or such president's delegate, who shall not be held liable
20 for any inaccuracy in such certificate. The amount of the overpayment or
21 underpayment shall be so certified to the comptroller as soon after the
22 discovery of the overpayment or underpayment as reasonably possible and
23 subsequent payments and distributions by the comptroller to this city
24 shall be adjusted by subtracting the amount of any such overpayment from
25 or by adding the amount of any such underpayment to such number of
26 subsequent payments and distributions as the comptroller and the presi-
27 dent of the tax commission shall consider reasonable in view of the
28 amount of the overpayment or underpayment and all other facts and
29 circumstances.

30 (b) All payments to the commissioner of finance pursuant to subdivi-
31 sion (a) of this section shall be credited to and deposited in the
32 general fund of this city.

33 § 11-2054 Construction and enforcement. This subchapter shall be
34 construed and enforced in conformity with articles twenty-eight and
35 twenty-nine of the tax law of the state of New York pursuant to which it
36 is enacted.

37 SUBCHAPTER 5
38 TAX ON BEER AND LIQUOR

39 § 11-2055 Definitions. When used in this subchapter the following
40 terms shall mean or include:

41 1. "Person." An individual, partnership, society, association,
42 corporation, joint-stock company, and any combination of individuals,
43 and also an executor, administrator, receiver, trustee or other fiduci-
44 ary.

45 2. "Alcohol." Ethyl alcohol, hydrated oxide of ethyl or spirit of
46 wine, from whatever source or by whatever process produced.

47 3. "Beers." All alcoholic beer, lager beer, ale, porter, and stout,
48 and all other fermented beverages of any name or description manufac-
49 tured from malt, wholly or in part, or from any substitute therefor
50 containing one-half of one per centum, or more, of alcohol by volume.

51 4. "Liquors." Any and all distilled or rectified spirits, alcohol,
52 brandy, cordial, whether the base therefor be wine or liquor, whiskey,
53 rum, gin and all other distilled beverages containing alcohol, including
54 all dilutions and mixtures of one or more of such liquids, including any

1 alcoholic liquids which would be wines if the alcoholic content thereof
2 were not more than twenty-four per centum by volume. Such term shall not
3 include liquors containing not more than twenty-four per centum of alco-
4 hol by volume.

5 5. "Alcoholic beverages." Beer or liquors.

6 6. "Distributor." Any person who imports or causes to be imported into
7 this city any alcoholic beverages which are or will be offered for sale
8 or used for any commercial purpose; any purchaser of warehouse receipts
9 for alcoholic beverages stored in a warehouse in this city who causes
10 such beverages to be removed from such warehouse; and also any person
11 who produces, distills, manufactures, brews, compounds, mixes or
12 ferments any alcoholic beverages within this city for sale, except: (a)
13 a person who manufactures, mixes or compounds alcoholic beverages the
14 ingredients of which consist only of alcoholic beverages on which the
15 taxes imposed by this subchapter have been paid, and (b) a person who
16 mixes or compounds alcoholic beverages with non-alcoholic ingredients
17 for sale and immediate consumption on the premises, who shall be a
18 distributor only with respect to the ingredients which consist of alco-
19 holic beverages upon which the taxes imposed by this subchapter have not
20 been paid.

21 7. "Noncommercial importer." A person other than a distributor who
22 imports or causes to be imported into this city alcoholic beverages,
23 except that such person shall not be a noncommercial importer where he
24 or she imports or causes to be imported into this city alcoholic bever-
25 ages in the quantities and under the conditions provided by subdivision
26 (e) of section 11-2056 of this subchapter.

27 8. "Sale." Any transfer, exchange or barter in any manner or by any
28 means whatsoever. The sale of warehouse receipts given upon the storage
29 of alcoholic beverages shall not be construed as a sale of the beverages
30 represented by such receipts.

31 9. "Use." Any compounding or mixing of alcoholic beverages with other
32 ingredients or other treatment of the same in such manner as to render
33 them unfit or unsuitable for consumption as a beverage and also the
34 actual consumption or possession for consumption of alcoholic beverages
35 as a beverage or otherwise.

36 10. "Gallon." One hundred twenty-eight fluid ounces; "quart" means
37 thirty-two fluid ounces.

38 11. "Liter." A metric unit of capacity equal to one thousand cubic
39 centimeters of alcoholic beverages and equivalent to thirty-three and
40 eight hundred fourteen thousandths fluid ounces.

41 12. "City." The city of Staten Island.

42 13. "Commissioner of finance." Commissioner of finance of the city.

43 14. "Tax commission." The tax commission of the state of New York.

44 15. Unless a different meaning is clearly required, any term used in
45 this subchapter shall have the same meaning as when used in a comparable
46 context in the laws of the state of New York relating to taxes on alco-
47 holic beverages.

48 § 11-2056 Imposition of tax. (a) There are hereby imposed on a
49 distributor and a noncommercial importer excise taxes at the following
50 rates:

51 (1) twelve cents per gallon upon beers; and

52 (2) twenty-six and four-tenths cents per liter upon liquors, when sold
53 or used within this city, except when sold or used under such circum-
54 stances that this city is without power to impose such tax or when sold
55 to the United States, and except beers when sold to or by a voluntary
56 unincorporated organization of the armed forces of the United States

1 operating a place for the sale of goods pursuant to regulations promul-
2 gated by the appropriate executive agency of the United States, and
3 except when sold to professional foreign consuls-general, consuls and
4 vice-consuls who are nationals of the state appointing them and who are
5 assigned to foreign consulates in this city provided that American
6 consular officers of equal rank who are citizens of the United States
7 and who exercise their official functions at American consulates in such
8 foreign country are granted reciprocal exemptions; provided, however,
9 that the tax commission may permit the sale of alcohol without tax to a
10 holder of any industrial alcohol permit, alcohol permit or alcohol
11 distributor's permit, issued by the state liquor authority, and by the
12 holder of an alcohol distributor's permit, class A, issued by such
13 authority to a holder of a distiller's license, class B, or a winery
14 license, issued by such authority and may also permit the use of alcohol
15 for any purpose other than the production of alcoholic beverages by such
16 holders without tax.

17 Notwithstanding any other provision of this subchapter, the tax
18 commission may permit the purchase of liquors without tax by a holder of
19 a distiller's license issued by the state liquor authority from another
20 holder of a distiller's license by such authority, in which event the
21 liquors so purchased shall be subject to the tax imposed by this
22 subchapter in the hands of the purchaser in the same manner and to the
23 same extent as if such purchaser had imported or caused the same to be
24 imported into this city or had produced, distilled, manufactured,
25 brewed, compounded, mixed or fermented the same within this city.

26 (b) There is also imposed on each person, other than a distributor
27 within the meaning of this subchapter, who, on August first, nineteen
28 hundred eighty, owns and possesses for the purposes of sale beers or
29 liquors, a floor tax at the rates applicable under subdivision (a) upon
30 such beer in excess of one hundred gallons and upon such liquor in
31 excess of four hundred liters. Such floor tax shall be due and payable
32 on the twentieth day of the month succeeding the month of August, nine-
33 teen hundred eighty.

34 (c) If, prior to August first, nineteen hundred eighty, a contract of
35 sale of alcoholic beverages was made, and delivery thereof pursuant to
36 such contract is made within this city on or after August first, nine-
37 teen hundred eighty, the vendor shall be deemed a distributor for the
38 purposes of this subchapter, and such alcoholic beverages shall be
39 deemed to be sold, and shall be subject to such taxes, at the time of
40 such delivery.

41 (d) In any case where the quantity of alcoholic beverages taxable
42 pursuant to this subchapter is a fractional part of one liter, or one
43 gallon in the case of beers, or an amount greater than a whole multiple
44 of liters, or gallons in the case of beers, the amount of tax levied and
45 imposed on such fractional part of one liter, or one gallon in the case
46 of beers, or fractional part of a liter, or gallon, in excess of a whole
47 multiple of liters or gallons shall be such fractional part of the rate
48 imposed by subdivisions (a) and (b) of this section.

49 (e) Notwithstanding any other provisions of this subchapter, there
50 shall be exempt from the taxes imposed under this subchapter, per month,
51 one quart of alcoholic beverages, or one gallon of such beverages in the
52 case of a person arriving directly from American Samoa, Guam or the
53 Virgin Islands of the United States not more than one quart of which
54 shall have been acquired elsewhere than in such insular possessions:

55 (1) purchased outside this city as an incident to a journey from which
56 the purchaser is returning and

1 (2) not to be offered for sale or used for any commercial purpose,
2 provided such alcoholic beverages accompany such person on his or her
3 return to this city and provided, further, that in the case of a person
4 arriving in this city from other than a state of the United States,
5 including the District of Columbia, the Virgin Islands of the United
6 States or a contiguous country maintaining a free zone or free port,
7 such person shall have remained beyond the territorial limits of the
8 United States for a period of not less than forty-eight hours.

9 Provided, however, where the amounts purchased outside the city or
10 brought in exceed the amounts specified in this subdivision but are not
11 in excess of one liter in the case of the references to one quart or
12 four liters in the case of the reference to one gallon, and where no
13 duty is required by the laws of the United States to be paid on such
14 amounts, such metric standards of fill shall be substituted for one
15 quart and one gallon, respectively, and such amounts shall be exempt
16 from tax under the conditions provided for in this subdivision.

17 § 11-2057 Manner of administration and collection. All the provisions
18 of article eighteen of the tax law shall apply to the taxes imposed by
19 subdivision (a) of section 11-2056 of this subchapter, and the
20 provisions of sections four hundred twenty, four hundred twenty-six,
21 four hundred twenty-nine through four hundred thirty-four, four hundred
22 thirty-six and four hundred thirty-seven of the tax law shall apply to
23 the tax imposed by subdivision (b) of section 11-2056 of this subchap-
24 ter, so far as such sections can be made applicable to the taxes imposed
25 by this subchapter with such limitations as set forth in section four
26 hundred forty-five of the tax law and such modifications as may be
27 necessary in order to adapt such language to the taxes imposed by this
28 subchapter.

29 § 11-2058 State tax commission; administration. The taxes imposed by
30 this subchapter shall be administered and collected by the tax commis-
31 sion in the same manner as the taxes imposed under sections four hundred
32 twenty-four and four hundred twenty-five of the tax law subject to all
33 provisions of that article as may be applicable. The tax commission may
34 make such provisions as it deems necessary for the joint administration
35 and collection of the state and local taxes imposed and authorized by
36 article eighteen of the tax law and this subchapter. Nothing in such
37 article eighteen or this subchapter which requires payment of both state
38 and local taxes to the tax commission shall be construed as the payment
39 of either tax more than once.

40 § 11-2059 Disposition of revenues. All taxes, penalties and interest
41 imposed by this subchapter, which are collected by the tax commission,
42 shall be deposited daily with such responsible banks, banking houses or
43 trust companies, as may be designated by the state comptroller, to the
44 credit of the comptroller, in trust for this city. Such deposits shall
45 be kept in trust and separate and apart from all other monies in the
46 possession of the comptroller. The comptroller shall require adequate
47 security from all such depositories of such revenues collected by the
48 tax commission. The comptroller shall retain in his or her hands such
49 amount as the commissioner of taxation and finance may determine to be
50 necessary for refunds in respect of the taxes imposed by this subchap-
51 ter, and for reasonable costs of the state tax commission in administer-
52 ing, collecting and distributing such taxes, out of which the comp-
53 troller shall pay any refunds of such taxes to which taxpayers shall be
54 entitled under the provisions of this subchapter. The comptroller, after
55 reserving such refund and such costs shall, on or before the twelfth day
56 of each month, pay to the commissioner of finance the taxes, penalties

1 and interest imposed by this subchapter, collected by the state tax
2 commission pursuant to this subchapter during the next preceding calen-
3 dar month. The amount so payable shall be certified to the comptroller
4 by the president of the state tax commission or his or her delegate, who
5 shall not be held liable for any inaccuracy in such certificate. Where
6 the amount so paid over to the city in any such distribution is more or
7 less than the amount then due to the city, the amount of the overpayment
8 or underpayment shall be certified to the comptroller by the president
9 of the state tax commission or his or her delegate, who shall not be
10 held liable for any inaccuracy in such certificate. The amount of the
11 overpayment or underpayment shall be so certified to the comptroller as
12 soon after the discovery of the overpayment or underpayment as reason-
13 ably possible and subsequent payments and distributions by the comp-
14 troller to the city shall be adjusted by subtracting the amount of any
15 such overpayment from or by adding the amount of any such underpayment
16 to such number of subsequent payments and distributions as the comp-
17 troller and the president of the state tax commission shall consider
18 reasonable in view of the amount of the overpayment or underpayment and
19 all other facts or circumstances.

20 § 11-2060 Construction. This subchapter shall be construed and
21 enforced in conformity with section four hundred forty-five of the tax
22 law, pursuant to which it is enacted.

23
24

CHAPTER 21
REAL PROPERTY TAX

25 § 11-2101 Definitions. When used in this chapter the following terms
26 shall mean or include:

27 1. "Person." An individual, partnership, society, association, joint
28 stock company, corporation, estate, receiver, trustee, assignee, referee
29 or any other person acting in a fiduciary or representative capacity,
30 whether appointed by a court or otherwise, any combination of individ-
31 uals, and any other form of unincorporated enterprise owned or conducted
32 by two or more persons.

33 2. "Deed." Any document or writing, other than a will, regardless of
34 where made, executed or delivered, whereby any real property or interest
35 therein is created, vested, granted, bargained, sold, transferred,
36 assigned or otherwise conveyed, including any such document or writing
37 whereby any leasehold interest in real property is granted, assigned or
38 surrendered.

39 3. "Instrument." Any document or writing, other than a deed or a will,
40 regardless of where made, executed or delivered, whereby any economic
41 interest in real property is transferred.

42 4. "Transaction." Any act or acts, regardless of where performed, and
43 whether or not reduced to writing, unless evidenced by a deed or instru-
44 ment, whereby any economic interest in real property is transferred,
45 other than a transfer pursuant to the laws of intestate succession.

46 5. "Real property." Every estate or right, legal or equitable, present
47 or future, vested or contingent, in lands, tenements or hereditaments,
48 which are located in whole or in part within the city of Staten Island.
49 It shall not include a mortgage, a release of mortgage or, for purposes
50 of paragraph three and subparagraphs (ii) and (iii) of paragraph seven
51 of subdivision a of section 11-2102 of this chapter, a leasehold inter-
52 est in a one, two or three-family house or an individual dwelling unit
53 in a dwelling which is to be occupied or is occupied as the residence or

1 home of four or more families living independently of each other. It
2 shall not include rights to sepulture.

3 6. "Economic interest in real property." The ownership of shares of
4 stock in a corporation which owns real property; the ownership of an
5 interest or interests in a partnership, association or other unincorpo-
6 rated entity which owns real property; and the ownership of a beneficial
7 interest or interests in a trust which owns real property.

8 7. "Transfer" or "transferred." When used in relation to an economic
9 interest in real property, the terms "transfer" or "transferred" shall
10 include the transfer or transfers or issuance of shares of stock in a
11 corporation, interest or interests in a partnership, association or
12 other unincorporated entity, or beneficial interest in a trust, whether
13 made by one or several persons, or in one or several related trans-
14 actions, which shares of stock or interest or interests constitute a
15 controlling interest in such corporation, partnership, association,
16 trust or other entity.

17 8. "Controlling interest." In the case of a corporation, fifty percent
18 or more of the total combined voting power of all classes of stock of
19 such corporation, or fifty percent or more of the total fair market
20 value of all classes of stock of such corporation; and, in the case of a
21 partnership, association, trust or other entity, fifty percent or more
22 of the capital, profits or beneficial interest in such partnership,
23 association, trust or other entity.

24 9. "Consideration." The price actually paid or required to be paid for
25 the real property or economic interest therein, without deduction for
26 mortgages, liens or encumbrances, whether or not expressed in the deed
27 or instrument and whether paid or required to be paid by money, proper-
28 ty, or any other thing of value. It shall include the cancellation or
29 discharge of an indebtedness or obligation. It shall also include the
30 amount of any mortgage, lien or other encumbrance, whether or not the
31 underlying indebtedness is assumed.

32 10. "Net consideration." Any consideration, exclusive of any mortgage
33 or other lien or encumbrance on the real property or interest therein
34 which existed before the delivery of the deed and remains thereon after
35 the delivery of the deed.

36 11. "Comptroller." The comptroller of the city of Staten Island.

37 12. "Commissioner of finance." The commissioner of finance of the city
38 of Staten Island.

39 13. "City." The city of Staten Island.

40 14. "Grantor." The person or persons making, executing or delivering
41 the deed. The term "grantor" also includes the entity with an interest
42 in real property or the person or persons who transfer an economic
43 interest in real property.

44 15. "Grantee." The person or persons accepting the deed or who obtain
45 any of the real property which is the subject of the deed or any inter-
46 est therein. The term "grantee" also includes the person or persons to
47 whom an economic interest in real property is transferred.

48 16. "Affixed." Includes attached or annexed by adhesion, stapling or
49 otherwise, or a notation by stamp, imprint or writing.

50 17. "Register." Includes the city register and the county clerk of the
51 county of Richmond.

52 18. "Tax appeals tribunal." The tax appeals tribunal established by
53 section one hundred sixty-eight of the charter of the preceding munici-
54 pality as it existed January first, nineteen hundred ninety-four.

55 § 11-2102 Imposition of tax. a. A tax is hereby imposed on each deed
56 at the time of delivery by a grantor to a grantee when the consideration

1 for the real property and any improvement thereon, whether or not
2 included in the same deed, exceeds twenty-five thousand dollars. The tax
3 shall be:

4 (1) at the rate of one-half of one per centum of the net consideration
5 with respect to conveyances made before July first, nineteen hundred
6 seventy-one, or made in performance of a contract therefor executed
7 before such date;

8 (2) at the rate of one percent of such net consideration with respect
9 to

10 (i) all conveyance made on or after July first, nineteen hundred
11 seventy-one and before February first, nineteen hundred eighty-two, or
12 made in performance of a contract therefor executed during such period;

13 (ii) conveyances made on or after February first, nineteen hundred
14 eighty-two and before July first, nineteen hundred eighty-two of one,
15 two or three-family houses and individual residential condominium units,
16 and

17 (iii) conveyances made on or after February first, nineteen hundred
18 eighty-two and before July first, nineteen hundred eighty-two where the
19 consideration is less than five hundred thousand dollars, other than
20 grants, assignments or surrenders of leasehold interests in real proper-
21 ty taxable under paragraph three of this subdivision;

22 (3) at the rate of one percent of the consideration with respect to
23 grants, assignments or surrenders of leasehold interests in real proper-
24 ty made on or after February first, nineteen hundred eighty-two and
25 before July first, nineteen hundred eighty-two where the consideration
26 is five hundred thousand dollars or more, provided however, that for
27 purposes of this paragraph the amount subject to tax in the case of a
28 grant of a leasehold interest in real property shall be only such amount
29 as is not considered rent for purposes of the tax imposed by chapter
30 seven of this title;

31 (4) at the rate of two percent of the consideration with respect to
32 all other conveyances made on or after February first, nineteen hundred
33 eighty-two and before July first, nineteen hundred eighty-two, except
34 that, for purposes of this paragraph, where the consideration includes
35 the amount of any mortgage or other lien or encumbrance on the real
36 property or interest therein which existed before the delivery of the
37 deed and remains thereon after the delivery of the deed, the portion of
38 the consideration ascribable to such mortgage, lien or encumbrance shall
39 be taxed at the rate of one percent, and only the balance of such
40 consideration shall be taxed at the rate of two percent;

41 (5) at the rate of one percent of the consideration with respect to
42 conveyances made on or after July first, nineteen hundred eighty-two and
43 before August first, nineteen hundred eighty-nine of one, two or three-
44 family houses and individual residential condominium units;

45 (6) at the rate of one percent of the consideration with respect to
46 conveyances made on or after July first, nineteen hundred eighty-two and
47 before August first, nineteen hundred eighty-nine where the consider-
48 ation is less than five hundred thousand dollars, other than grants,
49 assignments or surrenders of leasehold interests in real property taxa-
50 ble as hereafter provided;

51 (7) (i) at the rate of one percent of the consideration with respect
52 to a grant, assignment or surrender, made on or after July first, nine-
53 teen hundred eighty-two and before August first, nineteen hundred eight-
54 y-nine, of a leasehold interest in a one, two or three-family house or
55 an individual dwelling unit in a dwelling which is to be occupied or is

1 occupied as the residence or home of four or more families living inde-
2 pendently of each other,
3 (ii) at the rate of one percent of the consideration with respect to
4 grants, assignments or surrenders of leasehold interests in real proper-
5 ty made on or after July first, nineteen hundred eighty-two and before
6 August first, nineteen hundred eighty-nine where the consideration is
7 less than five hundred thousand dollars, or
8 (iii) at the rate of two percent of the consideration with respect to
9 grants, assignments or surrenders of leasehold interests in real proper-
10 ty made on or after July first, nineteen hundred eighty-two and before
11 August first, nineteen hundred eighty-nine where the consideration is
12 five hundred thousand dollars or more;
13 (iv) provided, however, that for purposes of subparagraphs (i), (ii)
14 and (iii) of this paragraph, the amount subject to tax in the case of a
15 grant of a leasehold interest shall be only such amount as is not
16 considered rent for purposes of the tax imposed by chapter seven of this
17 title; and
18 (8) at the rate of two percent of the consideration with respect to
19 all other conveyances made on or after July first, nineteen hundred
20 eighty-two and before August first, nineteen hundred eighty-nine;
21 (9) with respect to conveyances made on or after August first, nine-
22 teen hundred eighty-nine, other than grants, assignments or surrenders
23 of leasehold interests in real property taxable as provided in paragraph
24 ten of this subdivision, the tax shall be at the following rates:
25 (i) at the rate of one percent of the consideration for conveyances of
26 one, two or three-family houses and individual residential condominium
27 units where the consideration is five hundred thousand dollars or less,
28 and at the rate of one and four hundred twenty-five thousandths of one
29 percent of the consideration for such conveyances where the consider-
30 ation is more than five hundred thousand dollars, and
31 (ii) at the rate of one and four hundred twenty-five thousandths of
32 one percent of the consideration with respect to all other conveyances
33 where the consideration is five hundred thousand dollars or less, and at
34 the rate of two and six hundred twenty-five thousandths of one percent
35 where the consideration for such conveyances is more than five hundred
36 thousand dollars;
37 (10) With respect to a grant, assignment or surrender of a leasehold
38 interest in real property made on or after August first, nineteen
39 hundred eighty-nine, the tax shall be at the following rates:
40 (i) at the rate of one percent of the consideration for the granting,
41 assignment or surrender of a leasehold interest in a one, two or three-
42 family house or an individual dwelling unit in a dwelling which is to be
43 occupied or is occupied as the residence or home of four or more fami-
44 lies living independently of each other where the consideration is five
45 hundred thousand dollars or less, and at the rate of one and four
46 hundred twenty-five thousandths of one percent of the consideration
47 where the consideration for granting, assignment or surrender or such
48 leasehold interest is more than five hundred thousand dollars; and
49 (ii) at the rate of one and four hundred twenty-five thousandths of
50 one percent of the consideration for the granting, assignment or surren-
51 der of a leasehold interest in all other real property where the consid-
52 eration is five hundred thousand dollars or less, and at the rate of two
53 and six hundred twenty-five thousandths of one percent of the consider-
54 ation where the consideration for the granting, assignment or surrender
55 of such a leasehold interest is more than five hundred thousand dollars;
56 and

1 (iii) provided, however, that for purposes of subparagraphs (i) and
2 (ii) of this paragraph, the amount subject to tax in the case of a grant
3 of a leasehold interest shall be only such amount as is not considered
4 rent for purposes of the tax imposed by chapter seven of this title.

5 Where any real property is situated partly within and partly without
6 the boundaries of the city of Staten Island the consideration and net
7 consideration subject to tax shall be such part of the total consider-
8 ation and total net consideration attributable to that portion of such
9 real property situated within the city of Staten Island or to the inter-
10 est in such portion.

11 b. (1) In addition to the taxes imposed by subdivision a of this
12 section, there is hereby imposed a tax on each instrument or trans-
13 action, unless evidenced by a deed subject to tax under subdivision a of
14 this section, at the time of the transfer, whereby any economic interest
15 in real property is transferred by a grantor to a grantee, where the
16 consideration exceeds twenty-five thousand dollars.

17 (A) With respect to such transfers made on or after July thirteenth,
18 nineteen hundred eighty-six and before August first, nineteen hundred
19 eighty-nine, the tax shall be (i) at the rate of one percent of the
20 consideration where the real property the economic interest in which is
21 transferred is a one, two or three-family house, an individual cooper-
22 ative apartment, an individual residential condominium unit or an indi-
23 vidual dwelling unit in a dwelling which is to be occupied or is occu-
24 pied as the residence or home of four or more families living
25 independently of each other, or where the consideration for the transfer
26 is less than five hundred thousand dollars, and (ii) at the rate of two
27 percent of the consideration with respect to all other transfers.

28 (B) With respect to such transfers made on or after August first,
29 nineteen hundred eighty-nine, the tax shall be at the following rates:

30 (i) at the rate of one percent of the consideration where the real
31 property, the economic interest in which is transferred, is a one, two
32 or three-family house, an individual cooperative apartment, an individ-
33 ual residential condominium unit or an individual dwelling unit in a
34 dwelling which is to be occupied or is occupied as the residence or home
35 of four or more families living independently of each other and where
36 the consideration for such transfer of an economic interest in such real
37 property is five hundred thousand dollars or less, and at the rate of
38 one and four hundred twenty-five thousandths of one percent of the
39 consideration where the consideration for such transfer of an economic
40 interest in such property is more than five hundred thousand dollars,
41 and

42 (ii) at the rate of one and four hundred twenty-five thousandths of
43 one percent of the consideration with respect to all other transfers of
44 an economic interest in real property where the consideration is five
45 hundred thousand dollars or less, and at the rate of two and six hundred
46 twenty-five thousandths of one percent of the consideration where the
47 consideration for such transfers is more than five hundred thousand
48 dollars.

49 (C) Where any real property, the economic interest in which is trans-
50 ferred, is situated partly within and partly without the boundaries of
51 the city of Staten Island, the consideration subject to tax shall be
52 such part of the consideration as is attributable to that portion of
53 such real property which is situated within the city of Staten Island.

54 (2) Notwithstanding the definition of "controlling interest" contained
55 in subdivision eight of section 11-2101 of this chapter or anything to
56 the contrary contained in subdivision seven of such section, in the case

1 of any transfer of shares of stock in a cooperative housing corporation
2 in connection with the grant or transfer of a proprietary leasehold, the
3 tax imposed by this subdivision shall apply to (i) the original transfer
4 of such shares of stock by the cooperative corporation or cooperative
5 plan sponsor, and (ii) any subsequent transfer of such shares of stock
6 by the owner thereof. Notwithstanding any provision of this chapter to
7 the contrary, in the case of a transfer described in clause (ii) of this
8 subparagraph which relates to an individual residential unit, the
9 consideration for such transfer shall not include any portion of the
10 unpaid principal of any mortgage on the real property of the cooperative
11 housing corporation. In determining the tax on a transfer described in
12 clause (i) of this subparagraph, a credit shall be allowed for a propor-
13 tionate part of the amount of any tax paid upon the conveyance to the
14 cooperative housing corporation of the land and building or buildings
15 comprising the cooperative dwelling or dwellings. Such proportionate
16 part shall be the amount determined by multiplying the amount of tax
17 paid upon the conveyance to the cooperative housing corporation by a
18 fraction, the numerator of which shall be the number of shares of stock
19 transferred in a transaction described in clause (i) of this subpara-
20 graph and the denominator of which shall be the total number of
21 outstanding shares of stock of the cooperative housing corporation,
22 including any stock held by the corporation. In no event, however, shall
23 such credit reduce the tax on a transfer described in clause (i) of this
24 subparagraph below zero, nor shall any such credit be allowed for any
25 tax paid more than twenty-four months prior to the date on which occurs
26 the first in a series of transfers of shares of stock in an offering of
27 cooperative housing corporation shares described in clause (i) of this
28 subparagraph. For purposes of this paragraph, the term "cooperative
29 housing corporation" shall not include a housing company organized and
30 operating pursuant to the provisions of article two, four, five or elev-
31 en of the private housing finance law.

32 (3) Notwithstanding the definition of "controlling interest" contained
33 in paragraph eight of section 11-2101 of this chapter or anything to the
34 contrary contained in paragraph seven of such section, in the case of a
35 corporation, other than a cooperative housing corporation, partnership,
36 association, trust or other entity formed for the purpose of cooperative
37 ownership of real property, the tax imposed by this subdivision shall
38 apply to each transfer of shares of stock in such corporation, interest
39 in such partnership, association or other entity or beneficial interest
40 in such trust, in connection with the grant or transfer of a proprietary
41 leasehold. Notwithstanding any provision of this chapter to the contra-
42 ry, in the case of a transfer described in this paragraph which relates
43 to an individual residential unit, other than the original transfer of
44 such a unit by the cooperative entity or cooperative plan sponsor, the
45 consideration for such transfer shall not include any portion of the
46 unpaid principal of any mortgage on the real property of such corpo-
47 ration, partnership, association, trust or other entity. Notwithstanding
48 any other provision of law to the contrary, all revenues arising from
49 the tax imposed pursuant to this paragraph shall be credited to and
50 deposited in the general fund of the city, but no part of such revenues
51 may be expended unless appropriated in the annual budget of the city.

52 c. (1) Anything to the contrary notwithstanding, in the case of any
53 conveyance or transfer of real property or any economic interest therein
54 in complete or partial liquidation of a corporation, partnership, asso-
55 ciation, trust or other entity, the taxes imposed by this section shall
56 be measured by (i) the consideration for such conveyance or transfer, or

1 (ii) the value of the real property or economic interest therein, which-
2 ever is greater.

3 (2) If, within twenty-four months following the transfer of an econom-
4 ic interest in real property which is subject to the tax imposed by this
5 chapter, the corporation, partnership, association, trust or other enti-
6 ty owning the real property the economic interest in which was so trans-
7 ferred, is liquidated, and such real property is conveyed to the grantee
8 or grantees of such economic interest, a credit shall be allowed against
9 the tax imposed by this chapter upon such conveyance in liquidation to
10 such grantee or grantees. The amount of such credit shall be equal to
11 the amount of the tax paid upon the prior transfer of the economic
12 interest in such real property, but shall in no event be greater than
13 the tax payable upon the conveyance in liquidation.

14 d. In the case of a transfer of an economic interest in any entity
15 that owns assets in addition to real property or interest therein, the
16 consideration subject to tax shall be deemed equal to the fair market
17 value of the real property or interest therein apportioned based on the
18 percentage of the ownership interest in the entity transferred.

19 e. (1) Notwithstanding anything contained in this section, the tax
20 imposed under subdivisions a and b of this section on any deed or other
21 instrument or transaction conveying or transferring real property or an
22 economic interest therein, that qualifies as a real estate investment
23 trust transfer, as defined below, shall be imposed at a rate equal to
24 fifty percent of the otherwise applicable rate.

25 (2) For purposes of this subdivision, a real estate investment trust
26 transfer shall mean (A) any deed or other instrument or transaction
27 conveying or transferring real property or an economic interest therein
28 to a real estate investment trust as defined in section eight hundred
29 fifty-six of the internal revenue code (a "REIT") or to a partnership or
30 corporation in which a REIT owns a controlling interest immediately
31 following the transaction; and (B) any issuance or transfer of an inter-
32 est in a REIT, or in a partnership or corporation in which a REIT owns a
33 controlling interest immediately following the issuance or transfer in
34 connection with a transaction described in subparagraph (A) of this
35 paragraph.

36 Provided, however, a transaction described in the opening paragraph
37 of this paragraph shall not constitute a real estate investment trust
38 transfer unless (i) it occurs in connection with the initial formation
39 of the REIT and the conditions described in subparagraphs (C) and (D) of
40 this paragraph are satisfied, or (ii) in the case of any real estate
41 investment trust transfer occurring on or after July thirteenth, nine-
42 teen hundred ninety-six and before September first, two thousand twen-
43 ty-six, the transaction is described in subparagraph (E) of this para-
44 graph in which case the provision of such subparagraph shall apply.

45 (C) The value of the ownership interests in the REIT, or in a partner-
46 ship or corporation in which the REIT owns a controlling interest,
47 received by the grantor as consideration for such conveyance or transfer
48 must be equal to an amount not less than forty percent of the value of
49 the equity interest in the real property or economic interest therein
50 conveyed or transferred by the grantor to the grantee and such ownership
51 interests must be retained by the grantor or owners of the grantor for a
52 period of not less than two years following the date of such conveyance
53 or transfer; provided, however, that in the case of the death of the
54 grantor or an owner of the grantor within such two year period, this two
55 year retention requirement shall be deemed to be satisfied notwithstand-
56 ing any conveyance or transfer of such ownership interests held by such

1 individual as a result of such death. The value of the equity interest
2 in such real property or economic interest therein shall be computed by
3 subtracting from the consideration for the conveyance or transfer of the
4 real property or economic interest therein the unpaid balance of any
5 loans secured by mortgages or other encumbrances which are liens on the
6 real property or economic interest therein immediately before the
7 conveyance or transfer. For purposes of this computation, in the case of
8 a conveyance or transfer of real property other than a conveyance or
9 transfer of an economic interest in real property, the amount of the
10 unpaid balance of any loans secured by mortgages or other encumbrances
11 to be subtracted from consideration is determined by multiplying the
12 total unpaid balance of any loans secured by mortgages or other encum-
13 brances on the real property by the percentage of the ownership interest
14 in the real property being conveyed or transferred to the grantee. In
15 the case of a transfer of an economic interest in real property, such
16 amount to be subtracted is equal to the sum of the following amounts:
17 (i) a reasonable apportionment to the interests in real property owned
18 by the entity of the amount of any loans secured by encumbrances on the
19 ownership interests in the entity which are being conveyed or trans-
20 ferred and (ii) the amount of any loans secured by mortgages or other
21 encumbrances on the real property of the entity multiplied by the
22 percentage interest in the entity which is being conveyed or trans-
23 ferred.

24 Provided, however, that for purposes of the computation made pursuant
25 to this subparagraph, any mortgages or other encumbrances on the real
26 property or economic interest therein which are created in contemplation
27 of the initial formation of the REIT or in contemplation of the convey-
28 ance or transfer of such real property or economic interest therein to
29 the REIT or to a partnership or corporation in which the REIT owns a
30 controlling interest immediately following the conveyance or transfer
31 shall not be considered.

32 (D) Seventy-five percent or more of the cash proceeds received by such
33 REIT from the sale of ownership interests in such REIT upon its initial
34 formation must be used: (i) to make payments on loans secured by any
35 interest in real property, including an ownership interest in an entity
36 owning real property, which is owned directly or indirectly by such
37 REIT; (ii) to pay for capital improvements to real property or any
38 interest therein owned directly or indirectly by such REIT; (iii) to pay
39 brokerage fees and commissions, professional fees and payments to or on
40 behalf of a tenant as an inducement to enter into a lease or sublease
41 incurred in connection with the creation of a leasehold or sublease
42 pertaining to real property or any interest therein owned directly or
43 indirectly by such REIT; (iv) to acquire any interest in real property,
44 including an ownership interest in any entity owning real property,
45 apart from any acquisition to which a reduced rate of tax is applicable
46 pursuant to this subdivision, without regard to this subparagraph; or
47 (v) for reserves established for any of the purposes described in clause
48 (i), (ii) or (iii) of this subparagraph. For purposes of this subpara-
49 graph, the term real property shall include real property wherever
50 located.

51 (E) If a transaction otherwise described in subparagraph (A) or (B) of
52 this paragraph occurs other than in connection with the initial forma-
53 tion of a REIT, the condition set forth in subparagraph (D) shall be
54 disregarded and such transaction shall constitute a "real estate invest-
55 ment trust transfer" if the condition set forth in subparagraph (C)

1 would be satisfied if "fifty percent" is substituted for "forty percent"
2 therein.

3 (3) For purposes of determining the consideration for a real estate
4 investment trust transfer taxable under this subdivision the value of
5 the real property or interest therein shall be equal to the estimated
6 market value as determined by the commissioner of finance for real prop-
7 erty tax purposes as reflected on the most recent notice of assessment
8 issued by such commissioner, or such other value as the taxpayer may
9 establish to the satisfaction of such commissioner.

10 (4) This subdivision shall only apply to real estate investment trust
11 transfers occurring on or after the effective date of this subdivision.

12 f. Notwithstanding any other provision of this chapter, in determining
13 the tax imposed by this chapter with respect to a deed, instrument or
14 transaction conveying or transferring a one, two or three-family house,
15 an individual residential condominium unit, an individual residential
16 cooperative apartment, or an interest therein, the consideration for
17 such conveyance or transfer shall exclude, to the extent otherwise
18 included therein, the amount of any mortgage or other lien or encum-
19 brance on the real property or interest therein that existed before the
20 delivery of the deed or the transfer and remains thereon after the date
21 of delivery of the deed or the transfer, other than any mortgage, lien
22 or encumbrance placed on the property or interest in connection with, or
23 in anticipation of, the conveyance or transfer, or by reason of deferred
24 payments of the purchase price whether represented by notes or other-
25 wise. Provided, however, that this subdivision shall not apply to a
26 conveyance or transfer (1) to a mortgagee, lienor or encumbrancer,
27 regardless of whether the grantor or transferor is or was personally
28 liable for the indebtedness secured by the mortgage, lien or encumbrance
29 or whether the mortgage, lien or encumbrance is canceled of record, or
30 (2) which qualifies as a "real estate investment trust transfer" as
31 defined in subdivision e of this section.

32 § 11-2103 Presumptions and burden of proof. For the purpose of the
33 proper administration of this chapter and to prevent evasion of the tax
34 hereby imposed, it shall be presumed that all deeds and transfers of
35 economic interests in real property are taxable. Where the consider-
36 ation includes property other than money, it shall be presumed that the
37 consideration is the value of the real property or interest therein.
38 Such presumptions shall prevail until the contrary is established and
39 the burden of proving the contrary shall be on the taxpayer. The burden
40 of proving that a lien or encumbrance existed on the real property or
41 interest therein before the delivery of the deed and remained thereon
42 thereafter and the burden of proving the amount of such lien or encum-
43 brance at the time of the delivery of the deed shall be on the taxpayer.

44 § 11-2104 Payment. The tax imposed hereunder shall be paid by the
45 grantor to the commissioner of finance at the office of the register in
46 the county where the deed is or would be recorded within thirty days
47 after the delivery of the deed by the grantor to the grantee but before
48 the recording of such deed, or, in the case of a tax on the transfer of
49 an economic interest in real property, at such place as the commissioner
50 of finance shall designate, within thirty days after the transfer. The
51 grantee shall also be liable for the payment of such tax in the event
52 that the amount of tax due is not paid by the grantor or the grantor is
53 exempt from tax. All moneys received as such payments by the register
54 during the preceding month shall be transmitted to the commissioner of
55 finance on the first day of each month or on such other day as is mutu-
56 ally agreeable to the commissioner of finance and the register. From the

1 moneys so received by him or her, the commissioner of finance shall set
2 said in a special account:

3 (1) the total amount of taxes imposed pursuant to the provisions of
4 paragraph three of subdivision a of section 11-2102 of this chapter
5 including any interest or penalties thereon;

6 (2) fifty percent of the total amount of taxes imposed pursuant to the
7 provisions of paragraph four of subdivision a of section 11-2102 of this
8 chapter, including fifty percent of any interest or penalties thereon,
9 provided, however, that where such tax is measured by the consideration
10 for a conveyance without deduction for the amount of any mortgage or
11 other lien or encumbrance on the real property or interest therein which
12 existed before the delivery of the deed and remains thereon after the
13 delivery of the deed, the entire amount of tax imposed at the rate of
14 one percent on the portion of the consideration ascribable to such
15 nondeductible mortgage, lien or other encumbrance, including any inter-
16 est or penalties thereon, and fifty percent of the tax on the balance of
17 the consideration, including fifty percent of any interest or penalties
18 thereon, shall be set aside in such special account;

19 (3) fifty percent of the total amount of taxes imposed pursuant to the
20 provisions of subparagraph (iii) of paragraph seven of subdivision a of
21 section 11-2102 of this chapter, including fifty percent of any interest
22 or penalties thereon;

23 (4) fifty percent of the total amount of taxes imposed pursuant to the
24 provisions of paragraph eight of subdivision a of section 11-2102 of
25 this chapter, including fifty percent of any interest or penalties ther-
26 eon;

27 (5) fifty percent of the total amount of taxes imposed at the rate of
28 two percent pursuant to the provisions of clause (ii) of subparagraph A
29 of paragraph one of subdivision b of section 11-2102 of this chapter
30 including fifty percent of any interest or penalties thereon;

31 (6) with respect to any conveyance of real property, transfer of an
32 economic interest therein, or any grant, assignment or surrender of a
33 leasehold interest in real property, made on or after August first,
34 nineteen hundred eighty-nine and taxable under this chapter, in each
35 instance where the tax rate is in excess of two percent, a portion of
36 the tax received equal to one percent of the consideration subject to
37 the tax plus any interest or penalty attributable to such portion of the
38 tax; and

39 (7) notwithstanding anything in subdivision six of this section to the
40 contrary, in each instance where the tax rate imposed pursuant to subdivi-
41 sion e of section 11-2102 of this chapter is in excess of one percent,
42 a portion of the tax received equal to one-half of one percent of the
43 total consideration for the real property or economic interest therein
44 conveyed or transferred, plus any interest or penalty attributable to
45 such portion of the tax.

46 Moneys in such account shall be used for payment by such commissioner
47 to the state comptroller for deposit in the urban mass transit operating
48 assistance account of the mass transportation operating assistance fund
49 of any amount of insufficiency certified by the state comptroller pursu-
50 ant to the provisions of subdivision six of section eighty-eight-a of
51 the state finance law, and, on the fifteenth day of each month, the
52 commissioner of finance shall transmit all funds in such account on the
53 last day of the preceding month, except the amount required for the
54 payment of any amount of insufficiency certified by the state comp-
55 troller and such amount as he or she deems necessary for refunds and
56 such other amounts necessary to finance the New York City transportation

1 disabled committee and the New York City paratransit system as estab-
2 lished by section fifteen-b of the transportation law, provided, howev-
3 er, that such amounts shall not exceed six percent of the total funds in
4 the account but in no event be less than one hundred seventy-five thou-
5 sand dollars beginning April first, nineteen hundred eighty-six, and
6 further that beginning November fifteenth, nineteen hundred eighty-four
7 and during the entire period prior to operation of such system, the
8 total of such amounts shall not exceed three hundred seventy-five thou-
9 sand dollars for the administrative expenses of such committee and fifty
10 thousand dollars for the expenses of the agency designated pursuant to
11 paragraph b of subdivision five of such section, and other amounts
12 necessary to finance the operating needs of the private bus companies
13 franchised by the city of New York and eligible to receive state operat-
14 ing assistance under section eighteen-b of the transportation law,
15 provided, however, that such amounts shall not exceed four percent of
16 the total funds in the account, to the New York city transit authority
17 for mass transit within the city.

18 § 11-2105 Returns. a. A joint return shall be filed by both the
19 grantor and the grantee for each deed whether or not a tax is due there-
20 on. Such return shall be filed with the commissioner of finance within
21 thirty days after the delivery of the deed by the grantor to the grantee
22 but before the recording of such deed. The commissioner of finance may,
23 by rule, require that such returns be filed electronically.

24 Filing shall be accomplished by delivering the return to the register
25 for transmittal to the commissioner of finance or, where required by the
26 commissioner of finance, by electronic filing of the return in a manner
27 designated by the commissioner of finance. In the case of a transfer of
28 an economic interest in real property, a joint return shall be filed in
29 the above manner by both the grantor and the grantee for each instrument
30 or transaction by which such transfer is effected, whether or not a tax
31 is due thereon. Such return shall be filed with the commissioner of
32 finance, at such place and in such manner as he or she may designate
33 within thirty days after the transfer. The commissioner of finance shall
34 prescribe the form of the return and the information which it shall
35 contain. The return shall be signed by both the grantor or the grantor's
36 agent and the grantee or the grantee's agent. Where the commissioner of
37 finance requires electronic filing, the return shall be signed electron-
38 ically. Upon the filing of such return for a deed, evidence of the
39 filing shall be affixed to the deed by the register. The commissioner of
40 finance may provide for the use of stamps as evidence of payment and
41 that they shall be affixed to the deed before it is recorded. Where
42 either the grantor or grantee has failed to sign the return, it shall be
43 accepted as a return, but the party who has failed to sign the return or
44 file a separate return shall be subject to the penalties applicable to a
45 person who has failed to file a return and the period of limitations for
46 assessment of tax or of additional tax shall not apply to such party.
47 For good cause, the commissioner of finance may waive any rule requiring
48 electronic filing and may permit a return to be filed in such other
49 manner as the commissioner of finance may designate.

50 b. Returns shall be preserved for three years and thereafter until
51 the commissioner of finance permits them to be destroyed.

52 c. The commissioner of finance may require amended returns to be filed
53 within twenty days after notice and to contain the information specified
54 in the notice.

55 d. If a return required by this chapter is not filed or if a return
56 when filed is incorrect or insufficient on its face the commissioner of

1 finance shall take the necessary steps to enforce the filing of such a
2 return or of a corrected return.

3 e. Where a deed, or instrument or transaction has more than one gran-
4 tor or more than one grantee, the return may be signed by any one of the
5 grantors and by any one of the grantees, provided, however, that those
6 not signing shall not be relieved of any liability for the tax imposed
7 by this chapter.

8 f. The payment of, and the filing of returns relating to, the taxes
9 imposed hereunder, shall be required as a condition precedent to the
10 recording or filing of a deed, lease, assignment or surrender of lease
11 or other instrument effecting a conveyance or transfer subject to such
12 taxes.

13 g. Every cooperative housing corporation shall be required to file an
14 information return with the commissioner of finance as follows: such
15 information return shall be filed by February fifteenth of the year two
16 thousand and of each year thereafter, covering the reporting period
17 beginning on January sixth of the year preceding the filing and ending
18 on January fifth of the year of the filing. For reporting periods begin-
19 ning before January sixth, nineteen hundred ninety-nine, such informa-
20 tion return shall be filed by July fifteenth of each year covering the
21 preceding period of January first through June thirtieth and by January
22 fifteenth of each year covering the preceding period of July first
23 through December thirty-first provided, however, that for the reporting
24 period from January first through June thirtieth, nineteen hundred
25 eighty-nine, such information return shall be filed by July thirty-
26 first, nineteen hundred eighty-nine. The return shall contain such
27 information regarding the transfer of shares of stock in the cooperative
28 housing corporation as the commissioner may deem necessary, including
29 but not limited to, the names, addresses and employer identification
30 numbers or social security numbers of the grantor and the grantee, the
31 number of shares transferred, the date of the transfer and the consider-
32 ation paid for such transfer, provided, however, that if such cooper-
33 ative housing corporation elects that such information return be deemed
34 an application for an abatement pursuant to paragraph (f) of subdivision
35 three of section four hundred sixty-seven-a of the real property tax
36 law, such return shall contain the information required pursuant to
37 paragraph (d) of subdivision three of such section. The commissioner of
38 finance may enter into an agreement with the commissioner of taxation
39 and finance of the state of New York to provide that a single informa-
40 tion return may be filed for purposes of the tax imposed by this chapter
41 and the real estate transfer tax imposed by article thirty-one of the
42 tax law.

43 h. Returns with respect to the conveyance of a one- or two-family
44 dwelling will not be accepted for filing unless accompanied by an affi-
45 davit signed by the grantor and grantee indicating that the premises is
46 equipped with an approved and operational smoke detecting device as
47 provided in article six of subchapter seventeen of chapter one of title
48 twenty-seven of this code.

49 i. When the grantor or grantee of a deed for a building used as resi-
50 dential real property containing up to four family dwelling units is a
51 limited liability company, the joint return shall not be accepted for
52 filing unless it is accompanied by a document which identifies the names
53 and business addresses of all members, managers, and any other author-
54 ized persons, if any, of such limited liability company and the names
55 and business addresses or, if none, the business addresses of all share-
56 holders, directors, officers, members, managers and partners of any

1 limited liability company or other business entity that are to be the
2 members, managers or authorized persons, if any, of such limited liabil-
3 ity company. The identification of such names and addresses shall not be
4 deemed an unwarranted invasion of personal privacy pursuant to article
5 six of the public officers law. If any such member, manager or author-
6 ized person of the limited liability company is itself a limited liabil-
7 ity company or other business entity other than a publicly traded enti-
8 ty, a REIT, an UPREIT, or a mutual fund, the names and addresses of the
9 shareholders, directors, officers, members, managers and partners of the
10 limited liability company or other business entity shall also be
11 disclosed until full disclosure of ultimate ownership by natural persons
12 is achieved. For purposes of this subdivision, the terms "members",
13 "managers", "authorized person", "limited liability company" and "other
14 business entity" shall have the same meaning as those terms are defined
15 in section one hundred two of the limited liability company law.

16 § 11-2106 Exemptions. a. The following shall be exempt from the
17 payment of the tax imposed by this chapter and from filing a return:

18 1. The state of New York, or any of its agencies, instrumentalities,
19 public corporations, including a public corporation created pursuant to
20 agreement or compact with another state or the Dominion of Canada, or
21 political subdivisions;

22 2. The United States of America, and any of its agencies and instru-
23 mentalities, insofar, as they are immune from taxation, provided, howev-
24 er, that the exemption of such governmental bodies or persons shall not
25 relieve a grantee from them of liability for the tax or from filing a
26 return.

27 b. The tax imposed by this chapter shall not apply to any of the
28 following deeds, instruments or transactions:

29 1. A deed, instrument or transaction conveying or transferring real
30 property or an economic interest therein by or to the United Nations or
31 other world-wide international organizations of which the United States
32 of America is a member;

33 2. A deed, instrument or transaction conveying or transferring real
34 property or an economic interest therein by or to any corporation, or
35 association, or trust, or community chest, fund or foundation, organized
36 or operated exclusively for religious, charitable, or educational
37 purposes, or for the prevention of cruelty to children or animals, and
38 no part of the net earnings of which inures to the benefit of any
39 private shareholder or individual and no substantial part of the activ-
40 ities of which is carrying on propaganda, or otherwise attempting to
41 influence legislation; provided, however, that nothing in this paragraph
42 shall include an organization operated for the primary purpose of carry-
43 ing on a trade or business for profit, whether or not all of its profits
44 are payable to one or more organizations described in this paragraph;

45 3. A deed, instrument or transaction conveying or transferring real
46 property or an economic interest therein to any governmental body or
47 person exempt from payment of the tax pursuant to subdivision a of this
48 section;

49 4. A deed delivered pursuant to a contract made prior to May first,
50 nineteen hundred fifty-nine;

51 5. A deed delivered by any governmental body or person exempt from
52 payment of the tax pursuant to subdivision a of this section as a result
53 of a sale at a public auction held in accordance with the provisions of
54 a contract made prior to May first, nineteen hundred fifty-nine;

55 6. A deed or instrument given solely as security for, or a transaction
56 the sole purpose of which is to secure, a debt or obligation or a deed

1 or instrument given, or a transaction entered into, solely for the
2 purpose of returning such security;

3 7. A deed, instrument or transaction conveying or transferring real
4 property or an economic interest therein from a mere agent, dummy, straw
5 man or conduit to his principal or a deed, instrument or transaction
6 conveying or transferring real property or an economic interest therein
7 from the principal to his agent, dummy, straw man or conduit.

8 8. A deed, instrument or transaction conveying or transferring real
9 property or an economic interest therein that effects a mere change of
10 identity or form of ownership or organization to the extent the benefi-
11 cial ownership of such real property or economic interest therein
12 remains the same, other than a conveyance to a cooperative housing
13 corporation of the land and building or buildings comprising the cooper-
14 ative dwelling or dwellings. For purposes of this paragraph, the term
15 "cooperative housing corporation" shall not include a housing company
16 organized and operating pursuant to the provisions of article two, four,
17 five or eleven of the private housing finance law.

18 9. A deed, instrument or transaction conveying or transferring real
19 property or an economic interest therein by or to any housing develop-
20 ment fund company organized pursuant to article eleven of the private
21 housing finance law or to an entity, the controlling interest of which
22 is held by such a company, if at the time of such conveyance or trans-
23 fer, such real property is subject to, or simultaneously with such
24 conveyance or transfer is made subject to, a regulatory agreement with
25 the state of New York, a municipal corporation or any other public
26 corporation created by or pursuant to any law of the state of New York
27 that: encumbers the real property for thirty years or more, requires
28 mutual consent for revocation or amendment, restricts more than fifty
29 percent of the floor area, other than common areas, to residential real
30 property, and restricts at least sixty-six and two-thirds percent of
31 such residential real property to purchase, lease, license or other use
32 by persons of low income and families of low income within the meaning
33 of section two of the private housing finance law; provided, however,
34 that if such regulatory agreement restricts less than one hundred
35 percent of the floor area, other than common areas, to purchase, lease,
36 license or other use by persons of low income and families of low income
37 within the meaning of section two of the private housing finance law,
38 the tax shall apply to the consideration less the product of the consid-
39 eration and a fraction, the numerator of which is the floor area that
40 such regulatory agreement restricts to purchase, lease, license or other
41 use by persons of low income and families of low income within the mean-
42 ing of section two of the private housing finance law and the denomina-
43 tor of which is the entire floor area, minus the floor area of common
44 areas; provided further, that if such real property is made subject to a
45 regulatory agreement that meets the terms of this paragraph within two
46 years of the conveyance or transfer then the commissioner of finance may
47 issue a refund based on the application of this paragraph pursuant to
48 the provisions of section 11-2108 of this chapter, treating the transfer
49 or conveyance as if such real property were subject to such regulatory
50 agreement as of the date of such transfer or conveyance, if, notwith-
51 standing any other time limitation set forth in section 11-2108 of this
52 chapter, application to the commissioner of finance for such refund is
53 made within twelve months of the effective date of such regulatory
54 agreement.

55 c. Notwithstanding any provision of this chapter to the contrary,
56 where stock of a cooperative housing corporation and the appurtenant

1 proprietary leasehold are transferred to such cooperative housing corpo-
2 ration or a wholly owned subsidiary of such housing corporation, or to
3 the holder of a mortgage on the real property of such cooperative hous-
4 ing corporation or a wholly owned subsidiary of such holder of a mort-
5 gage on the real property of such cooperative housing corporation, such
6 cooperative housing corporation or its wholly owned subsidiary, or such
7 mortgage holder or its wholly owned subsidiary, shall not be liable as
8 grantee for the tax determined to be due under this chapter from the
9 grantor in such transfer, provided that such transfer occurred pursuant
10 to, as the result of, or in connection with an action, proceeding, or
11 other procedure to which such cooperative housing corporation is a
12 party, to enforce a lien, security interest or other rights on or in
13 such stock and proprietary leasehold, including but not limited to
14 rights under the proprietary lease. This subdivision shall apply to
15 transfers occurring on or after June sixteenth, nineteen hundred nine-
16 ty-two.

17 § 11-2107 Determination of tax. If a return required by this chapter
18 is not filed, or if a return when filed is incorrect or insufficient,
19 the amount of tax due shall be determined by the commissioner of finance
20 from such information as may be obtainable, including the assessed valu-
21 ation of the real property or interest therein. Notice of such determi-
22 nation shall be given to the person liable for the tax. Such determi-
23 nation shall finally and irrevocably fix the tax unless the person
24 against whom it is assessed, within ninety days after the giving of
25 notice of such determination, or, if the commissioner of finance has
26 established a conciliation procedure pursuant to section 11-124 of the
27 code of the preceding municipality and the taxpayer has requested a
28 conciliation conference in accordance therewith, within ninety days from
29 the mailing of a conciliation decision or the date of the commissioner's
30 confirmation of the discontinuance of the conciliation proceeding, both
31 (1) serves a petition upon the commissioner of finance and (2) files a
32 petition with the tax appeals tribunal for a hearing, or, unless the
33 commissioner of finance of his or her own motion shall redetermine the
34 same. Such hearing and any appeal to the tax appeals tribunal sitting en
35 banc from the decision rendered in such hearing shall be conducted in
36 the manner and subject to the requirements prescribed by the tax appeals
37 tribunal pursuant to sections one hundred sixty-eight through one
38 hundred seventy-two of the charter of the preceding municipality as it
39 existed January first, nineteen hundred ninety-four. After such hearing
40 the tax appeals tribunal shall give notice of its decision to the person
41 against whom the tax is assessed and to the commissioner of finance. A
42 decision of the tax appeals tribunal sitting en banc shall be reviewable
43 for error, illegality or unconstitutionality or any other reason whatso-
44 ever by a proceeding under article seventy-eight of the civil practice
45 law and rules if application therefor is made to the supreme court by
46 the person against whom the tax was assessed within four months after
47 the giving of the notice of such tax appeals tribunal decision. A
48 proceeding under article seventy-eight of the civil practice law and
49 rules shall not be instituted by a taxpayer unless: (a) the amount of
50 any tax sought to be reviewed, with penalties and interest thereon, if
51 any, shall be first deposited with the commissioner of finance and there
52 shall be filed with the commissioner of finance an undertaking, issued
53 by a surety company authorized to transact business in this state and
54 approved by the superintendent of insurance of this state as to solvency
55 and responsibility, in such amount and with such sureties as a justice
56 of the supreme court shall approve, to the effect that if such proceed-

1 ing be dismissed or the tax confirmed, the taxpayer will pay all costs
2 and charges which may accrue in the prosecution of the proceeding; or
3 (b) at the option of the taxpayer such undertaking filed with the
4 commissioner of finance may be in a sum sufficient to cover the taxes,
5 penalties and interest thereon stated in such decision plus the costs
6 and charges which may accrue against it in the prosecution of the
7 proceeding, in which event the taxpayer shall not be required to deposit
8 such taxes, penalties and interest as a condition precedent to the
9 application.

10 § 11-2108 Refunds. a. In the manner provided in this section the
11 commissioner of finance shall refund or credit, without interest, any
12 tax, penalty or interest erroneously, illegally or unconstitutionally
13 collected or paid if application to the commissioner of finance for such
14 refund shall be made within one year from the payment thereof. Whenever
15 a refund is made or denied by the commissioner of finance, the commis-
16 sioner shall state his or her reason therefor and give notice thereof to
17 the taxpayer in writing. Such application may be made by the grantor,
18 grantee or other person who has actually paid the tax. The commissioner
19 of finance may, in lieu of any refund required to be made, allow credit
20 therefor on payments due from the applicant.

21 b. Any determination of the commissioner of finance denying a refund
22 or credit pursuant to subdivision a of this section shall be final and
23 irrevocable unless the applicant for such refund or credit, within nine-
24 ty days from the mailing of notice of such determination, or, if the
25 commissioner of finance has established a conciliation procedure pursu-
26 ant to section 11-124 of the code of the preceding municipality and the
27 applicant has requested a conciliation conference in accordance there-
28 with, within ninety days from the mailing of a conciliation decision or
29 the date of the commissioner's confirmation of the discontinuance of the
30 conciliation proceeding, both (1) serves a petition upon the commission-
31 er of finance and (2) files a petition with the tax appeals tribunal for
32 a hearing. Such petition for a refund or credit made as herein provided
33 shall be deemed an application for a revision of any tax, penalty or
34 interest complained of. Such hearing and any appeal to the tax appeals
35 tribunal sitting en banc from the decision rendered in such hearing
36 shall be conducted in the manner and subject to the requirements
37 prescribed by the tax appeals tribunal pursuant to sections one hundred
38 sixty-eight through one hundred seventy-two of the charter of the
39 preceding municipality as it existed January first, nineteen hundred
40 ninety-four. After such hearing, the tax appeals tribunal shall give
41 notice of its decision to the applicant and the commissioner of finance.
42 The applicant shall be entitled to review such decision of the tax
43 appeals tribunal sitting en banc by a proceeding pursuant to article
44 seventy-eight of the civil practice law and rules, provided such
45 proceeding is instituted within four months after the giving of notice
46 of such decision, and provided, in the case of an application by a
47 taxpayer, that a final determination of tax due was not previously made.
48 Such a proceeding shall not be instituted by a taxpayer unless an under-
49 taking is filed with the commissioner of finance in such amount and with
50 such sureties as a justice of the supreme court shall approve to the
51 effect that if such proceeding be dismissed or the tax confirmed, the
52 taxpayer will pay all costs and charges which may accrue in the prose-
53 cution of such proceeding.

54 c. A person shall not be entitled to a revision, refund or credit
55 under this section of a tax, interest or penalty which had been deter-
56 mined to be due pursuant to the provisions of section 11-2107 of this

1 chapter where he or she has had a hearing or an opportunity for a hear-
2 ing, as provided in said section, or has failed to avail himself or
3 herself of the remedies therein provided. No refund or credit shall be
4 made of a tax, interest or penalty paid after a determination by the
5 commissioner of finance made pursuant to section 11-2107 of this chapter
6 unless it be found that such determination was erroneous, illegal or
7 unconstitutional or otherwise improper, by the tax appeals tribunal
8 after a hearing, or on the commissioner of finance's own motion, or, if
9 such tax appeals tribunal affirms in whole or in part the determination
10 of the commissioner of finance, in a proceeding under article seventy-
11 eight of the civil practice law and rules, pursuant to the provisions of
12 said section, in which event refund or credit without interest shall be
13 made of the tax, interest or penalty found to have been overpaid.

14 § 11-2109 Reserves. In cases where the grantor or grantee has
15 applied for a refund and has instituted a proceeding under article
16 seventy-eight of the civil practice law and rules to review a determi-
17 nation adverse to him or her on his or her application for refund, the
18 comptroller shall set up appropriate reserves to meet any decision
19 adverse to the city.

20 § 11-2110 Remedies exclusive. The remedies provided by sections
21 11-2107 and 11-2108 of this chapter shall be exclusive remedies avail-
22 able to any person for the review of tax liability imposed by this chap-
23 ter; and no determination or proposed determination of tax or determi-
24 nation on any application for refund shall be enjoined or reviewed by an
25 action for declaratory judgment, an action for money had and received or
26 by any action or proceeding other than a proceeding in the nature of a
27 certiorari proceeding under article seventy-eight of the civil practice
28 law and rules; provided, however, that a taxpayer may proceed by declar-
29 atory judgment if he or she institutes suit within thirty days after a
30 deficiency assessment is made and pays the amount of the deficiency
31 assessment to the commissioner of finance prior to the institution of
32 such suit and posts a bond for costs as provided in section 11-2107 of
33 this chapter.

34 § 11-2111 Proceedings to recover tax. a. Whenever any grantor or
35 grantee shall fail to pay any tax, penalty or interest imposed by this
36 chapter as herein provided, the corporation counsel shall, upon the
37 request of the commissioner of finance bring or cause to be brought an
38 action to enforce the payment of the same on behalf of the city of
39 Staten Island in any court of the state of New York or of any other
40 state or of the United States. If, however, the commissioner of finance
41 in his or her discretion believes that any such grantor or grantee
42 subject to the provisions of this chapter is about to cease business,
43 leave the state or remove or dissipate the assets out of which the tax
44 or penalty might be satisfied, and that any such tax or penalty will not
45 be paid when due, such commissioner may declare such tax or penalty to
46 be immediately due and payable and may issue a warrant immediately.

47 b. As an additional or alternate remedy, the commissioner of finance
48 may issue a warrant, directed to the city sheriff commanding him or her
49 to levy upon and sell the real and personal property of the grantor,
50 grantee or other person liable for the tax which may be found within the
51 city, for the payment of the amount thereof, with any penalty and inter-
52 est, and the cost of executing the warrant, and to return such warrant
53 to the commissioner of finance and to pay to him or her the money
54 collected by virtue thereof within sixty days after the receipt of such
55 warrant. The city sheriff shall within five days after the receipt of
56 the warrant file with the county clerk a copy thereof, and thereupon

1 such clerk shall enter in the judgment docket the name of the person
2 mentioned in the warrant and the amount of the tax, penalty and interest
3 for which the warrant is issued and the date when such copy is filed.
4 Thereupon the amount of such warrant so docketed shall become a lien
5 upon the title to and the interest in real and personal property of the
6 person against whom the warrant is issued. The city sheriff shall then
7 proceed upon the warrant in the same manner, and with like effect, as
8 that provided by law in respect to executions issued against property
9 upon judgments of a court of record and for services in executing the
10 warrant he or she shall be entitled to the same fees, which such sheriff
11 may collect in the same manner. In the discretion of the commissioner
12 of finance a warrant of like terms, force and effect may be issued and
13 directed to an officer or employee of the department of finance, and in
14 the execution thereof such officer or employee shall have all the powers
15 conferred by law upon sheriffs, but shall be entitled to no fee or
16 compensation in excess of the actual expenses paid in the performance of
17 such duty. If a warrant is returned not satisfied in full, the commis-
18 sioner of finance may from time to time issue new warrants and shall
19 also have the same remedies to enforce the amount due thereunder as if
20 the city had recovered judgment therefor and execution thereon had been
21 returned unsatisfied.

22 c. The commissioner of finance, if he or she finds that the interests
23 of the city will not thereby be jeopardized, and upon such conditions as
24 the commissioner of finance may require, may release any property from
25 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
26 tions to tax, penalties and interest filed pursuant to subdivision b of
27 this section, and such release or vacating of the warrant may be
28 recorded in the office of any recording officer in which such warrant
29 has been filed. The clerk shall thereupon cancel and discharge as of the
30 original date of docketing the vacated warrant.

31 § 11-2112 General powers of the commissioner of finance. In addition
32 to the powers granted to the commissioner of finance in this chapter, he
33 or she is hereby authorized and empowered:

34 1. To make, adopt and amend rules and regulations appropriate to the
35 carrying out of this chapter and the purposes thereof;

36 2. To extend, for cause shown, the time for filing any return for a
37 period not exceeding thirty days; and to compromise disputed claims in
38 connection with the taxes hereby imposed;

39 3. To request information from the tax commission of the state of New
40 York or the treasury department of the United States relative to any
41 person; and to afford returns, reports and other information to such tax
42 commission or such treasury department relative to any person, any other
43 provision of this chapter to the contrary notwithstanding;

44 4. To delegate his or her functions under this section to a deputy
45 commissioner of finance or any employee or employees of the department
46 of finance;

47 5. To prescribe the methods for determining the consideration and net
48 consideration attributable to that portion of real property located
49 partly within and partly without the city of Staten Island which is
50 located within the city of Staten Island or any interest therein;

51 6. To require any grantor or grantee to keep such records, and for
52 such length of time as may be required for the proper administration of
53 this chapter and to furnish such records to the commissioner of finance
54 upon request;

55 7. To assess, determine, revise and adjust the taxes imposed under
56 this chapter.

1 § 11-2113 Administration of oaths and compelling testimony. a. The
2 commissioner of finance, his or her employees or agents duly designated
3 and authorized by him or her, the tax appeals tribunal and any of its
4 duly designated and authorized employees or agents shall have power to
5 administer oaths and take affidavits in relation to any matter or
6 proceeding in the exercise of their powers and duties under this chap-
7 ter. The commissioner of finance and the tax appeals tribunal shall have
8 power to subpoena and require the attendance of witnesses and the
9 production of books, papers and documents to secure information perti-
10 nent to the performance of the duties of the commissioner or of the tax
11 appeals tribunal under this chapter and of the enforcement of this chap-
12 ter and to examine them in relation thereto, and to issue commissions
13 for the examination of witnesses who are out of the state or unable to
14 attend before such commissioner or the tax appeals tribunal or excused
15 from attendance.

16 b. A justice of the supreme court either in court or at chambers shall
17 have power summarily to enforce by proper proceedings the attendance and
18 testimony of witnesses and the production and examination of books,
19 papers and documents called for by the subpoena of the commissioner of
20 finance or the tax appeals tribunal under this chapter.

21 c. Cross-reference; criminal penalties. For failure to obey subpoenas
22 or for testifying falsely, see section 11-4007 of this title; for
23 supplying false or fraudulent information, see section 11-4009 of this
24 title.

25 d. The officers who serve the summons or subpoena of the commissioner
26 of finance or the tax appeals tribunal and witnesses attending in
27 response thereto shall be entitled to the same fees as are allowed to
28 officers and witnesses in civil cases in courts of record, except as
29 herein otherwise provided. Such officers shall be the city sheriff and
30 his or her duly appointed deputies or any officers or employees of the
31 department of finance or the tax appeals tribunal, designated to serve
32 such process.

33 § 11-2114 Interest and penalties. (a) Interest on underpayments. If
34 any amount of tax is not paid on or before the last date prescribed for
35 payment, without regard to any extension of time granted for payment,
36 interest on such amount at the rate set by the commissioner of finance
37 pursuant to subdivision (g) of this section, or, if no rate is set, at
38 the rate of seven and one-half percent per annum, shall be paid for the
39 period from such last date to the date of payment. In computing the
40 amount of interest to be paid, such interest shall be compounded daily.
41 Interest under this subdivision shall not be paid if the amount thereof
42 is less than one dollar.

43 (b) (1) Failure to file return. (A) In case of failure to file a
44 return under this chapter on or before the prescribed date, determined
45 with regard to any extension of time for filing, unless it is shown that
46 such failure is due to reasonable cause and not due to willful neglect,
47 there shall be added to the amount required to be shown as tax on such
48 return five percent of the amount of such tax if the failure is for not
49 more than one month, with an additional five percent for each additional
50 month or fraction thereof during which such failure continues, not
51 exceeding twenty-five percent in the aggregate.

52 (B) In the case of a failure to file a return of tax within sixty days
53 of the date prescribed for filing of such return, determined with regard
54 to any extension of time for filing, unless it is shown that such fail-
55 ure is due to reasonable cause and not due to willful neglect, the addi-
56 tion to tax under subparagraph (A) of this paragraph shall not be less

1 than the lesser of one hundred dollars or one hundred percent of the
2 amount required to be shown as tax on such return.

3 (C) For purposes of this paragraph, the amount of tax required to be
4 shown on the return shall be reduced by the amount of any part of the
5 tax which is paid on or before the date prescribed for payment of the
6 tax and by the amount of any credit against the tax which may be claimed
7 upon the return.

8 (2) Failure to pay tax shown on return. In case of failure to pay the
9 amount shown as tax on a return required to be filed under this chapter
10 on or before the prescribed date, determined with regard to any exten-
11 sion of time for payment, unless it is shown that such failure is due to
12 reasonable cause and not due to willful neglect, there shall be added to
13 the amount shown as tax on such return one-half of one percent of the
14 amount of such tax if the failure is not for more than one month, with
15 an additional one-half of one percent for each additional month or frac-
16 tion thereof during which such failure continues, not exceeding twenty-
17 five percent in the aggregate. For the purpose of computing the addition
18 for any month the amount of tax shown on the return shall be reduced by
19 the amount of any part of the tax which is paid on or before the begin-
20 ning of such month and by the amount of any credit against the tax which
21 may be claimed upon the return. If the amount of tax required to be
22 shown on a return is less than the amount shown as tax on such return,
23 this paragraph shall be applied by substituting such lower amount.

24 (3) Failure to pay tax required to be shown on return. In case of
25 failure to pay any amount in respect of any tax required to be shown on
26 a return required to be filed under this chapter which is not so shown,
27 including a determination made pursuant to section 11-2107 of this chap-
28 ter, within ten days of the date of a notice and demand therefor, unless
29 it is shown that such failure is due to reasonable cause and not due to
30 willful neglect, there shall be added to the amount of tax stated in
31 such notice and demand one-half of one percent of such tax if the fail-
32 ure is not for more than one month, with an additional one-half of one
33 percent for each additional month or fraction thereof during which such
34 failure continues, not exceeding twenty-five percent in the aggregate.
35 For the purpose of computing the addition for any month, the amount of
36 tax stated in the notice and demand shall be reduced by the amount of
37 any part of the tax which is paid before the beginning of such month.

38 (4) Limitations on additions.

39 (A) With respect to any return, the amount of the addition under para-
40 graph one of this subdivision shall be reduced by the amount of the
41 addition under paragraph two of this subdivision for any month to which
42 an addition applies under both paragraphs one and two of this subdivi-
43 sion. In any case described in subparagraph (B) of paragraph one of this
44 subdivision, the amount of the addition under such paragraph one shall
45 not be reduced below the amount provided in such subparagraph.

46 (B) With respect to any return, the maximum amount of the addition
47 permitted under paragraph three of this subdivision shall be reduced by
48 the amount of the addition under paragraph one of this subdivision,
49 determined without regard to subparagraph (B) of such paragraph one,
50 which is attributable to the tax for which the notice and demand is made
51 and which is not paid within ten days of such notice and demand.

52 (c) Underpayment due to negligence. (1) If any part of an underpayment
53 of tax is due to negligence or intentional disregard of this chapter or
54 any rules or regulations hereunder, but without intent to defraud, there
55 shall be added to the tax a penalty equal to five percent of the under-
56 payment.

1 (2) There shall be added to the tax, in addition to the amount deter-
2 mined under paragraph one of this subdivision, an amount equal to fifty
3 percent of the interest payable under subdivision (a) of this section
4 with respect to the portion of the underpayment described in such para-
5 graph one which is attributable to the negligence or intentional discre-
6 gard referred to in such paragraph one, for the period beginning on the
7 last date prescribed by law for payment of such underpayment, determined
8 without regard to any extension, and ending on the date of the assess-
9 ment of the tax, or, if earlier, the date of the payment of the tax.

10 (d) Underpayment due to fraud. (1) If any part of an underpayment of
11 tax is due to fraud, there shall be added to the tax a penalty equal to
12 fifty percent of the underpayment.

13 (2) There shall be added to the tax, in addition to the penalty deter-
14 mined under paragraph one of this subdivision, an amount equal to fifty
15 percent of the interest payable under subdivision (a) of this section
16 with respect to the portion of the underpayment described in such para-
17 graph one which is attributable to fraud, for the period beginning on
18 the last day prescribed by law for payment of such underpayment, deter-
19 mined without regard to any extension, and ending on the date of the
20 assessment of the tax, or, if earlier, the date of the payment of the
21 tax.

22 (3) The penalty under this subdivision shall be in lieu of any other
23 addition to tax imposed by subdivision (b) or (c) of this section.

24 (e) Additional penalty. Any person who, with fraudulent intent, shall
25 fail to pay any tax imposed by this chapter, or to make, render, sign or
26 certify any return, or to supply any information within the time
27 required by or under this chapter, shall be liable for a penalty of not
28 more than one thousand dollars, in addition to any other amounts
29 required under this chapter to be imposed, assessed and collected by the
30 commissioner of finance. The commissioner of finance shall have the
31 power, in his or her discretion, to waive, reduce or compromise any
32 penalty under this subdivision.

33 (f) The interest and penalties imposed by this section shall be paid
34 and disposed of in the same manner as other revenues from this chapter.
35 Unpaid interest and penalties may be enforced in the same manner as the
36 tax imposed by this chapter.

37 (g)(1) Authority to set interest rates. The commissioner of finance
38 shall set the rate of interest to be paid pursuant to subdivision (a) of
39 this section, but if no such rate of interest is set, such rate shall be
40 deemed to be set at seven and one-half percent per annum. Such rate
41 shall be the rate prescribed in paragraph two of this subdivision but
42 shall not be less than seven and one-half percent per annum. Any such
43 rate set by the commissioner of finance shall apply to taxes, or any
44 portion thereof, which remain or become due on or after the date on
45 which such rate becomes effective and shall apply only with respect to
46 interest computed or computable for periods or portions of periods
47 occurring in the period in which such rate is in effect.

48 (2) General rule. The rate of interest set under this subdivision
49 shall be the sum of (i) the federal short-term rate as provided under
50 paragraph three of this subdivision, plus (ii) seven percentage points.

51 (3) Federal short-term rate. For purposes of this subdivision:

52 (A) The federal short-term rate for any month shall be the federal
53 short-term rate determined by the United States secretary of the treas-
54 ury during such month in accordance with subsection (d) of section
55 twelve hundred seventy-four of the internal revenue code for use in
56 connection with section six thousand six hundred twenty-one of the

1 internal revenue code. Any such rate shall be rounded to the nearest
2 full percent, or, if a multiple of one-half of one percent, such rate
3 shall be increased to the next highest full percent.

4 (B) Period during which rate applies.

5 (i) In general. Except as provided in clause (ii) of this subpara-
6 graph, the federal short-term rate for the first month in each calendar
7 quarter shall apply during the first calendar quarter beginning after
8 such month.

9 (ii) Special rule for the month of September, nineteen hundred eight-
10 y-nine. The federal short-term rate for the month of April, nineteen
11 hundred eighty-nine shall apply with respect to setting the rate of
12 interest for the month of September, nineteen hundred eighty-nine.

13 (4) Publication of interest rate. The commissioner of finance shall
14 cause to be published in the City Record, and give other appropriate
15 general notice of, the interest rate to be set under this subdivision no
16 later than twenty days preceding the first day of the calendar quarter
17 during which such interest rate applies. The setting and publication of
18 such interest rate shall not be included within paragraph (a) of subdi-
19 vision five of section one thousand forty-one of the city charter of the
20 preceding municipality as it existed January first, nineteen hundred
21 ninety-four relating to the definition of a rule.

22 (h) Miscellaneous. (1) The certificate of the commissioner to the
23 effect that a tax has not been paid or that information has not been
24 supplied pursuant to the provisions of this chapter shall be presumptive
25 evidence thereof.

26 (2) Cross-reference: For criminal penalties, see chapter forty of
27 this title.

28 (i) Failure to file information return. If a cooperative housing
29 corporation fails to file an information return required under subdivi-
30 sion g of section 11-2105 of this chapter on or before the prescribed
31 date, determined with regard to any extension of time for filing, unless
32 it is shown that such failure is due to reasonable cause and not due to
33 willful neglect, there shall be imposed on such cooperative housing
34 corporation a penalty of one hundred dollars for each such failure.

35 § 11-2115 Returns to be secret. a. Except in accordance with proper
36 judicial order, or as otherwise provided by law, it shall be unlawful
37 for the commissioner of finance, register or tax appeals tribunal or any
38 officer or employee of the department of finance, register or tax
39 appeals tribunal to divulge or make known in any manner any information
40 contained in or relating to any return provided for by this chapter. The
41 officers charged with the custody of such returns shall not be required
42 to produce any of them or evidence of anything contained in them in any
43 action or proceeding in any court, except on behalf of the commissioner
44 of finance in an action or proceeding under the provisions of this chap-
45 ter, or on behalf of any party to an action or proceeding under the
46 provisions of this chapter when the returns or facts shown thereby are
47 directly involved in such action or proceeding, in either of which
48 events the court may require the production of, and may admit in
49 evidence, so much of said returns or of the facts shown thereby, as are
50 pertinent to the action or proceeding and no more. Nothing in this
51 section shall be construed to prohibit the delivery to a grantor or
52 grantee of a deed or to any subsequent owner of the real property
53 conveyed by such deed or to the duly authorized representative of any of
54 them of a certified copy of any return filed in connection with the tax
55 on such deed; nor to prohibit the delivery of such a certified copy of
56 such return or of any information contained in or relating thereto to

1 the United States of America or any department thereof, the state of New
2 York or any department thereof, the city of Staten Island or any depart-
3 ment thereof provided the same is required for official business; nor to
4 prohibit the inspection for official business of such returns by the
5 register, the corporation counsel or other legal representatives of the
6 city or by the district attorney of Richmond county; nor to prohibit the
7 publication of statistics so classified as to prevent the identification
8 of particular returns or items thereof.

9 b. (1) Any officer or employee of the city who willfully violates the
10 provisions of subdivision a of this section shall be dismissed from
11 office and be incapable of holding any public office in this city for a
12 period of five years thereafter.

13 (2) Cross-reference: For criminal penalties, see chapter forty of
14 this title.

15 c. This section shall be deemed a state statute for purposes of para-
16 graph (a) of subdivision two of section eighty-seven of the public offi-
17 cers law.

18 d. Notwithstanding anything in subdivision a of this section to the
19 contrary, if a taxpayer has petitioned the tax appeals tribunal for
20 administrative review as provided in section one hundred seventy of the
21 charter of the preceding municipality as it existed January first, nine-
22 teen hundred ninety-four, the commissioner of finance shall be author-
23 ized to present to the tribunal any report or return of such taxpayer,
24 or any information contained therein or relating thereto, which may be
25 material or relevant to the proceeding before the tribunal. The tax
26 appeals tribunal shall be authorized to publish a copy or a summary of
27 any decision rendered pursuant to section one hundred seventy-one of the
28 charter of the preceding municipality as it existed January first, nine-
29 teen hundred ninety-four.

30 e. This section shall not apply to any information contained in or
31 relating to a return filed on or after the first day of January, two
32 thousand three with respect to a transaction or transfer occurring on or
33 after that date; provided, however, that this section shall continue to
34 apply to any social security account number contained in any report or
35 return pursuant to this chapter.

36 § 11-2116 Notices and limitations of time. a. Any notice authorized
37 or required under the provisions of this chapter may be given by mailing
38 the same to the person for whom it is intended in a postpaid envelope
39 addressed to such person at the address given in the last return filed
40 by him or her pursuant to the provisions of this chapter in any applica-
41 tion made by him or her, or in any deed or instrument which is the
42 subject of the notice, or, if no return has been filed or application
43 made or address stated in the deed or instrument, then to such address
44 as may be obtainable. The mailing of such notice shall be presumptive
45 evidence of the receipt of the same by the person to whom addressed.
46 Any period of time which is determined according to the provisions of
47 this chapter by the giving of notice shall commence to run from the date
48 of mailing of such notice.

49 b. The provisions of the civil practice law and rules or any other law
50 relative to limitations of time for the enforcement of a civil remedy
51 shall not apply to any proceeding or action taken by the city to levy,
52 appraise, assess, determine or enforce the collection of any tax or
53 penalty provided by this chapter. However, except in the case of a
54 wilfully false or fraudulent return with intent to evade the tax, no
55 assessment of additional tax shall be made after the expiration of more
56 than three years from the date of the filing of a return; provided,

1 however, that where no return has been filed as provided by law the tax
2 may be assessed at any time.

3 c. Where, before the expiration of the period prescribed in this
4 section for the assessment of an additional tax, a taxpayer has
5 consented in writing that such period be extended, the amount of such
6 additional tax due may be determined at any time within such extended
7 period. The period so extended may be further extended by subsequent
8 consents in writing made before the expiration of the extended period.

9 d. Except as otherwise provided in this subdivision, if any return,
10 claim, statement, notice, application, or other document required to be
11 filed, or any payment required to be made, within a prescribed period or
12 on or before a prescribed date under authority of any provision of this
13 chapter is, after such period or such date, delivered by United States
14 mail to the commissioner of finance, the tax appeals tribunal, bureau,
15 office, officer or person with which or with whom such document is
16 required to be filed, or to which or to whom such payment is required to
17 be made, the date of the United States postmark stamped on the envelope
18 shall be deemed to be the date of delivery. This subdivision shall apply
19 only if the postmark date falls within the prescribed period or on or
20 before the prescribed date for the filing of such document, or for
21 making the payment, including any extension granted for such filing or
22 payment, and only if such document or payment was deposited in the mail,
23 postage prepaid, properly addressed to the commissioner of finance, the
24 tax appeals tribunal, bureau, office, officer or person with which or
25 with whom the document is required to be filed or to which or to whom
26 such payment is required to be made. If any document is sent by United
27 States registered mail, such registration shall be prima facie evidence
28 that such document was delivered to the commissioner of finance, the tax
29 appeals tribunal, bureau, office, officer or person to which or to whom
30 addressed, and the date of registration shall be deemed the postmark
31 date. The commissioner of finance and, where relevant, the tax appeals
32 tribunal are authorized to provide by regulation the extent to which the
33 provisions of the preceding sentence with respect to prima facie
34 evidence of delivery and the postmark date shall apply to certified
35 mail. Except as provided in subdivision f of this section, this subdivi-
36 sion shall apply in the case of postmarks not made by the United States
37 postal service only if and to the extent provided by regulation of the
38 commissioner of finance or, where relevant, the tax appeals tribunal.
39 Any return filed electronically shall be deemed to be filed on the date
40 of issuance by the commissioner of finance of a confirmation.

41 e. When the last day prescribed under authority of this chapter,
42 including any extension of time, for performing any act falls on a
43 Saturday, Sunday or legal holiday in the state, the performance of such
44 act shall be considered timely if it is performed on the next succeeding
45 day which is not a Saturday, Sunday or legal holiday.

46 f. (1) Any reference in subdivision d of this section to the United
47 States mail shall be treated as including a reference to any delivery
48 service designated by the secretary of the treasury of the United States
49 pursuant to section seventy-five hundred two of the internal revenue
50 code and any reference in subdivision d of this section to a United
51 States postmark shall be treated as including a reference to any date
52 recorded or marked in the manner described in section seventy-five
53 hundred two of the internal revenue code by a designated delivery
54 service. If the commissioner of finance finds that any delivery service
55 designated by such secretary is inadequate for the needs of the city,
56 the commissioner of finance may withdraw such designation for purposes

1 of this title. The commissioner of finance may also designate additional
2 delivery services meeting the criteria of section seventy-five hundred
3 two of the internal revenue code for purposes of this title, or may
4 withdraw any such designation if the commissioner of finance finds that
5 a delivery service so designated is inadequate for the needs of the
6 city. Any reference in subdivision d of this section to the United
7 States mail shall be treated as including a reference to any delivery
8 service designated by the commissioner of finance and any reference in
9 subdivision d of this section to a United States postmark shall be
10 treated as including a reference to any date recorded or marked in the
11 manner described in section seventy-five hundred two of the internal
12 revenue code by a delivery service designated by the commissioner of
13 finance, provided, however, any withdrawal of designation or additional
14 designation by the commissioner of finance shall not be effective for
15 purposes of service upon the tax appeals tribunal, unless and until such
16 withdrawal of designation or additional designation is ratified by the
17 president of the tax appeals tribunal.

18 (2) Any equivalent of registered or certified mail designated by the
19 United States secretary of the treasury, or as may be designated by the
20 commissioner of finance pursuant to the same criteria used by such
21 secretary for such designations pursuant to section seventy-five hundred
22 two of the internal revenue code, shall be included within the meaning
23 of registered or certified mail as used in subdivision d of this
24 section. If the commissioner of finance finds that any equivalent of
25 registered or certified mail designated by such secretary or the commis-
26 sioner of finance is inadequate for the needs of the city, the commis-
27 sioner of finance may withdraw such designation for purposes of this
28 title, provided, however, any withdrawal of designation or additional
29 designation by the commissioner of finance shall not be effective for
30 purposes of service upon the tax appeals tribunal, unless and until such
31 withdrawal of designation or additional designation is ratified by the
32 president of the tax appeals tribunal.

33 § 11-2117 Construction and enforcement. This chapter shall be
34 construed and enforced in conformity with chapter ninety-three of the
35 laws of nineteen hundred sixty-five, as amended.

36 § 11-2118 Disposition of revenues. Except as otherwise provided, all
37 revenues resulting from the imposition of the tax under this chapter
38 shall be paid into the treasury of the city and shall be credited to and
39 deposited in the general fund of the city. Except as otherwise
40 provided, no part of such revenues may be expended unless appropriated
41 in the annual budget of the city.

42 § 11-2119 Foreclosure proceedings. Where the conveyance consists of a
43 transfer of property made as a result of an order of the court in a
44 foreclosure proceeding ordering the sale of such property, the referee
45 or sheriff effectuating the transfer shall not be liable for any inter-
46 est or penalties authorized by this chapter or chapter forty of this
47 title.

48
49

CHAPTER 22
TAX ON OWNERS OF MOTOR VEHICLES

50 § 11-2201 Definitions. When used in this chapter, the following terms
51 shall mean and include:

- 52 1. "City". The city of Staten Island.
- 53 2. "Commissioner of finance". The commissioner of finance of the city.

1 3. "Highway". The entire width between the boundary lines of every way
2 publicly maintained when any part thereof is open to the use of the
3 public for purposes of vehicular travel.

4 4. "Individual resident". One or more natural persons other than a
5 firm, copartnership, trustee or trustees conducting a business or asso-
6 ciation who, or one of whom, owns a motor vehicle registered or required
7 to be registered pursuant to section four hundred one of the vehicle and
8 traffic law, the registration fees for which are provided for by subdivi-
9 sion six of such section, who, at the time he or she makes application
10 for registration or renewal thereof of such motor vehicle, or such
11 application is made on his or her behalf: (a) is domiciled in the city,
12 unless he or she maintains no permanent place of abode in the city,
13 maintains a permanent place of abode elsewhere, and during the period of
14 one year next preceding the date upon which such application is made,
15 spent in the aggregate not more than thirty days in the city; or (b) is
16 not domiciled in the city but maintains a permanent place of abode in
17 the city and, during the period of one year next preceding the date upon
18 which such application is made, spent in the aggregate more than one
19 hundred eighty-three days in the city, unless such individual is in the
20 armed forces of the United States.

21 5. "Motor vehicle". Every vehicle, except electrically-driven invalid
22 chairs being operated or driven by an invalid, operated or driven upon a
23 public highway by any power, other than muscular power, which includes
24 electric power obtained from overhead trolley wires, except vehicles
25 which run only upon rails or tracks.

26 6. "Other resident". Every firm, copartnership, trustee or trustees
27 conducting a business or association or a corporation, who or which
28 regularly keeps, stores, garages or maintains within the city a motor
29 vehicle owned by it which, at the time it makes application for regis-
30 tration or renewal of registration thereof, is registered or required to
31 be registered pursuant to subdivision six of section four hundred one of
32 the vehicle and traffic law.

33 7. "Person". Unless otherwise indicated, an individual, partnership,
34 society, association, joint-stock company, corporation, estate, receiv-
35 er, trustee, assignee, referee or any other person acting in a fiduciary
36 or representative capacity, whether appointed by a court or otherwise,
37 and any other form of unincorporated enterprise.

38 8. "Owner". A person, other than a lien holder, having the property in
39 or title to a vehicle. The term includes a person entitled to the use
40 and possession of a vehicle subject to a security interest in another
41 person.

42 9. "Vehicle". Every device in, upon or by which any person or property
43 is or may be transported or drawn upon a highway, except devices moved
44 by human power or used exclusively upon stationary rails or tracks.

45 10. "Leased or rented passenger motor vehicles". Any motor vehicle
46 owned by any person engaged in the business of renting or leasing motor
47 vehicles to be operated on the public highways for carrying passengers
48 registered or required to be registered pursuant to any provision of
49 section four hundred one of the vehicle and traffic law, which vehicle
50 at the time when application is made for registration, re-registration
51 or renewal thereof is regularly kept, stored, garaged or maintained in
52 the city, including such vehicles which have been rented and leased by
53 the owner and are in possession of lessees when such application for
54 registration, re-registration or renewal is made.

1 11. "Tax appeals tribunal." The tax appeals tribunal established by
2 section one hundred sixty-eight of the charter of the preceding munici-
3 pality as it existed January first, nineteen hundred ninety-four.

4 § 11-2202 Imposition of tax. Notwithstanding the provisions of
5 section four hundred of the vehicle and traffic law and of subdivision
6 ten of section four hundred one of the vehicle and traffic law to the
7 contrary, a tax of fifteen dollars per annum is hereby imposed:

8 1. With respect to each motor vehicle registered or required to be
9 registered pursuant to subdivision six of section four hundred one of
10 the vehicle and traffic law:

11 a. Upon each individual resident for each such motor vehicle regis-
12 tered or for which registration is renewed, or required to be registered
13 or renewed by him or her; and

14 b. Upon each other resident of each such motor vehicle regularly
15 kept, stored, garaged or maintained in the city and registered or
16 required to be registered or renewed by such other resident; and

17 2. With respect to each leased or rented passenger motor vehicle,
18 upon the owner thereof.

19 § 11-2203 Exemptions. The tax imposed by this chapter shall not be
20 imposed upon:

21 (1) owners of motor vehicles, the registration fees for which are or
22 may be prescribed, governed or established by subdivisions seven, except
23 for leased or rented passenger vehicles, eight, twelve, thirteen,
24 sixteen of section four hundred one, articles fifteen and sixteen, or
25 section four hundred twenty of the vehicle and traffic law;

26 (2) any owner to whom the provisions of the vehicle and traffic law
27 relative to registration and equipment of motor vehicles are made inap-
28 plicable by the provisions of article three of such law, for the period
29 of such inapplicability;

30 (3) the state of New York, or any of its agencies, instrumentalities,
31 public corporations, including a public corporation created pursuant to
32 agreement or compact with another state or the Dominion of Canada, or
33 political subdivision;

34 (4) the United States of America, and any of its agencies and instru-
35 mentalities insofar as it is immune from taxation;

36 (5) the United Nations or other international organizations of which
37 the United States of America is a member;

38 (6) any corporation, or association, or trust, or community chest,
39 fund or foundation, organized and operated exclusively for religious,
40 charitable, or educational purposes, or for the prevention of cruelty to
41 children or animals, and no part of the net earnings of which inures to
42 the benefit of any private shareholder or individual and no substantial
43 part of the activities of which is carrying on propaganda, or otherwise
44 attempting to influence legislation; provided, however, that nothing in
45 this subdivision shall include an organization operated for the primary
46 purpose of carrying on a trade or business for profit, whether or not
47 all of its profits are payable to one or more organizations described in
48 this subdivision.

49 § 11-2204 Payment of tax and evidence of tax payment. Every owner of
50 a motor vehicle subject to tax under this chapter shall pay the tax
51 thereon to the commissioner of motor vehicles of the state of New York
52 on or before the date upon which he or she registers or renews his or
53 her registration thereof or is required to register or renew his or her
54 registration thereof pursuant to section four hundred one of the vehicle
55 and traffic law.

1 Notwithstanding the provisions of section four hundred of the vehicle
2 and traffic law to the contrary, the payment of such tax shall be a
3 condition precedent to the registration or renewal thereof of such motor
4 vehicle and to the issuance of any certificate of registration and
5 plates or removable tag specified in subdivision three of section four
6 hundred one and in sections four hundred three and four hundred four of
7 the vehicle and traffic law, and no such certificate of registration,
8 plates or tag shall be issued unless such tax has been paid. The
9 commissioner of motor vehicles shall not issue a registration certifi-
10 cate for any motor vehicle for which the registrant's address is with-
11 in any such city, except upon proof, in a form approved by the commis-
12 sioner of motor vehicles, that such tax has been paid, or is not due,
13 with respect to such motor vehicle. The commissioner of motor vehicles,
14 upon the payment of such tax or upon the application of any person
15 exempt therefrom, shall furnish to each taxpayer paying the tax a
16 receipt for such tax and to each such taxpayer or exempt person a state-
17 ment, document or other form approved by the commissioner of motor vehi-
18 cles, showing that such tax has been paid or is not due, with respect to
19 such motor vehicle.

20 § 11-2205 Returns. a. At the time the payment of the tax imposed by
21 this chapter becomes due, every person subject to tax under this chapter
22 shall file a return with the commissioner of motor vehicles in form and
23 containing such information as may be prescribed by such commissioner of
24 motor vehicles. The taxpayer's application for registration or the
25 renewal of registration shall constitute the return required under this
26 chapter, unless the commissioner of motor vehicles, by regulation, shall
27 otherwise provide.

28 b. Returns shall be preserved for three years and thereafter until
29 the commissioner of motor vehicles permits them to be destroyed.

30 c. The commissioner of motor vehicles may require amended returns or
31 certificates of facts to be filed within twenty days after notice and to
32 contain the information specified in the notice. Any such certificate
33 shall be deemed to be part of the return required to be filed.

34 d. If a return required by this chapter is not filed or if a return
35 when filed is incorrect or insufficient on its face the commissioner of
36 motor vehicles or the commissioner of finance if designated as his or
37 her agent shall take the necessary steps to enforce the filing of such a
38 return or of a corrected return.

39 § 11-2206 Determination of tax. If a return required by this chapter
40 is not filed or if a return when filed is incorrect or insufficient, or
41 if a tax or any part thereof due pursuant to this chapter be not paid
42 when required, the amount of tax due shall be determined by the commis-
43 sioner of motor vehicles or by the commissioner of finance if designated
44 as his or her agent, from such information as may be obtainable, includ-
45 ing motor vehicle registration with the department of motor vehicles of
46 the state of New York or other factors. Notice of such determination
47 shall be given to the person liable for the tax. Such a determination by
48 the commissioner of motor vehicles shall finally and irrevocably fix the
49 tax unless the person against whom it is assessed, within ninety days
50 after the giving of notice of such determination, shall apply to the
51 commissioner of motor vehicles for a hearing, or unless such commission-
52 er of his or her own motion shall redetermine the same. If the commis-
53 sioner of finance is designated as the agent of the commissioner of
54 motor vehicles, such a determination by the commissioner of finance
55 shall finally and irrevocably fix the tax unless the person against whom
56 it is assessed, within ninety days after the giving of such determi-

1 nation, or, if the commissioner of finance has established a concil-
2 iation procedure pursuant to section 11-124 of the code of the preceding
3 municipality and the taxpayer has requested a conciliation conference in
4 accordance therewith, within ninety days from the mailing of a concil-
5 iation decision or the date of the commissioner's confirmation of the
6 discontinuance of the conciliation proceeding, both (1) serves a peti-
7 tion upon the commissioner of finance and (2) applies to the tax appeals
8 tribunal for a hearing by filing a petition, or unless the commissioner
9 of finance of his or her own motion shall redetermine the same. A hear-
10 ing following a petition to the tax appeals tribunal and any appeal to
11 the tax appeals tribunal sitting en banc from the decision rendered in
12 such hearing shall be conducted in the manner and subject to the
13 requirements prescribed by the tax appeals tribunal pursuant to sections
14 one hundred sixty-eight through one hundred seventy-two of the charter
15 of the preceding municipality as it existed January first, nineteen
16 hundred ninety-four. After such hearing by the commissioner of motor
17 vehicles or the tax appeals tribunal, the commissioner of motor vehi-
18 cles, if he or she holds the hearing, or the tax appeals tribunal if the
19 tax appeals tribunal holds the hearing, shall give notice of the deter-
20 mination or decision to the person against whom the tax is assessed and
21 in the case of a tax appeals tribunal decision, to the commissioner of
22 finance. Such determination by the commissioner of motor vehicles, or a
23 decision of the tax appeals tribunal sitting en banc shall be reviewable
24 for error, illegality or unconstitutionality or any other reason whatso-
25 ever by a proceeding under article seventy-eight of the civil practice
26 law and rules if application therefor is made to the supreme court by
27 the person against whom the tax was assessed within four months after
28 the giving of the notice of such determination or tax appeals tribunal
29 decision. A proceeding under article seventy-eight of the civil prac-
30 tice law and rules shall not be instituted by a taxpayer unless (a) the
31 amount of any tax sought to be reviewed, with penalties and interest
32 thereon, if any, shall be first deposited with the commissioner of motor
33 vehicles and there shall be filed with the commissioner of motor vehi-
34 cles an undertaking, issued by a surety company authorized to transact
35 business in this state and approved by the superintendent of insurance
36 of this state as to solvency and responsibility, in such amount as a
37 justice of the supreme court shall approve, to the effect that if such
38 proceeding be dismissed or the tax confirmed, the taxpayer will pay all
39 costs and charges which may accrue in the prosecution of the proceeding;
40 or (b) at the option of the taxpayer such undertaking filed with the
41 commissioner of motor vehicles may be in a sum sufficient to cover the
42 taxes, penalties and interest thereon stated in such determination or
43 decision, plus the costs and charges which may accrue against it in the
44 prosecution of the proceeding, in which event the taxpayer shall not be
45 required to deposit such taxes, penalties and interest as a condition
46 precedent to the application.

47 § 11-2207 Refunds for certain unused registrations. Whenever any fee
48 or portion of a fee paid for the registration of a motor vehicle under
49 the provisions of the vehicle and traffic law is refunded pursuant to
50 the provisions of subdivision one of section four hundred twenty-eight
51 of the vehicle and traffic law, the amount of any tax paid pursuant to
52 this chapter upon such registration shall also be refunded by the
53 commissioner.

54 § 11-2208 Refunds. a. In the manner provided in this section the
55 commissioner of motor vehicles shall refund or credit, without interest,
56 any tax, penalty or interest erroneously, illegally or unconstitu-

1 tionally collected or paid if application for such refund shall be made
2 within one year from the payment thereof to the commissioner of motor
3 vehicles or to the commissioner of finance if designated as his or her
4 agent. Whenever a refund is made or denied, the reasons therefor shall
5 be stated in writing by the commissioner of motor vehicles or by the
6 commissioner of finance, as the case may be, who in lieu of any refund,
7 may allow credit therefor on payments due from the applicant.

8 b. (1) If the commissioner of motor vehicles has not designated the
9 commissioner of finance as his or her agent, application for a refund or
10 credit made as provided under this section shall be deemed an applica-
11 tion for a revision of any tax, penalty or interest complained of and
12 the commissioner of motor vehicles shall hold a hearing and receive
13 evidence with respect thereto. After such hearing, the commissioner of
14 motor vehicles shall give notice of the determination of such applica-
15 tion to the applicant who shall be entitled to review such determination
16 by a proceeding pursuant to article seventy-eight of the civil practice
17 law and rules, provided such proceeding is instituted within four months
18 after the giving of notice of such determination, and provided that a
19 final determination of tax due was not previously made. Such a proceed-
20 ing shall not be instituted unless an undertaking is filed with the
21 commissioner of motor vehicles in such amount and with such sureties as
22 a justice of the supreme court shall approve, to the effect that if such
23 proceeding be dismissed or the tax confirmed, the petitioner will pay
24 all costs and charges which may accrue in the prosecution of such
25 proceeding.

26 (2) If the commissioner of motor vehicles has designated the commis-
27 sioner of finance as his or her agent, a determination of the commis-
28 sioner of finance denying a refund or credit pursuant to subdivision a
29 of this section shall be final and irrevocable unless the applicant for
30 such refund or credit, within ninety days from the mailing of notice of
31 such determination, or, if the commissioner of finance has established a
32 conciliation procedure pursuant to section 11-124 of the code of the
33 preceding municipality and the applicant has requested a conciliation
34 conference in accordance therewith, within ninety days from the mailing
35 of a conciliation decision or the date of the commissioner's confirma-
36 tion of the discontinuance of the conciliation proceeding, both (1)
37 serves a petition upon the commissioner of finance and (2) files a peti-
38 tion with the tax appeals tribunal for a hearing. Such petition for a
39 refund or credit, made as provided under this section, shall be deemed
40 an application for a revision of any tax, penalty or interest complained
41 of. Such hearing and any appeal to the tax appeals tribunal sitting en
42 banc from the decision rendered in such hearing shall be conducted in
43 the manner and subject to the requirements prescribed by the tax appeals
44 tribunal pursuant to sections one hundred sixty-eight through one
45 hundred seventy-two of the charter of the preceding municipality as it
46 existed January first, nineteen hundred ninety-four. After such hearing,
47 the tax appeals tribunal shall give notice of its decision to the appli-
48 cant and to the commissioner of finance. The applicant shall be entitled
49 to institute a proceeding pursuant to article seventy-eight of the civil
50 practice law and rules to review a decision of the tax appeals tribunal
51 sitting en banc if application to the supreme court be made therefor
52 within four months after the giving of notice of such decision, and
53 provided, in the case of an application by a taxpayer, that a final
54 determination of tax due was not previously made. Such a proceeding
55 shall not be instituted by a taxpayer unless an undertaking shall first
56 be filed with the commissioner of motor vehicles, in such amount and

1 with such sureties as a justice of the supreme court shall approve, to
2 the effect that if such proceeding be dismissed or the tax confirmed,
3 the taxpayer will pay all costs and charges which may accrue in the
4 prosecution of such proceeding.

5 c. A person shall not be entitled to a revision, refund or credit
6 under this section of a tax, interest or penalty which has been deter-
7 mined to be due pursuant to the provisions of section 11-2206 of this
8 chapter where he or she has had a hearing or an opportunity for a hear-
9 ing, as provided in such section, or has failed to avail himself or
10 herself of the remedies provided in such section. No refund or credit
11 shall be made of a tax, interest or penalty paid after a determination
12 made pursuant to section 11-2206 of this chapter, unless it be found
13 that such determination was erroneous, illegal or unconstitutional or
14 otherwise improper after a hearing, or on his or her own motion, by the
15 commissioner of motor vehicles or after a hearing by the tax appeals
16 tribunal, or on his or her own motion by the commissioner of finance, as
17 the case may be, or in a proceeding under article seventy-eight of the
18 civil practice law and rules, pursuant to the provisions of said
19 section, in which event refund or credit without interest shall be made
20 of the tax, interest or penalty found to have been overpaid.

21 § 11-2209 Reserves. In cases where a taxpayer has applied for a
22 refund and has instituted a proceeding under article seventy-eight of
23 the civil practice law and rules to review a determination adverse to
24 such taxpayer on his or her application for refund, the commissioner of
25 motor vehicles shall set up appropriate reserves to meet any decision
26 adverse to the city.

27 § 11-2210 Remedies exclusive. The remedies provided by sections
28 11-2206 and 11-2208 of this chapter shall be the exclusive remedies
29 available to any person for the review of tax liability imposed by this
30 chapter; and no determination or proposed determination of tax or deter-
31 mination on any application for refund by the commissioner of motor
32 vehicles or by the commissioner of finance, nor any decision by the tax
33 appeals tribunal or any of its administrative law judges, shall be
34 enjoined or reviewed by an action for declaratory judgment, an action
35 for money had and received or by any action or proceeding other than, in
36 the case of a final determination by the commissioner of motor vehicles
37 or a decision by the tax appeals tribunal sitting en banc, a proceeding
38 in the nature of a certiorari proceeding under article seventy-eight of
39 the civil practice law and rules; provided, however, that a taxpayer may
40 proceed by declaratory judgment if he or she institutes suit within
41 thirty days after a deficiency assessment is made and pays the amount of
42 the deficiency assessment to the commissioner of motor vehicles prior to
43 the institution of such suit and posts a bond for costs as provided in
44 section 11-2206 of this chapter.

45 § 11-2211 Proceedings to recover tax. a. Whenever any person shall
46 fail to pay any tax, penalty or interest imposed by this chapter, the
47 corporation counsel, upon the request of the commissioner of motor vehi-
48 cles or of the commissioner of finance if designated as his or her
49 agent, shall bring or cause to be brought an action to enforce the
50 payment of the same on behalf of the city of Staten Island in any court
51 of the state of New York or of any other state of the United States.
52 However, if in his or her discretion the commissioner of motor vehicles,
53 or the commissioner of finance if designated as his or her agent,
54 believes that any such person subject to the provisions of this chapter
55 is about to cease business, leave the state or remove or dissipate the
56 assets out of which the tax or penalty might be satisfied, and that any

1 such tax or penalty will not be paid when due, he or she may declare
2 such tax or penalty to be immediately due and payable and may issue a
3 warrant immediately.

4 b. As an additional or alternate remedy, the commissioner of motor
5 vehicles, or the commissioner of finance if designated as his or her
6 agent, may issue a warrant, directed to the city sheriff commanding him
7 or her to levy upon and sell the real and personal property of the
8 person liable for the tax which may be found within the city, for the
9 payment of the amount thereof, with any penalty and interest, and the
10 cost of executing the warrant, and to return such warrant to the person
11 who issued it and to pay to him or her the money collected by virtue
12 thereof within sixty days after the receipt of such warrant. The city
13 sheriff shall within five days after the receipt of the warrant file
14 with the county clerk a copy thereof, and thereupon such clerk shall
15 enter in the judgment docket the name of the person mentioned in the
16 warrant and the amount of the tax, penalty and interest for which the
17 warrant is issued and the date when such copy is filed. Thereupon the
18 amount of such warrant so docketed shall become a lien upon the title to
19 and the interest in real and personal property of the person against
20 whom the warrant is issued. The city sheriff shall then proceed upon
21 the warrant in the same manner, and with like effect, as that provided
22 by law in respect to executions issued against property upon judgments
23 of a court of record and for services in executing the warrant such
24 sheriff shall be entitled to the same fees, which he or she may collect
25 in the same manner. In the discretion of the commissioner of motor
26 vehicles, or of the commissioner of finance if designated as his or her
27 agent, a warrant of like terms, force and effect may be issued and
28 directed to an officer or employee of the department of finance of the
29 city, and in the execution thereof such officer or employee shall have
30 all the powers conferred by law upon sheriffs, but shall be entitled to
31 no fee or compensation in excess of the actual expenses paid in the
32 performance of such duty. If a warrant is returned not satisfied in
33 full, the commissioner of motor vehicles or the commissioner of finance,
34 as the case may be, may from time to time issue new warrants and shall
35 also have the same remedies to enforce the amount due thereunder as if
36 he or she had recovered judgment therefor and execution thereon had been
37 returned unsatisfied.

38 c. The commissioner of finance, if he or she finds that the interests
39 of the city will not thereby be jeopardized, and upon such conditions as
40 the commissioner of finance may require, may release any property from
41 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
42 tions to tax, penalties and interest filed pursuant to subdivision b of
43 this section, and such release or vacating of the warrant may be
44 recorded in the office of any recording officer in which such warrant
45 has been filed. The clerk shall thereupon cancel and discharge as of the
46 original date of docketing the vacated warrant.

47 § 11-2212 General powers of the commissioner of motor vehicles. In
48 addition to the powers granted to the commissioner of motor vehicles in
49 this chapter, he or she is hereby authorized and empowered:

50 1. To make, adopt and amend rules and regulations appropriate to the
51 carrying out of this chapter and the purposes thereof;

52 2. For cause shown, to remit penalties; and to compromise disputed
53 claims in connection with the taxes imposed under this chapter;

54 3. To request information concerning motor vehicles and persons
55 subject to the provisions of this chapter from the department of motor
56 vehicles of any other state or the treasury department of the United

1 States, or any city or county of the state of New York; and to afford
2 such information to such other state, treasury department, city or coun-
3 ty, any provision of this chapter to the contrary notwithstanding;

4 4. To delegate his or her functions under this section to a deputy
5 commissioner in the department of motor vehicles or any employee or
6 employees of his or her department or to any county clerk or other offi-
7 cer who acts as the agent of such commissioner in the registration of
8 motor vehicles;

9 5. To prescribe methods for determining the tax;

10 6. To require all persons owning motor vehicles subject to tax to
11 keep such records as he or she may prescribe and to furnish such infor-
12 mation upon his or her request;

13 7. To request the police department of the city to assist in the
14 enforcement of the provisions of this chapter.

15 § 11-2213 Administration of oaths and compelling testimony. a. The
16 commissioner of motor vehicles or his or her employees or agents duly
17 designated and authorized by such commissioner, and the tax appeals
18 tribunal, shall have power to administer oaths and take affidavits in
19 relation to any matter or proceeding in the exercise of the powers and
20 duties under this chapter. The commissioner of motor vehicles, or the
21 commissioner of finance if designated as his or her agent or the tax
22 appeals tribunal, shall have the power to subpoena and require the
23 attendance of witnesses and the production of books, papers and docu-
24 ments to secure information pertinent to the performance of the duties
25 of the commissioner of motor vehicles, the commissioner of finance or
26 the tax appeals tribunal pursuant to this chapter and of the enforcement
27 of this chapter and to examine them in relation thereto, and to issue
28 commissions for the examination of witnesses who are out of the state or
29 unable to attend before him or her or the tax appeals tribunal or
30 excused from attendance.

31 b. A justice of the supreme court either in court or at chambers shall
32 have power summarily to enforce by proper proceedings the attendance and
33 testimony of witnesses and production and examination of books, papers
34 and documents called for by the subpoena of the commissioner of motor
35 vehicles, or, if the commissioner of finance is designated as his or her
36 agent under this chapter, of the commissioner of finance and the tax
37 appeals tribunal.

38 c. Cross-reference; criminal penalties. For failure to obey subpoenas
39 or for testifying falsely, see section 11-4007 of this title; for
40 supplying false or fraudulent information, see section 11-4009 of this
41 title.

42 d. The officers who serve the summons or subpoena of the commissioner
43 of motor vehicles, or the commissioner of finance if designated as his
44 or her agent, or the tax appeals tribunal if the commissioner of finance
45 is designated as the agent of the commissioner of motor vehicles, and
46 witnesses attending in response thereto shall be entitled to the same
47 fees as are allowed to officers and witnesses in civil cases in courts
48 of record, except as otherwise provided in this section. Such officers
49 shall be the city sheriff and his or her duly appointed deputies, or any
50 officers or employees of the department of motor vehicles designated by
51 the commissioner of motor vehicles to serve such process or any officers
52 or employees of the department of finance of the city designated by the
53 commissioner of finance to serve such process or any officers or employ-
54 ees of the tax appeals tribunal designated to serve such process.

55 § 11-2214 Penalties and interest. a. Any person failing to file a
56 return or to pay any tax or any portion thereof within the time required

1 by this chapter shall be subject to a penalty of five times the amount
2 of the tax due, plus interest of five percent of such tax for each month
3 of delay or fraction thereof, but the commissioner of motor vehicles, or
4 the commissioner of finance if designated as his or her agent, if satis-
5 fied that the delay was excusable, may remit all or any part of such
6 penalty, but not interest at the rate of six percent per year. Penal-
7 ties and interest shall be paid and disposed of in the same manner as
8 other revenues under this chapter. Unpaid penalties and interest may be
9 enforced in the same manner as the tax imposed by this chapter.

10 b. The certificate of the commissioner of motor vehicles or of the
11 commissioner of finance if designated as his or her agent to the effect
12 that a tax has not been paid, or that a return required by this chapter
13 has not been filed, or that information has not been supplied pursuant
14 to the provisions of this chapter shall be presumptive evidence thereof.

15 c. Cross-reference: For criminal penalties, see chapter forty of this
16 title.

17 § 11-2215 Returns to be secret. a. Except in accordance with proper
18 judicial order or as otherwise provided by law, it shall be unlawful for
19 the commissioner of motor vehicles, any officer or employee of the
20 department of motor vehicles, the commissioner of finance, any officer
21 or employee of the department of finance, the tax appeals tribunal, any
22 commissioner or employee of such tribunal, any agent of the commissioner
23 of motor vehicles, or any person who, pursuant to this section, is
24 permitted to inspect any return or to whom a copy, an abstract or
25 portion of any return is furnished, or to whom any information contained
26 in any return is furnished to divulge or make known in any manner any
27 information contained in or relating to any return provided for by this
28 chapter. The officers charged with the custody of such returns shall
29 not be required to produce any of them or evidence of anything contained
30 in them in any action or proceeding in any court, except on behalf of
31 the commissioner of motor vehicles or the commissioner of finance in an
32 action or proceeding under the provisions of this chapter, or on behalf
33 of any party to an action or proceeding under the provisions of this
34 chapter when the returns or facts shown thereby are directly involved in
35 such action or proceeding, in either of which events the court may
36 require the production of, and may admit in evidence, so much of said
37 returns or of the facts shown thereby, as are pertinent to the action or
38 proceeding and no more. The commissioner of motor vehicles may, never-
39 theless, publish a copy or a summary of any determination or decision
40 rendered after a formal hearing held pursuant to section 11-2206 or
41 11-2208 of this chapter. Nothing under this section shall be construed
42 to prohibit the delivery to a person or his or her duly authorized
43 representative of a certified copy of any return filed by him or her
44 pursuant to this chapter, or of the receipt, document or other form
45 issued pursuant to section 11-2204 of this chapter, or a duplicate copy
46 thereof; nor to prohibit the delivery of such a certified copy of such
47 return or of any information contained in or relating thereto, to the
48 United States of America or any department thereof, the state of New
49 York or any department thereof, the city of Staten Island or any depart-
50 ment thereof provided the same is required for official business; nor to
51 prohibit the inspection for official business of such returns by the
52 corporation counsel or other legal representatives of the city or by the
53 district attorney of Richmond county; nor to prohibit the publication of
54 statistics so classified as to prevent the identification of particular
55 returns or items thereof.

1 b. (1) Any officer or employee of the state of New York or the city
2 who willfully violates the provisions of subdivision a of this section
3 shall be dismissed from office and be incapable of holding any public
4 office in the state of New York or this city for a period of five years
5 thereafter.

6 (2) Cross-reference: For criminal penalties, see chapter forty of this
7 title.

8 c. This section shall be deemed a state statute for purposes of para-
9 graph (a) of subdivision two of section eighty-seven of the public offi-
10 cers law.

11 d. Notwithstanding anything in subdivision a of this section to the
12 contrary, if a taxpayer has petitioned the tax appeals tribunal for
13 administrative review as provided in section one hundred seventy of the
14 charter of the preceding municipality as it existed January first, nine-
15 teen hundred ninety-four, the commissioner of finance shall be author-
16 ized to present to the tax appeals tribunal any report or return of such
17 taxpayer, or any information contained therein or relating thereto,
18 which may be material or relevant to the proceeding before the tax
19 appeals tribunal. The tax appeals tribunal shall be authorized to
20 publish a copy or a summary of any decision rendered pursuant to section
21 one hundred seventy-one of the charter of the preceding municipality as
22 it existed January first, nineteen hundred ninety-four.

23 § 11-2216 Notices and limitations of time. a. Any notice authorized or
24 required under the provisions of this chapter may be given by mailing
25 the same to the person for whom it is intended in a postpaid envelope
26 addressed to such person at the address given in the last return filed
27 by him or her pursuant to the provisions of this chapter, in any appli-
28 cation made by him or her, or in any application for registration made
29 by him or her pursuant to section four hundred one of the vehicle and
30 traffic law or, if no return has been filed or application made, then to
31 such address as may be obtainable. The mailing of such notice shall be
32 presumptive evidence of the receipt of the same by the person to whom
33 addressed. Any period of time which is determined according to the
34 provisions of this chapter by the giving of notice shall commence to run
35 from the date of mailing of such notice.

36 b. The provisions of the civil practice law and rules or any other law
37 relative to limitations of time for the enforcement of a civil remedy
38 shall not apply to any proceeding or action taken by the commissioner of
39 motor vehicles, or the commissioner of finance if designated as his or
40 her agent, to levy, appraise, assess, determine or enforce the
41 collection of any tax or penalty provided by this chapter. However,
42 except in the case of a wilfully false or fraudulent return with intent
43 to evade the tax, no assessment of additional tax shall be made after
44 the expiration of more than three years from the date of the filing of a
45 return; provided, however, that where no return has been filed as
46 provided by law the tax may be assessed at any time.

47 c. Where, before the expiration of the period prescribed under this
48 section for the assessment of an additional tax, a taxpayer has
49 consented in writing that such period be extended, the amount of such
50 additional tax may be determined at any time within such extended peri-
51 od. The period so extended may be further extended by subsequent
52 consents in writing made before the expiration of the extended period.

53 d. If any return, claim, statement, notice, application, or other
54 document required to be filed, or any payment required to be made, with-
55 in a prescribed period or on or before a prescribed date under authority
56 of any provision of this title is, after such period or such date,

1 delivered by United States mail to the commissioner of motor vehicles,
2 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
3 cer or person with which or with whom such document is required to be
4 filed, or to which or to whom such payment is required to be made, the
5 date of the United States postmark stamped on the envelope shall be
6 deemed to be the date of delivery. This subdivision shall apply only if
7 the postmark date falls within the prescribed period or on or before the
8 prescribed date for the filing of such document, or for making the
9 payment, including any extension granted for such filing or payment, and
10 only if such document or payment was deposited in the mail, postage
11 prepaid, properly addressed to the commissioner of motor vehicles,
12 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
13 cer or person with which or with whom the document is required to be
14 filed or to which or to whom such payment is required to be made. If any
15 document is sent by United States registered mail, such registration
16 shall be prima facie evidence that such document was delivered to the
17 commissioner of motor vehicles, commissioner of finance, the tax appeals
18 tribunal, bureau, office, officer or person to which or to whom
19 addressed, and the date of registration shall be deemed the postmark
20 date. The commissioner of motor vehicles is authorized to provide by
21 regulation the extent to which, such provisions with respect to prima
22 facie evidence of delivery and the postmark date, shall apply to certi-
23 fied mail. This subdivision shall apply in the case of postmarks not
24 made by the United States Postal Service only if and to the extent
25 provided by regulation of the commissioner of motor vehicles.

26 e. When the last day prescribed under authority of this title, includ-
27 ing any extension of time, for performing any act falls on a Saturday,
28 Sunday or legal holiday in the state of New York, the performance of
29 such act shall be considered timely if it is performed on the next
30 succeeding day which is not a Saturday, Sunday or legal holiday.

31 § 11-2217 Commissioner of finance as agent. The commissioner of motor
32 vehicles is hereby authorized to designate the commissioner of finance
33 as his or her agent to exercise any or all of his or her functions and
34 powers specified or provided for in subdivision (d) of section 11-2205
35 and in sections 11-2206, 11-2208, 11-2211, 11-2213, 11-2214 and 11-2216
36 of this chapter. Where the commissioner of finance has been so desig-
37 nated as agent, the commissioner of finance, in addition to the powers
38 elsewhere granted to him or her in this chapter, is hereby authorized
39 and empowered:

40 1. To delegate such functions and powers to a commissioner or deputy
41 commissioner in the department of finance or to any employee or employ-
42 ees of the department of finance;

43 2. For cause shown, to remit penalties and to compromise disputed
44 claims in connection with the taxes hereby imposed;

45 3. To request information concerning motor vehicles and persons
46 subject to the provisions of this chapter from the department of motor
47 vehicles of any other state or the treasury department of the United
48 States, or any city or county of the state of New York; and to afford
49 such information to such other state, treasury department, city or coun-
50 ty, any provision of this chapter to the contrary notwithstanding;

51 4. To request the police department of the city to assist in the
52 enforcement of the provisions of this chapter.

53 § 11-2218 Agreement between commissioner of finance and commissioner
54 of motor vehicles. The commissioner of finance is hereby authorized and
55 empowered to enter into an agreement with the commissioner of motor
56 vehicles to govern the administration and collection of the taxes

1 imposed by this chapter, which agreement shall provide for the exclusive
2 method of collection of such taxes, custody and remittal of the proceeds
3 of such tax; for the payment by the city of the reasonable expenses
4 incurred by the department of motor vehicles in collecting and adminis-
5 tering such tax; and for the audit, upon request of the commissioner of
6 finance or his or her delegate, of the accuracy of the payments,
7 distributions and remittances to the commissioner of finance pursuant to
8 the provisions of this chapter, to be conducted at a time agreed upon by
9 the state comptroller and to be allowed not more frequently than once in
10 each calendar year. Such agreement shall have the force and effect of a
11 rule or regulation of the commissioner of motor vehicles, and shall be
12 filed and published in accordance with any statutory requirements relat-
13 ing thereto.

14 § 11-2219 Notification to corporation counsel. The commissioner of
15 motor vehicles shall promptly notify the corporation counsel of the city
16 of any litigation instituted against him or her which challenges the
17 constitutionality or validity of any provision of this chapter, or of
18 the enabling act pursuant to which it was adopted, or which attempts to
19 limit or question the applicability of either such law, and such notifi-
20 cation shall include a copy of the papers served upon him or her.

21 § 11-2220 Construction and enforcement. This chapter shall be
22 construed and enforced in conformity with subdivisions (g) and (h) of
23 section twelve hundred one of the tax law, pursuant to which it is
24 enacted.

25 § 11-2221 Disposition of revenues. All revenues resulting from the
26 imposition of the tax under this chapter shall be paid into the treasury
27 of the city and shall be credited to and deposited in the general fund
28 of the city, but no part of such revenues may be expended unless appro-
29 priated in the annual budget of the city.

30 CHAPTER 23-A
31 ENHANCED 911 TELEPHONE SURCHARGE

32 § 11-2321 Short title. This chapter shall be known and may be cited as
33 the "enhanced 911 telephone surcharge act."

34 § 11-2322 Definitions. When used in this chapter the following terms
35 shall mean:

36 (a) "E911 system" means an enhanced emergency telephone service which
37 automatically connects a person dialing the digits 9-1-1 to the answer-
38 ing point established within the city of Staten Island police depart-
39 ment, and which shall include, but not be limited to, selective routing,
40 automatic number identification and automatic location identification.

41 (b) "Lifeline" means a discounted or low-priced telephone service
42 available to eligible low-income residential customers.

43 (c) "Access line" means a communications circuit that connects a
44 customer location to a facility housing the switching system and related
45 equipment that provides telephone service.

46 (d) "911 service area" means the area within the geographic boundaries
47 of the city of Staten Island.

48 (e) "Municipality" means any New York city agency, or any public bene-
49 fit corporation, local development corporation or other governmental
50 entity the majority of whose members or governing body is appointed by a
51 city official.

52 (f) "Public safety agency" means a public safety agency as defined in
53 subdivision five of section three hundred one of the county law.

1 (g) "Service supplier" means a service supplier as defined in subdivi-
2 sion seven of section three hundred one of the county law that provides
3 service within the 911 service area.

4 (h) "System costs" means the costs associated with obtaining and main-
5 taining the telecommunication equipment, all operations and maintenance
6 costs and the telephone services costs necessary to establish and
7 provide an E911 system.

8 (i) "Voice over internet protocol service" or "VOIP service" shall
9 mean any service that (1) enables real-time, two-way voice communi-
10 cations; (2) requires a broadband connection from the user's location;
11 (3) requires internet protocol compatible customer premises equipment
12 (CPE); and (4) permits users generally to receive calls that originate
13 on the public switched telephone network and to terminate calls to the
14 public switched telephone network.

15 § 11-2323 Establishment of surcharge for E911 system. (a) In accord-
16 ance with the provisions of article six of the county law, as amended,
17 there is hereby established a surcharge of one dollar per telephone
18 access line, or equivalent, per month on the customers of every service
19 supplier within the city of New York.

20 (b) The surcharge imposed by subdivision (a) of this section shall be
21 used to pay for the costs associated with obtaining, operating and main-
22 taining the telecommunication equipment and telephone services needed to
23 provide an enhanced 911 emergency telephone system to serve the city of
24 New York.

25 (c) All service suppliers that provide local access service within the
26 911 service area in the city of New York shall begin to add the monthly
27 surcharge of one dollar per telephone access line per month as provided
28 in subdivision (a) of this section to all service bills no later than
29 the forty-fifth day after the effective date of the local law that
30 increased such surcharge to one dollar per telephone access line per
31 month. Notwithstanding the provisions of this subdivision, all provid-
32 ers of voice over internet protocol service that provide such service
33 within the 911 service area shall begin to add the monthly surcharge of
34 one dollar per telephone access line, or equivalent, per month as
35 provided in subdivision (a) of this section to all service bills no
36 later than September fifth, two thousand ten.

37 § 11-2324 Application; limitations; exemptions. (a) The surcharge
38 established pursuant to the provisions of section 11-2323 of this chap-
39 ter shall be imposed on a per access line basis on all current bills
40 rendered for local exchange access service within the 911 service area.

41 (b) No such surcharge shall be imposed upon:

42 (1) more than seventy-five exchange access lines per customer per
43 location;

44 (2) any lifeline customers of a local telephone service supplier; or

45 (3) a public safety agency; or

46 (4) any municipality, as defined in subdivision (e) of section 11-2322
47 of this chapter.

48 § 11-2325 Collection of surcharge. (a) The appropriate service suppli-
49 er or suppliers serving the city of Staten Island 911 service area shall
50 act as collection agents for the city and shall remit the funds
51 collected as the surcharge to the commissioner of finance each month.
52 Such funds shall be remitted no later than thirty days after the last
53 business day of such period.

54 (b) The service supplier shall be entitled to retain as an administra-
55 tive fee an amount equal to two per cent of its collections of the
56 surcharge.

1 (c) The surcharge required to be collected by the service supplier
2 shall be added to and stated separately in its billings to the customer.

3 (d) The service supplier shall annually provide to the commissioner of
4 finance an accounting of the surcharge amounts billed and collected.

5 § 11-2326 Liability for surcharge. (a) Each service supplier who is
6 subject to the provisions of this chapter shall be liable to the city
7 for the surcharge until it has been paid to the city, except that
8 payment to a service supplier is sufficient to relieve the customer from
9 further liability for such surcharge.

10 (b) The service supplier customer shall have no obligation to take any
11 legal action to enforce the collection of any surcharge. However, when-
12 ever the service supplier remits the funds collected as the surcharge to
13 the city, it shall also provide the city with the name and address of
14 any customer refusing or failing to pay the surcharge imposed by this
15 chapter and shall state the amount of such surcharge remaining unpaid.

16 § 11-2327 System revenues; adjustment of surcharge. (a) All surcharge
17 monies remitted to the commissioner of finance by a service supplier and
18 all other monies dedicated to the payment of system costs from whatever
19 source derived or received by the city of Staten Island shall be
20 expended only upon authorization of the council, and only for payment of
21 system costs as permitted by this chapter. The finance commissioner and
22 the director of the office of management and budget shall separately
23 account for and keep adequate records of the amount and source of all
24 such revenues and of the amount and object or purpose of all expendi-
25 tures thereof.

26 (b) If at the end of any fiscal year the total amount of all such
27 revenues exceeds the amount necessary for payment of system costs in
28 such fiscal year, such excess shall be reserved and carried over for the
29 payment of system costs in the following fiscal year. However, if at the
30 end of any fiscal year in conformance with applicable law, such E911
31 reserved fund balance exceeds an amount equal to five per cent of that
32 necessary for the payment of system costs in such fiscal year, the coun-
33 cil shall by local law reduce the surcharge for the following fiscal
34 year to a level that more adequately reflects the system cost require-
35 ments of its E911 system. The council may also reestablish or increase
36 such surcharge, subject to the provisions of section three hundred three
37 of the county law, if the revenues generated by such surcharge and by
38 any other source are not adequate to pay for system costs.

39 CHAPTER 23-B

40 WIRELESS COMMUNICATIONS SERVICE SURCHARGE

41 § 11-2341 Short title. This chapter shall be known and may be cited as
42 the "wireless communications service surcharge act."

43 § 11-2342 Definitions. (a) "Wireless communications device" means any
44 equipment used to access a wireless communications service.

45 (b) "Wireless communications service" means all commercial mobile
46 services, as that term is defined in subdivision (d) of section three
47 hundred thirty-two of title forty-seven of the United States Code, as
48 amended from time to time, including, but not limited to, all broadband
49 personal communications services, wireless radio telephone services,
50 geographic area specialized and enhanced specialized mobile radio
51 services, and incumbent-wide area specialized mobile radio licensees,
52 which offer real time, two-way voice or data service that is intercon-
53 nected with the public switched telephone network or otherwise provides
54 access to emergency communications services.

55 (c) "Wireless communications service supplier" means any commercial
56 entity that operates a wireless communications service.

1 (d) "Place of primary use" means the street address that is represen-
2 tative of where the customer's use of the wireless communications
3 service primarily occurs, which address must be either the residential
4 street address or the primary business street address of the customer;
5 and within the licensed service area of the wireless communications
6 service provider.

7 § 11-2343 Establishment of surcharge for wireless communications
8 devices. (a) In accordance with the provisions of article six of the
9 county law, as amended, there is hereby established a surcharge of thir-
10 ty cents per month on wireless communications service in the city of New
11 York. The surcharge shall be imposed on each wireless communications
12 device and shall be reflected and made payable on bills rendered for
13 wireless communications service that is provided to a customer whose
14 place of primary use is within the city of New York.

15 (b) The surcharge imposed by subdivision (a) of this section shall be
16 used to pay for the costs associated with the design, construction,
17 operation, maintenance, and administration of public safety communi-
18 cations networks serving the city of New York.

19 (c) All wireless communications service suppliers that provide service
20 to customers whose place of primary use is within the city of New York
21 shall begin to add the monthly surcharge as provided in subdivision (a)
22 of this section to all service bills no later than the forty-fifth day
23 after the effective date of the local law that added this chapter.

24 (d) Notwithstanding any provision of law to the contrary, no surcharge
25 shall be imposed pursuant to this chapter on or after December first,
26 two thousand seventeen.

27 § 11-2344 Collection of surcharge. (a) Each wireless communications
28 service supplier serving the city of New York shall act as collection
29 agent for the city of Staten Island and shall remit the funds collected
30 pursuant to the surcharge imposed under the provisions of this chapter
31 to the commissioner of finance each month. Such funds shall be remitted
32 no later than thirty days after the last business day of the month.

33 (b) Each wireless communications service supplier shall be entitled to
34 retain, as an administrative fee, an amount equal to two per cent of its
35 collections of the surcharge.

36 (c) The surcharge required to be collected by the wireless communi-
37 cations service supplier shall be added to and stated separately in its
38 billings to customers.

39 (d) Each wireless communications service supplier shall annually
40 provide to the city of Staten Island an accounting of the surcharge
41 amounts billed and collected.

42 § 11-2345 Liability for surcharge. (a) Each wireless communications
43 service customer who is subject to the provisions of this chapter shall
44 be liable to the city of Staten Island for the surcharge until it has
45 been paid to the city except that payment to a wireless communications
46 service supplier is sufficient to relieve the customer from further
47 liability for such surcharge.

48 (b) No wireless communications service supplier shall have a legal
49 obligation to enforce the collection of any surcharge imposed under the
50 provisions of this chapter, provided, however, that whenever the wire-
51 less communications service supplier remits the funds collected to the
52 city of Staten Island, it shall also provide the city with the name and
53 address of any customer refusing or failing to pay the surcharge and
54 shall state the amount of such surcharge remaining unpaid.

55 § 11-2346 Systems revenues; adjustment of surcharge. (a) All surcharge
56 monies remitted to the city of Staten Island by a wireless communi-

1 cations service supplier shall be expended only upon authorization of
2 the council and only for payment of system costs or other costs associ-
3 ated with the design, construction, operation, maintenance, and adminis-
4 tration of public safety communications networks serving the city of
5 Staten Island. The finance commissioner and the director of the office
6 of management and budget shall separately account for and keep adequate
7 books and records of the amount and source of all such monies and of the
8 amount and object or purpose of all expenditures thereof.

9 (b) If, at the end of any fiscal year, the total amount of all such
10 monies exceeds the amount necessary for payment of the above mentioned
11 costs in such fiscal year, such excess shall be reserved and carried
12 over for the payment of those costs in the following fiscal year.

13 CHAPTER 23-C
14 WIRELESS COMMUNICATIONS SURCHARGE

15 § 11-2351 Surcharge on wireless communications service. (a) There is
16 hereby imposed within the territorial limits of the city of Staten
17 Island, in accordance with the provisions of section one hundred eight-
18 y-six-g of the tax law, a surcharge on wireless communications service,
19 as such surcharge is described in paragraph (b) of subdivision two of
20 section one hundred eighty-six-g of the tax law.

21 (b) Such surcharge shall be imposed at the rate of thirty cents per
22 month on each wireless communications device in service during any part
23 of the month.

24 (c) A wireless communications service supplier shall begin to add such
25 surcharge to the billings of its customers on December first, two thou-
26 sand seventeen.

27 § 11-2352 Surcharge on the retail sale of each prepaid wireless commu-
28 nications service. (a) There is hereby imposed within the territorial
29 limits of the city of Staten Island, in accordance with the provisions
30 of section one hundred eighty-six-g of the tax law, a surcharge on
31 prepaid wireless communications service, as such surcharge is described
32 in paragraph (c) of subdivision two of section one hundred eighty-six-g
33 of the tax law.

34 (b) Such surcharge shall be imposed at the rate of thirty cents per
35 retail sale.

36 (c) A prepaid wireless communications seller shall begin to collect
37 such surcharge from its customers on December first, two thousand seven-
38 teen.

39 CHAPTER 24
40 TAX ON RETAIL LICENSEES OF THE STATE LIQUOR AUTHORITY

41 § 11-2401 Definitions. When used in this chapter the following terms
42 shall mean or include:

43 1. "Person." An individual, partnership, society, association, joint-
44 stock company, corporation, estate, receiver, lessee, trustee, assignee,
45 referee, or any other person acting in a fiduciary or representative
46 capacity, whether appointed by a court or otherwise, and any combination
47 of individuals.

48 2. "Retail licensee." Any person to whom a license has been issued
49 by the state liquor authority under the state alcoholic beverage control
50 law who sells at retail in the city, for on or off premises consumption,
51 any liquor, wine or beer for the sale of which such license is required.

1 3. "Return." Any return required to be filed as provided under this
2 chapter.

3 4. "State." The state of New York.

4 5. "City." The city of Staten Island.

5 6. "Commissioner." The commissioner of finance of the city of Staten
6 Island.

7 7. "Tax year." June first of any calendar year through May thirty-
8 first of the following calendar year.

9 8. "Tax appeals tribunal." The tax appeals tribunal established by
10 section one hundred sixty-eight of the charter of the preceding munici-
11 pality as it existed January first, nineteen hundred ninety-four.

12 § 11-2402 Imposition of tax. For the privilege of selling liquor,
13 wine or beer at retail, for on or off premises consumption, within the
14 city of Staten Island, there is hereby imposed and there shall be paid
15 annually for each tax year, commencing with the tax year beginning June
16 first, nineteen hundred eighty, a tax to be paid by each retail licensee
17 in an amount equal to twenty-five percent of the license fees payable
18 under the state alcoholic beverage control law by such retail licensee
19 for the license year in effect at the commencement of the tax year under
20 this chapter. A retail licensee who obtains a license subsequent to the
21 commencement of a tax year shall pay the tax based upon fees payable
22 under the state alcoholic beverage control law by such licensee for the
23 license year in effect at the time such license is issued. This tax
24 shall be in addition to any and all other taxes paid by such retail
25 licensee.

26 § 11-2403 Exemptions. The tax imposed by this chapter shall not apply
27 to the following:

28 (a) The state of New York, or any of its agencies, instrumentalities,
29 public corporations, including a public corporation created pursuant to
30 agreement or compact with another state or Canada, or political subdivi-
31 sions;

32 (b) The United States of America, and any of its agencies and instru-
33 mentalities insofar as it is immune from taxation;

34 (c) The United Nations or other international organizations of which
35 the United States of America is a member; and

36 (d) Any corporation, or association, or trust, or community chest,
37 fund or foundation, organized and operated exclusively for religious,
38 charitable, or educational purposes, or for the prevention of cruelty to
39 children or animals, and no part of the net earnings of which inures to
40 the benefit of any private shareholder or individual, and no substantial
41 part of the activities of which is carrying on propaganda, or otherwise
42 attempting to influence legislation; provided, however, that nothing in
43 this paragraph shall include an organization operated for the primary
44 purpose of carrying on a trade or business for profit, whether or not
45 all of its profits are payable to one or more organizations described in
46 this subdivision.

47 § 11-2404 Records to be kept. Every retail licensee shall keep such
48 records of its business and in such form as the commissioner may by
49 regulation require. Such records shall be offered for inspection and
50 examination at any time upon demand by the commissioner or his or her
51 duly authorized agent or employee and shall be preserved for a period of
52 three years, except that the commissioner may consent to their
53 destruction within that period or may require that they be kept longer.

54 § 11-2405 Returns. a. On or before the twenty-fifth day of June in
55 each tax year, every person subject to tax under this chapter shall file
56 a return with the commissioner on a form prescribed by the commissioner.

1 A retail licensee who obtains a license subsequent to the commencement
2 of a tax year shall file a return for such tax year on or before the
3 twenty-fifth day of the month following the month in which such license
4 was obtained.

5 b. The return shall state the amount of license fees paid to the
6 state under the alcoholic beverage control law and the date when a
7 license under such law was issued to the retail licensee and shall
8 contain any other information which the commissioner may deem necessary
9 for the proper administration of this chapter. The commissioner may
10 require amended returns to be filed within twenty days after notice and
11 to contain the information specified in the notice.

12 c. If a return required by this chapter is not filed or if a return
13 when filed is incorrect or insufficient on its face, the commissioner
14 shall take the necessary steps to enforce the filing of such a return or
15 of a corrected return.

16 d. The return otherwise required to be filed on or before June twen-
17 ty-fifth, nineteen hundred eighty under the provisions of subdivision a
18 of this section, shall be made and filed on or before August twenty-
19 fifth, nineteen hundred eighty.

20 § 11-2406 Payment of tax. At the time of filing a return each person
21 shall pay to the commissioner the tax imposed under this chapter. Such
22 tax shall be due and payable on the last day on which such return is
23 required to be filed, regardless of whether a return is filed or whether
24 the return which is filed correctly indicates the amount of tax due.

25 § 11-2407 Determination of tax. If a return required by this chapter
26 is not filed, or if a return when filed is incorrect or insufficient,
27 the commissioner shall determine the amount of tax due from such infor-
28 mation as may be obtainable and, if necessary, may estimate the tax on
29 the basis of external indices. Notice of such determination shall be
30 given to the person liable for the payment of the tax. Such determi-
31 nation shall finally and irrevocably fix the tax unless the person
32 against whom it is assessed, within ninety days after the giving of
33 notice of such determination, or, if the commissioner of finance has
34 established a conciliation procedure pursuant to section 11-124 of the
35 code of the preceding municipality and the taxpayer has requested a
36 conciliation conference in accordance therewith, within ninety days from
37 the mailing of a conciliation decision or the date of the commissioner's
38 confirmation of the discontinuance of the conciliation proceeding, both
39 (1) serves a petition upon the commissioner of finance and (2) files a
40 petition with the tax appeals tribunal for a hearing, or unless the
41 commissioner of his or her own motion shall redetermine the same. Such
42 hearing and any appeal to the tax appeals tribunal sitting en banc from
43 the decision rendered in such hearing shall be conducted in the manner
44 and subject to the requirements prescribed by the tax appeals tribunal
45 pursuant to sections one hundred sixty-eight through one hundred seven-
46 ty-two of the charter of the preceding municipality as it existed Janu-
47 ary first, nineteen hundred ninety-four. After such hearing the tax
48 appeals tribunal shall give notice of its decision to the person against
49 whom the tax is assessed and to the commissioner of finance. A decision
50 of the tax appeals tribunal sitting en banc shall be reviewable for
51 error, illegality or unconstitutionality or any other reason whatsoever
52 by a proceeding under article seventy-eight of the civil practice law
53 and rules if application therefor is made to the supreme court by the
54 person against whom the tax was assessed within four months after the
55 giving of the notice of such tax appeals tribunal decision. A proceed-
56 ing under article seventy-eight of the civil practice law and rules

1 shall not be instituted by a taxpayer unless: (a) the amount of any tax
2 sought to be reviewed, with penalties and interest thereon, if any,
3 shall be first deposited with the commissioner and there shall be filed
4 with the commissioner an undertaking issued by a surety company author-
5 ized to transact business in this state and approved by the superinten-
6 dent of insurance of this state as to solvency and responsibility, in
7 such amount as a justice of the supreme court shall approve, to the
8 effect that if such proceeding be dismissed or the tax confirmed, the
9 taxpayer will pay all costs and charges which may accrue in the prose-
10 cution of the proceedings or (b) at the option of the taxpayer, such
11 undertaking may be in a sum sufficient to cover the taxes, interest and
12 penalties stated in such decision, plus the costs and charges which may
13 accrue against it in the prosecution of the proceeding, in which event
14 the taxpayer shall not be required to pay such taxes, interest or penal-
15 ties as a condition precedent to the application.

16 § 11-2408 Refunds. a. In the manner provided in this section, the
17 commissioner shall refund or credit, without interest, any tax, penalty
18 or interest erroneously, illegally or unconstitutionally collected or
19 paid, if written application to the commissioner for such refund shall
20 be made within one year from the payment thereof. Whenever a refund or
21 credit is made or denied, the commissioner shall state his or her reason
22 therefor and give notice thereof to the taxpayer in writing. The commis-
23 sioner may, in lieu of any refund required to be made, allow credit
24 therefor on payments due from the applicant.

25 b. Any determination of the commissioner of finance denying a refund
26 or credit pursuant to subdivision a of this section shall be final and
27 irrevocable unless the applicant for such refund or credit, within nine-
28 ty days from the mailing of notice of such determination, or, if the
29 commissioner of finance has established a conciliation procedure pursu-
30 ant to section 11-124 of the code of the preceding municipality and the
31 applicant has requested a conciliation conference in accordance there-
32 with, within ninety days from the mailing of a conciliation decision or
33 the date of the commissioner's confirmation of the discontinuance of the
34 conciliation proceeding, both (1) serves a petition upon the commission-
35 er of finance and (2) files a petition with the tax appeals tribunal for
36 a hearing. Such petition for a refund or credit made as provided in this
37 section shall be deemed an application for a revision of any tax, penal-
38 ty or interest complained of. Such hearing and any appeal to the tribu-
39 nal sitting en banc from the decision rendered in such hearing shall be
40 conducted in the manner and subject to the requirements prescribed by
41 the tax appeals tribunal pursuant to sections one hundred sixty-eight
42 through one hundred seventy-two of the charter of the preceding munici-
43 pality as it existed January first, nineteen hundred ninety-four. After
44 such hearing, the tax appeals tribunal shall give notice of its decision
45 to the applicant and to the commissioner of finance. The applicant shall
46 be entitled to institute a proceeding pursuant to article seventy-eight
47 of the civil practice law and rules to review a decision of the tax
48 appeals tribunal sitting en banc if application to the supreme court be
49 made therefor within four months after the giving of notice of such
50 decision, and provided, in the case of an application by a taxpayer,
51 that a final determination of tax due was not previously made. Such a
52 proceeding shall not be instituted by a taxpayer unless an undertaking
53 shall first be filed with the commissioner, in such amount and with such
54 sureties as a justice of the supreme court shall approve, to the effect
55 that if such proceeding be dismissed or the tax confirmed, the taxpayer

1 will pay all costs and charges which may accrue in the prosecution of
2 the proceeding.

3 c. A person shall not be entitled to a revision, refund or credit
4 under this section, of a tax, interest or penalty which had been deter-
5 mined to be due pursuant to the provisions of section 11-2407 of this
6 chapter where such person has had a hearing or an opportunity for a
7 hearing, as provided in such section or has failed to avail himself or
8 herself of the remedies as provided in such section. No refund or cred-
9 it shall be made of a tax, interest or penalty paid after a determi-
10 nation by the commissioner made pursuant to section 11-2407 of this
11 chapter unless it be found that such determination was erroneous, ille-
12 gal or unconstitutional or otherwise improper, by the tax appeals tribu-
13 nal after a hearing or of the commissioner's own motion, or, if such tax
14 appeals tribunal affirms in whole or in part the determination of the
15 commissioner of finance, in a proceeding under article seventy-eight of
16 the civil practice law and rules, pursuant to the provisions of said
17 section in which event refund or credit without interest shall be made
18 of the tax, interest or penalty found to have been overpaid.

19 § 11-2409 Remedies exclusive. The remedies provided by this chapter
20 shall be the exclusive remedies available to any person for the review
21 of tax liability imposed by this chapter; and no determination or
22 proposed determination of tax or determination on any application for
23 refund by the commissioner of finance, nor any decision by the tax
24 appeals tribunal or any of its administrative law judges, shall be
25 enjoined or reviewed by an action for declaratory judgment, an action
26 for money had and received or by any action or proceeding other than, in
27 the case of a decision by the tax appeals tribunal sitting en banc, a
28 proceeding under article seventy-eight of the civil practice law and
29 rules; provided, however, that a taxpayer may proceed by declaratory
30 judgment if such taxpayer institutes suit within thirty days after a
31 deficiency assessment is made and pays the amount of the deficiency
32 assessment to the commissioner prior to the institution of such suit and
33 posts a bond for costs as provided in section 11-2407 of this chapter.

34 § 11-2410 Reserves. In cases where the taxpayer has applied for a
35 refund and has instituted a proceeding under article seventy-eight of
36 the civil practice law and rules to review a determination adverse to
37 such taxpayer on his or her application for refund, the city comptroller
38 shall set up appropriate reserves to meet any decision adverse to the
39 city.

40 § 11-2411 Proceedings to recover tax. a. Whenever any person shall
41 fail to pay any tax or penalty or interest imposed by this chapter, the
42 corporation counsel shall, upon the request of the commissioner, bring
43 or cause to be brought an action to enforce payment of the same against
44 the person liable for the same on behalf of the city of Staten Island in
45 any court of the state of New York or of any other state or of the
46 United States. If, however, the commissioner in his or her discretion
47 believes that a taxpayer subject to the provisions of this chapter is
48 about to cease business, leave the state or remove or dissipate the
49 assets out of which tax or penalties or interest might be satisfied and
50 that any such tax or penalty or interest will not be paid when due, he
51 or she may declare such tax or penalty or interest to be immediately due
52 and payable and may issue a warrant immediately.

53 b. As an additional or alternate remedy, the commission may issue a
54 warrant, directed to the city sheriff, commanding such sheriff to levy
55 upon and sell the real and personal property of such person which may be
56 found within the city, for the payment of the amount thereof, with any

1 penalties and interest, and the cost of executing the warrant, and to
2 return such warrant to the commissioner and to pay to him or her the
3 money collected by virtue thereof within sixty days after receipt of
4 such warrant. The city sheriff shall, within five days after the
5 receipt of the warrant, file with the county clerk a copy thereof, and
6 thereupon such clerk shall enter in the judgment docket the name of the
7 person mentioned in the warrant and the amount of the tax, penalties and
8 interest for which the warrant is issued and the date when such copy is
9 filed. Thereupon the amount of such warrant so docketed shall become a
10 lien upon the title to and interest in real and personal property of the
11 person against whom the warrant is issued. The city sheriff shall then
12 proceed upon the warrant in the same manner and with like effect as that
13 provided by law in respect to executions issued against property upon
14 judgments of a court of record, and for services in executing the
15 warrant such sheriff shall be entitled to the same fees which he or she
16 may collect in the same manner. In the discretion of the commissioner a
17 warrant of like terms, force and effect may be issued and directed to
18 any officer or employee of the department of finance, and in the
19 execution thereof such officer or employee shall have all the powers
20 conferred by law upon sheriffs, but he or she shall be entitled to no
21 fee for compensation in excess of the actual expenses paid in the
22 performance of such duty. If a warrant is returned not satisfied in
23 full, the commissioner may from time to time issue new warrants and
24 shall also have the same remedies to enforce the amount due thereunder
25 as if the city had recovered judgment therefor and execution thereon had
26 been returned unsatisfied.

27 c. Whenever there is made a sale, transfer or assignment in bulk of
28 any part or the whole of a stock of merchandise or of fixtures, or
29 merchandise and of fixtures pertaining to the conducting of the business
30 of the seller, transferor or assignor, otherwise than in the ordinary
31 course of trade and in the regular prosecution of said business, the
32 purchaser, transferee or assignee shall at least ten days before taking
33 possession of such merchandise, fixtures, or merchandise and fixtures,
34 or paying therefor, notify the commissioner by registered mail of the
35 proposed sale and of the price, terms and conditions thereof whether or
36 not the seller, transferor or assignor, has represented to, or informed
37 the purchaser, transferee or assignee that it owes any tax pursuant to
38 this chapter and whether or not the purchaser, transferee or assignee
39 has knowledge that such taxes are owing, and whether any such taxes are
40 in fact owing.

41 Whenever the purchaser, transferee or assignee shall fail to give
42 notice to the commissioner as required by the opening paragraph of this
43 subdivision, or whenever the commissioner shall inform the purchaser,
44 transferee or assignee that a possible claim for such tax or taxes
45 exists, any sums of money, property or choses in action, or other
46 consideration, which the purchaser, transferee or assignee is required
47 to transfer over to the seller, transferor or assignor shall be subject
48 to a first priority right and lien for any such taxes theretofore or
49 thereafter determined to be due from the seller, transferor or assignor
50 to the city, and the purchaser, transferee or assignee is forbidden to
51 transfer to the seller, transferor or assignor any such sums of money,
52 property or choses in action to the extent of the amount of the city's
53 claim. For failure to comply with the provisions of this subdivision,
54 the purchaser, transferee or assignee, in addition to being subject to
55 the liabilities and remedies imposed under the provisions of article six
56 of the uniform commercial code, shall be personally liable for the

1 payment to the city of any such taxes theretofore or thereafter deter-
2 mined to be due to the city from the seller, transferor or assignor, and
3 such liability may be assessed and enforced in the same manner as the
4 liability for tax under this chapter.

5 d. The commissioner of finance, if he or she finds that the interests
6 of the city will not thereby be jeopardized, and upon such conditions as
7 the commissioner of finance may require, may release any property from
8 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
9 tions to tax, penalties and interest filed pursuant to subdivision b of
10 this section, and such release or vacating of the warrant may be
11 recorded in the office of any recording officer in which such warrant
12 has been filed. The clerk shall thereupon cancel and discharge as of the
13 original date of docketing the vacated warrant.

14 § 11-2412 General powers of the commissioner. In addition to all
15 other powers granted to the commissioner in this chapter, he or she is
16 hereby authorized and empowered:

17 1. To make, adopt and amend rules and regulations appropriate to the
18 carrying out of this chapter and the purposes thereof; and to prescribe
19 the form of blanks, reports and other records relating to the enforce-
20 ment and administration of this chapter;

21 2. To extend, for cause shown, the time for filing any return for a
22 period not exceeding thirty days; and to compromise disputed claims in
23 connection with the taxes hereby imposed;

24 3. To request information from the department of taxation and finance
25 of the state of New York or the state liquor authority or the officials
26 of any political subdivision of this state or the treasury department of
27 the United States relative to any person; and to afford information to
28 such department of taxation and finance, liquor authority, officials or
29 treasury department relative to any person, any other provision of this
30 chapter to the contrary notwithstanding;

31 4. To delegate his or her functions under this section to a deputy or
32 assistant or other employee or employees of his or her department;

33 5. To assess, reassess, determine, revise and readjust the taxes
34 imposed under this chapter;

35 6. To provide by regulation for granting a refund of an appropriate
36 portion of the tax where the retail licensee ceases to do business
37 during the course of the tax year under circumstances which result in,
38 or would entitle such licensee to, a refund of license fee by the state
39 liquor authority. The provisions of section 11-2408 of this chapter
40 shall be applicable to such refunds.

41 § 11-2413 Administration of oaths and compelling testimony. a. The
42 commissioner, his or her employees duly designated and authorized by the
43 commissioner, the tax appeals tribunal and any of its duly designated
44 and authorized employees shall have power to administer oaths and take
45 affidavits in relation to any matter or proceeding in the exercise of
46 their powers and duties under this chapter. The commissioner and the tax
47 appeals tribunal shall have power to subpoena and require the attendance
48 of witnesses and the production of books, papers and documents to secure
49 information pertinent to the performance of the duties of the commis-
50 sioner or the tax appeals tribunal under this chapter and of the
51 enforcement of this chapter and to examine them in relation thereto, and
52 to issue commissions for the examination of witnesses who are out of the
53 state or unable to attend before the commissioner or the tax appeals
54 tribunal or excused from attendance.

55 b. A justice of the supreme court either in court or at chambers shall
56 have power summarily to enforce by proper proceedings the attendance and

1 testimony of witnesses and the production and examination of books,
2 papers and documents called for by the subpoena of the commissioner or
3 the tax appeals tribunal under this chapter.

4 c. Cross-reference; criminal penalties. For failure to obey subpoenas
5 or for testifying falsely, see section 11-4007 of this title; for
6 supplying false or fraudulent information, see section 11-4009 of this
7 title.

8 d. The officers who serve the summons or subpoena of the commissioner
9 of finance or the tax appeals tribunal under this chapter and witnesses
10 attending in response thereto shall be entitled to the same fees as are
11 allowed to officers and witnesses in civil cases in courts of record,
12 except as otherwise provided in this chapter. Such officers shall be
13 the city sheriff, and his or her duly appointed deputies or any officers
14 or employees of the department of finance or the tax appeals tribunal,
15 designated to serve such process.

16 § 11-2414 Interest and penalties. (a) Interest on underpayments. If
17 any amount of tax is not paid on or before the last date prescribed for
18 payment, without regard to any extension of time granted for payment,
19 interest on such amount at the rate set by the commissioner of finance
20 pursuant to subdivision (g) of this section, or, if no rate is set, at
21 the rate of seven and one-half percent per annum, shall be paid for the
22 period from such last date to the date of payment. In computing the
23 amount of interest to be paid, such interest shall be compounded daily.
24 Interest under this subdivision shall not be paid if the amount thereof
25 is less than one dollar.

26 (b) (1) Failure to file return. (A) In case of failure to file a
27 return under this chapter on or before the prescribed date, determined
28 with regard to any extension of time for filing, unless it is shown that
29 such failure is due to reasonable cause and not due to willful neglect,
30 there shall be added to the amount required to be shown as tax on such
31 return five percent of the amount of such tax if the failure is for not
32 more than one month, with an additional five percent for each additional
33 month or fraction thereof during which such failure continues, not
34 exceeding twenty-five percent in the aggregate.

35 (B) In the case of a failure to file a return of tax within sixty days
36 of the date prescribed for filing of such return, determined with regard
37 to any extension of time for filing, unless it is shown that such fail-
38 ure is due to reasonable cause and not due to willful neglect, the addi-
39 tion to tax under subparagraph (A) of this paragraph shall not be less
40 than the lesser of one hundred dollars or one hundred percent of the
41 amount required to be shown as tax on such return.

42 (C) For purposes of this paragraph, the amount of tax required to be
43 shown on the return shall be reduced by the amount of any part of the
44 tax which is paid on or before the date prescribed for payment of the
45 tax and by the amount of any credit against the tax which may be claimed
46 upon the return.

47 (2) Failure to pay tax shown on return. In case of failure to pay the
48 amount shown as tax on a return required to be filed under this chapter
49 on or before the prescribed date, determined with regard to any exten-
50 sion of time for payment, unless it is shown that such failure is due to
51 reasonable cause and not due to willful neglect, there shall be added to
52 the amount shown as tax on such return one-half of one percent of the
53 amount of such tax if the failure is not for more than one month, with
54 an additional one-half of one percent for each additional month or frac-
55 tion thereof during which such failure continues, not exceeding twenty-
56 five percent in the aggregate. For the purpose of computing the addition

1 for any month the amount of tax shown on the return shall be reduced by
2 the amount of any part of the tax which is paid on or before the begin-
3 ning of such month and by the amount of any credit against the tax which
4 may be claimed upon the return. If the amount of tax required to be
5 shown on a return is less than the amount shown as tax on such return,
6 this paragraph shall be applied by substituting such lower amount.

7 (3) Failure to pay tax required to be shown on return. In case of
8 failure to pay any amount in respect of any tax required to be shown on
9 a return required to be filed under this chapter which is not so shown,
10 including a determination made pursuant to section 11-2407 of this chap-
11 ter, within ten days of the date of a notice and demand therefor, unless
12 it is shown that such failure is due to reasonable cause and not due to
13 willful neglect, there shall be added to the amount of tax stated in
14 such notice and demand one-half of one percent of such tax if the fail-
15 ure is not for more than one month, with an additional one-half of one
16 percent for each additional month or fraction thereof during which such
17 failure continues, not exceeding twenty-five percent in the aggregate.
18 For the purpose of computing the addition for any month, the amount of
19 tax stated in the notice and demand shall be reduced by the amount of
20 any part of the tax which is paid before the beginning of such month.

21 (4) Limitations on additions.

22 (A) With respect to any return the amount of the addition under para-
23 graph one of this subdivision shall be reduced by the amount of the
24 addition under paragraph two of this subdivision for any month to which
25 an addition applies under both paragraphs one and two. In any case
26 described in subparagraph (B) of paragraph one of this subdivision, the
27 amount of the addition under such paragraph one shall not be reduced
28 below the amount provided in such subparagraph.

29 (B) With respect to any return, the maximum amount of the addition
30 permitted under paragraph three of this subdivision shall be reduced by
31 the amount of the addition under paragraph one of this subdivision,
32 determined without regard to subparagraph (B) of such paragraph one,
33 which is attributable to the tax for which the notice and demand is made
34 and which is not paid within ten days of such notice and demand.

35 (c) Underpayment due to negligence. (1) If any part of an underpay-
36 ment of tax is due to negligence or intentional disregard of this chap-
37 ter or any rules or regulations relating thereto, but without intent to
38 defraud, there shall be added to the tax a penalty equal to five percent
39 of the underpayment.

40 (2) There shall be added to the tax, in addition to the amount deter-
41 mined under paragraph one of this subdivision, an amount equal to fifty
42 percent of the interest payable under subdivision (a) of this section
43 with respect to the portion of the underpayment described in such para-
44 graph one which is attributable to the negligence or intentional disre-
45 gard referred to in such paragraph one, for the period beginning on the
46 last date prescribed by law for payment of such underpayment, determined
47 without regard to any extension, and ending on the date of the assess-
48 ment of the tax, or, if earlier, the date of the payment of the tax.

49 (d) Underpayment due to fraud. (1) If any part of an underpayment of
50 tax is due to fraud, there shall be added to the tax a penalty equal to
51 fifty percent of the underpayment.

52 (2) There shall be added to the tax, in addition to the penalty deter-
53 mined under paragraph one of this subdivision, an amount equal to fifty
54 percent of the interest payable under subdivision (a) of this section
55 with respect to the portion of the underpayment described in such para-
56 graph one which is attributable to fraud, for the period beginning on

1 the last day prescribed by law for payment of such underpayment, deter-
2 mined without regard to any extension, and ending on the date of the
3 assessment of the tax, or, if earlier, the date of the payment of the
4 tax.

5 (3) The penalty under this subdivision shall be in lieu of any other
6 addition to tax imposed by subdivision (b) or (c) of this section.

7 (e) Additional penalty. Any person who, with fraudulent intent, shall
8 fail to pay any tax imposed by this chapter, or to make, render, sign or
9 certify any return, or to supply any information within the time
10 required by or under this chapter, shall be liable for a penalty of not
11 more than one thousand dollars, in addition to any other amounts
12 required under this chapter to be imposed, assessed and collected by the
13 commissioner of finance. The commissioner of finance shall have the
14 power, in his or her discretion, to waive, reduce or compromise any
15 penalty under this subdivision.

16 (f) The interest and penalties imposed by this section shall be paid
17 and disposed of in the same manner as other revenues from this chapter.
18 Unpaid interest and penalties may be enforced in the same manner as the
19 tax imposed by this chapter.

20 (g)(1) Authority to set interest rates. The commissioner of finance
21 shall set the rate of interest to be paid pursuant to subdivision (a) of
22 this section, but if no such rate of interest is set, such rate shall be
23 deemed to be set at seven and one-half percent per annum. Such rate
24 shall be the rate prescribed in paragraph two of this subdivision but
25 shall not be less than seven and one-half percent per annum. Any such
26 rate set by the commissioner of finance shall apply to taxes, or any
27 portion thereof, which remain or become due on or after the date on
28 which such rate becomes effective and shall apply only with respect to
29 interest computed or computable for periods or portions of periods
30 occurring in the period in which such rate is in effect.

31 (2) General rule. The rate of interest set under this subdivision
32 shall be the sum of (i) the federal short-term rate as provided under
33 paragraph three of this subdivision, plus (ii) seven percentage points.

34 (3) Federal short-term rate. For purposes of this subdivision:

35 (A) The federal short-term rate for any month shall be the federal
36 short-term rate determined by the United States secretary of the treas-
37 ury during such month in accordance with subsection (d) of section
38 twelve hundred seventy-four of the internal revenue code for use in
39 connection with section six thousand six hundred twenty-one of the
40 internal revenue code. Any such rate shall be rounded to the nearest
41 full percent, or, if a multiple of one-half of one percent, such rate
42 shall be increased to the next highest full percent.

43 (B) Period during which rate applies.

44 (i) In general. Except as provided in clause (ii) of this subpara-
45 graph, the federal short-term rate for the first month in each calendar
46 quarter shall apply during the first calendar quarter beginning after
47 such month.

48 (ii) Special rule for the month of September, nineteen hundred eight-
49 y-nine. The federal short-term rate for the month of April, nineteen
50 hundred eighty-nine shall apply with respect to setting the rate of
51 interest for the month of September, nineteen hundred eighty-nine.

52 (4) Publication of interest rate. The commissioner of finance shall
53 cause to be published in the City Record, and give other appropriate
54 general notice of, the interest rate to be set under this subdivision no
55 later than twenty days preceding the first day of the calendar quarter
56 during which such interest rate applies. The setting and publication of

1 such interest rate shall not be included within paragraph (a) of subdivi-
2 sion five of section one thousand forty-one of the city charter of the
3 preceding municipality as it existed January first, nineteen hundred
4 ninety-four relating to the definition of a rule.

5 (h) Miscellaneous. (1) The certificate of the commissioner of finance
6 to the effect that a tax has not been paid, that a return has not been
7 filed, that information has not been supplied pursuant to the provisions
8 of this chapter or that records have not been retained pursuant to the
9 provisions of this chapter shall be prima facie evidence thereof.

10 (2) Cross-reference: For criminal penalties, see chapter forty of this
11 title.

12 § 11-2415 Returns to be secret. (a) Except in accordance with proper
13 judicial order, or as otherwise provided by law, it shall be unlawful
14 for the commissioner, the tax appeals tribunal or any officer or employ-
15 ee of the city to divulge or make known in any manner any information
16 relating to the business of a taxpayer contained in any return required
17 under this chapter. The officers charged with the custody of such
18 returns shall not be required to produce any of them or evidence of
19 anything contained in them in any action or proceeding in any court,
20 except on behalf of the commissioner in an action or proceeding under
21 the provisions of this chapter, or on behalf of any party to any action
22 or proceeding under the provisions of this chapter when the returns or
23 facts shown thereby are directly involved in such action or proceeding,
24 in either of which events the court may require the production of, and
25 may admit in evidence, so much of said returns or of the facts shown
26 thereby, as are pertinent to the action or proceeding and no more.
27 Nothing under this section shall be construed to prohibit the delivery
28 to a taxpayer or the taxpayer's duly authorized representative of a
29 certified copy of any return filed in connection with his or her tax nor
30 to prohibit the publication of statistics so classified as to prevent
31 the identification of particular returns and the items thereof, or the
32 inspection by the corporation counsel or other legal representatives of
33 the city, or by the district attorney of Richmond county, of the return
34 of any taxpayer who shall bring action to set aside or review the tax
35 based thereon, or against whom an action or proceeding under this chap-
36 ter may be instituted. Returns shall be preserved for three years and
37 thereafter until the commissioner permits them to be destroyed.

38 (b) (1) Any officer or employee of the city who willfully violates the
39 provisions of subdivision (a) of this section shall be dismissed from
40 office and be incapable of holding any public office in this city for a
41 period of five years thereafter.

42 (2) Cross-reference: For criminal penalties, see chapter forty of this
43 title.

44 (c) This section shall be deemed a state statute for purposes of
45 paragraph (a) of subdivision two of section eighty-seven of the public
46 officers law.

47 (d) Notwithstanding anything in subdivision (a) of this section to the
48 contrary, if a taxpayer has petitioned the tax appeals tribunal for
49 administrative review as provided in section one hundred seventy of the
50 charter of the preceding municipality as it existed January first, nine-
51 teen hundred ninety-four, the commissioner of finance shall be author-
52 ized to present to the tribunal any report or return of such taxpayer,
53 or any information contained therein or relating thereto, which may be
54 material or relevant to the proceeding before the tribunal. The tax
55 appeals tribunal shall be authorized to publish a copy or a summary of
56 any decision rendered pursuant to section one hundred seventy-one of the

1 charter of the preceding municipality as it existed January first, nine-
2 teen hundred ninety-four.

3 § 11-2416 Notices and limitations of time. a. Any notice authorized
4 or required under the provisions of this chapter may be given by mailing
5 the same to the person for whom it is intended in a postpaid envelope
6 addressed to such person at the address given in the last return filed
7 by him or her pursuant to the provisions of this chapter or in any
8 application made by him or her, or, if no return has been filed or
9 application made, then to such address as may be obtainable. The mailing
10 of such notice shall be presumptive evidence of the receipt of the same
11 by the person to whom addressed. Any period of time which is determined
12 according to the provisions of this chapter by the giving of notice
13 shall commence to run from the date of mailing of such notice.

14 b. The provisions of the civil practice law and rules or any other law
15 relative to limitations of time for the enforcement of a civil remedy
16 shall not apply to any proceeding or action taken by the city to levy,
17 appraise, assess, determine or enforce the collection of any tax or
18 penalty or interest provided by this chapter. However, except in the
19 case of a wilfully false or fraudulent return with intent to evade the
20 tax, no assessment of additional tax shall be made after the expiration
21 of more than three years from the date of the filing of a return,
22 provided, however, that where no return has been filed as provided by
23 law the tax may be assessed at any time.

24 c. Where, before the expiration of the period prescribed in this
25 section for the assessment of an additional tax, a taxpayer has
26 consented in writing that such period be extended, the amount of such
27 additional tax due may be determined at any time within such extended
28 period. The period so extended may be further extended by subsequent
29 consents in writing made before the expiration of the extended period.

30 d. If any return, claim, statement, notice, application, or other
31 document required to be filed, or any payment required to be made, with-
32 in a prescribed period or on or before a prescribed date under authority
33 of any provision of this chapter is, after such period or such date,
34 delivered by United States mail to the commissioner of finance, the tax
35 appeals tribunal, bureau, office, officer or person with which or with
36 whom such document is required to be filed, or to which or to whom such
37 payment is required to be made, the date of the United States postmark
38 stamped on the envelope shall be deemed to be the date of delivery. This
39 subdivision shall apply only if the postmark date falls within the
40 prescribed period or on or before the prescribed date for the filing of
41 such document, or for making the payment, including any extension grant-
42 ed for such filing or payment, and only if such document or payment was
43 deposited in the mail, postage prepaid, properly addressed to the
44 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
45 cer or person with which or with whom the document is required to be
46 filed or to which or to whom such payment is required to be made. If any
47 document is sent by United States registered mail, such registration
48 shall be prima facie evidence that such document was delivered to the
49 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
50 cer or person to which or to whom addressed, and the date of registra-
51 tion shall be deemed the postmark date. The commissioner of finance and,
52 where relevant, the tax appeals tribunal are authorized to provide by
53 regulation the extent to which, such provisions with respect to prima
54 facie evidence of delivery and the postmark date, shall apply to certi-
55 fied mail. Except as provided in subdivision f of this section, this
56 subdivision shall apply in the case of postmarks not made by the United

1 States postal service only if and to the extent provided by regulation
2 of the commissioner of finance or, where relevant, the tax appeals
3 tribunal.

4 e. When the last day prescribed under authority of this chapter,
5 including any extension of time, for performing any act falls on a
6 Saturday, Sunday or legal holiday in the state, the performance of such
7 act shall be considered timely if it is performed on the next succeeding
8 day which is not a Saturday, Sunday or legal holiday.

9 f. (1) Any reference in subdivision d of this section to the United
10 States mail shall be treated as including a reference to any delivery
11 service designated by the secretary of the treasury of the United States
12 pursuant to section seventy-five hundred two of the internal revenue
13 code and any reference in subdivision d of this section to a United
14 States postmark shall be treated as including a reference to any date
15 recorded or marked in the manner described in section seventy-five
16 hundred two of the internal revenue code by a designated delivery
17 service. If the commissioner of finance finds that any delivery service
18 designated by such secretary is inadequate for the needs of the city,
19 the commissioner of finance may withdraw such designation for purposes
20 of this title. The commissioner of finance may also designate additional
21 delivery services meeting the criteria of section seventy-five hundred
22 two of the internal revenue code for purposes of this title, or may
23 withdraw any such designation if the commissioner of finance finds that
24 a delivery service so designated is inadequate for the needs of the
25 city. Any reference in subdivision d of this section to the United
26 States mail shall be treated as including a reference to any delivery
27 service designated by the commissioner of finance and any reference in
28 subdivision d of this section to a United States postmark shall be
29 treated as including a reference to any date recorded or marked in the
30 manner described in section seventy-five hundred two of the internal
31 revenue code by a delivery service designated by the commissioner of
32 finance, provided, however, any withdrawal of designation or additional
33 designation by the commissioner of finance shall not be effective for
34 purposes of service upon the tax appeals tribunal, unless and until such
35 withdrawal of designation or additional designation is ratified by the
36 president of the tax appeals tribunal.

37 (2) Any equivalent of registered or certified mail designated by the
38 United States secretary of the treasury, or as may be designated by the
39 commissioner of finance pursuant to the same criteria used by such
40 secretary for such designations pursuant to section seventy-five hundred
41 two of the internal revenue code, shall be included within the meaning
42 of registered or certified mail as used in subdivision d of this
43 section. If the commissioner of finance finds that any equivalent of
44 registered or certified mail designated by such secretary or the commis-
45 sioner of finance is inadequate for the needs of the city, the commis-
46 sioner of finance may withdraw such designation for purposes of this
47 title, provided, however, any withdrawal of designation or additional
48 designation by the commissioner of finance shall not be effective for
49 purposes of service upon the tax appeals tribunal, unless and until such
50 withdrawal of designation or additional designation is ratified by the
51 president of the tax appeals tribunal.

52 § 11-2417 Construction and enforcement. This chapter shall be
53 construed and enforced in conformity with article twenty-nine of the tax
54 law, pursuant to which it is enacted.

1 not a permanent resident with respect to a room for which such person
2 has the rights of a room remarketer.

3 § 11-2502 Imposition of tax. a. (1) On and after July first, nineteen
4 hundred seventy until and including August thirty-first, nineteen
5 hundred eighty, there is hereby imposed and there shall be paid a tax
6 for every occupancy of each room in a hotel in the city of Staten Island
7 at the rates set forth in, and determined in accordance with the follow-
8 ing table:

9	If the rent per day for the room is:	The tax is:
10	Less than \$10	\$.25 per day
11	\$10 or more, but less than \$15	\$.50 per day
12	\$15 or more, but less than \$20	\$.75 per day
13	\$20 or more	\$1.00 per day

14 (2) On and after September first, nineteen hundred eighty, there is
15 hereby imposed and there shall be paid a tax for every occupancy of each
16 room in a hotel in the city of Staten Island at the rates set forth in,
17 and determined in accordance with, the following table:

18	If the rent per day for the room is:	The tax is:
19	\$10 or more, but less than \$20	\$.50 per day
20	\$20 or more, but less than \$30	\$1.00 per day
21	\$30 or more, but less than \$40	\$1.50 per day
22	\$40 or more	\$2.00 per day

23 Where a person occupies a room for less than a full day and pays less
24 than the rent for a full day, the tax shall nevertheless be the same
25 amount as would be due had such person occupied the room for a full day
26 at the rent for a full day.

27 (3) In addition to the tax imposed by paragraph two of this subdivi-
28 sion, there is hereby imposed and there shall be paid a tax for every
29 occupancy of each room in a hotel in the city (A) at the rate of five
30 percent of the rent or charge per day for each such room up to and
31 including August thirty-first, nineteen hundred ninety, (B) at the rate
32 of six percent of the rent or charge per day for each such room on and
33 after September first, nineteen hundred ninety and before December
34 first, nineteen hundred ninety-four, (C) at the rate of five percent of
35 the rent or charge per day for each such room on and after December
36 first, nineteen hundred ninety-four and before March first, two thousand
37 nine, (D) at the rate of five and seven-eighths percent of the rent or
38 charge per day for each such room on and after March first, two thousand
39 nine and before December first, two thousand thirteen, (E) at the rate
40 of five percent of the rent or charge per day for each such room on and
41 after December first, two thousand thirteen and before December twenti-
42 eth, two thousand thirteen, (F) at the rate of five and seven-eighths
43 percent of the rent or charge per day for each such room on and after
44 December twentieth, two thousand thirteen and before December first, two
45 thousand twenty-three, and (G) at the rate of five percent of the rent
46 or charge per day for each such room on and after December first, two
47 thousand twenty-three.

48 (4) (A) When occupancy is provided, for a single consideration, with
49 property, services, amusement charges, or any other items, the separate
50 sale of which is not subject to tax under this chapter, and the rent
51 paid for such occupancy does not qualify for the exemption in this
52 subdivision, the entire consideration shall be treated as rent subject
53 to tax under paragraph one of this subdivision; provided, however, that
54 where the amount of the rent for occupancy is stated separately from the
55 price of such property, services, amusement charges or other items on
56 any sales slip, invoice, receipt, or other statement given the occupant

1 and such rent is reasonable in relation to the value of such property,
2 services, amusement charges, or other items, only such separately stated
3 rent will be subject to tax under this subdivision. (B) In regard to
4 the collection of tax on occupancies by remarketers, when occupancy is
5 provided, for a single consideration, with property, services, amusement
6 charges, or any other items, whether or not such other items are taxa-
7 ble, the rent portion of the consideration for such sale shall be
8 computed as follows: the total consideration for the sale multiplied by
9 a fraction, the numerator of which shall be the consideration paid to
10 the hotel for the occupancy and the denominator of which shall be the
11 consideration paid to the hotel for the occupancy plus the consideration
12 paid to the providers of the other items being sold, or by any other
13 reasonable method pursuant to which the rent portion of consideration
14 would be no less than the computation of rent portion of consideration
15 under subparagraph (A) of this paragraph. Nothing in this subdivision
16 shall be construed to subject to tax or exempt from tax any service or
17 property or amusement charge or other items otherwise subject to tax or
18 exempt from tax under this chapter.

19 (5) A room remarketer shall be allowed a refund or credit against the
20 taxes collected and required to be remitted pursuant to section 11-2505
21 of this chapter in the amount of the tax it paid to the operator of the
22 hotel or another room remarketer under this subdivision. Provided,
23 however, that in order to qualify for a refund or credit under this
24 paragraph with respect to any quarterly period, as described in subdivi-
25 sion a of section 11-2504 of this chapter, the room remarketer must,
26 with respect to such quarter, (A) be registered for hotel room occupancy
27 tax purposes under section 11-2514 of this chapter, and (B) collect the
28 taxes imposed by paragraphs two and three of this subdivision. Subject
29 to the conditions and limitations of this paragraph, the provisions of
30 section 11-2507 of this chapter shall apply to refunds or credits under
31 this paragraph.

32 (6) Where the rent is paid or charged or billed, or falls due on
33 either a weekly, monthly or other term basis, the daily rent upon which
34 the tax is determined shall be the result obtained by dividing the rent
35 for such term by the number of days in such term. Where the rent is for
36 more than one room, including but not limited to a suite of rooms, the
37 daily rent per room upon which tax is determined shall be calculated by
38 multiplying the daily rent for the group of rooms by a fraction, the
39 numerator of which shall be the daily rent for the particular room, or a
40 similar room, when such room is rented alone with similar bath facili-
41 ties, and the denominator of which shall be the total of the daily rent
42 for the individual rooms in the group of rooms, or similar rooms, when
43 such rooms are rented alone with similar bath facilities. In any case in
44 which it is not possible to determine the daily rent per room in the
45 manner described under this paragraph, the commissioner of finance shall
46 prescribe methods for making such determination.

47 b. (1) No tax shall be imposed under this chapter upon a permanent
48 resident.

49 (2) For purposes of this subdivision, an occupant who is eligible to
50 request and has requested a lease pursuant to the provisions of para-
51 graph two of subdivision (a) of section 2522.5 of the rent stabilization
52 regulations promulgated by the division of housing and community renewal
53 of the state of New York, shall tentatively be accorded the status of
54 permanent resident as of the date of such request, notwithstanding that
55 such occupant has not met the one hundred eighty-consecutive-day
56 requirement contained in subdivision eight of section 11-2501 of this

1 chapter as of such date. In the case of such an occupant, the operator
2 or room remarketer shall not collect the taxes imposed by this chapter
3 for any day, commencing with the date such lease is requested, which
4 falls within a period of continuous occupancy by such occupant of a room
5 or rooms in the hotel. Provided, however, if such occupant ceases to
6 occupy a room or rooms in the hotel prior to the completion of one
7 hundred eighty consecutive days of occupancy, any taxes not collected
8 theretofore by reason of the provisions of this paragraph shall become
9 immediately due and payable on the date of cessation of occupancy and
10 shall be collected by the operator or room remarketer from such occu-
11 pant. In the event, however, that the operator or room remarketer is
12 unable to collect such taxes from the occupant, the operator or room
13 remarketer shall not be liable to the city for such taxes. The
14 provisions of this paragraph shall apply with respect to leases
15 requested on or after September first, nineteen hundred ninety.

16 c. No tax shall be imposed under this chapter upon any organization
17 described in subdivision (a) of section eleven hundred sixteen of the
18 tax law to the extent such organization is not subject to the tax
19 imposed under subdivision (e) of section eleven hundred five of the tax
20 law.

21 d. (1) No tax shall be imposed under this chapter upon any person
22 occupying any room or rooms in a hotel solely and directly as a result
23 of such person's involuntary displacement from premises by the attack on
24 the World Trade Center on September eleventh, two thousand one, provided
25 such premises were not subject to the tax imposed by this section or the
26 tax imposed under section eleven hundred seven of the tax law.

27 (2) Where an occupant claims exemption from the tax under the
28 provisions of paragraph one of this subdivision, the rent shall be
29 deemed taxable under this chapter unless the operator shall receive from
30 the occupant claiming such exemption a signed written statement describ-
31 ing the specific circumstances providing the basis for such claim and
32 containing such other information as the commissioner of finance may
33 require. The operator shall retain such statement and provide it to the
34 commissioner of finance upon request.

35 e. Where any corporation, or association, or trust, or community
36 chest, fund or foundation, organized and operated exclusively for reli-
37 gious, charitable, or educational purposes, or for the prevention of
38 cruelty to children or animals, and no part of the net earnings of which
39 inures to the benefit of any private shareholder or individual and no
40 substantial part of the activities of which is carrying on propaganda,
41 or otherwise attempting to influence legislation, carries on its activ-
42 ities in furtherance of any of the purposes for which it was organized,
43 in premises in which, as part of said activities, it operates a hotel,
44 occupancy of rooms in said premises and rents therefrom received by such
45 corporation or association shall not be subject to tax under this chap-
46 ter. Nothing in this subdivision shall be deemed to include an organ-
47 ization operated for the primary purpose of carrying on a trade or busi-
48 ness for profit, whether or not all of its profits are payable to one or
49 more organizations described in this subdivision.

50 f. The tax to be collected shall be stated and charged separately from
51 the rent and shown separately on any record thereof, at the time when
52 the occupancy is arranged or contracted for and charged for and upon
53 every evidence of occupancy or any bill or statement or charge made for
54 said occupancy issued or delivered by the operator or room remarketer.

55 (1) Where an occupant rents a room directly from an operator, the tax
56 shall be paid by the occupant to the operator as trustee for and on

1 account of the city, and the operator shall be liable for the collection
2 of the tax on the rent and for the payment of the tax on the rent.

3 (2) The operator or room remarketer and any officer of any corporate
4 operator or room remarketer shall be personally liable for the portion
5 of the tax collected or required to be collected under this chapter, and
6 the operator shall have the same right in respect to collecting the tax
7 from the occupant, or in respect to nonpayment of the tax by the occu-
8 pant as if the tax were a part of the rent for the occupancy payable at
9 the time such tax shall become due and owing, including all rights of
10 eviction, dispossession, repossession and enforcement of any innkeeper's
11 lien that he or she may have in the event of nonpayment of rent by the
12 occupant; provided however, that the commissioner of finance shall be
13 joined as a party in any action or proceeding brought by the operator to
14 collect or enforce collection of the tax.

15 g. Where the occupant has failed to pay and the operator or room
16 remarketer has failed to collect a tax as imposed by this chapter, then
17 in addition to all other rights, obligations and remedies provided, such
18 tax shall be payable by the occupant directly to the commissioner of
19 finance, and it shall be the duty of the occupant to file a return ther-
20 eof with the commissioner of finance and to pay the tax imposed therein
21 to the commissioner of finance within fifteen days after such tax was
22 due.

23 h. The commissioner of finance may, wherever he or she deems it neces-
24 sary for the proper enforcement of this chapter, provide by regulation
25 that the occupant shall file returns and pay directly to the commission-
26 er of finance the tax imposed by this chapter, at such times as returns
27 are required to be filed and payment over made by the operator or room
28 remarketer.

29 i. The tax imposed by this chapter shall be paid upon any occupancy on
30 and after July first, nineteen hundred seventy, although such occupancy
31 is had pursuant to a contract, lease or other arrangement made prior to
32 such effective date. Where rent is paid, or charged or billed, or falls
33 due on either a weekly, monthly, or other term basis, the rent so paid,
34 charged, billed or falling due shall be subject to the tax imposed by
35 this chapter to the extent that it covers any portion of the period on
36 and after July first, nineteen hundred seventy, and such payment, bill,
37 charge or rent due shall be apportioned on the basis of the ratio of the
38 number of days falling within said period, to the total number of days
39 covered thereby. Where any tax has been paid pursuant to this chapter
40 upon any rent which has been ascertained to be worthless, the commis-
41 sioner of finance may by regulation provide for credit or refund of the
42 amount of such tax upon application therefor as provided in section
43 11-2507 of this chapter.

44 j. For the purpose of the proper administration of this chapter and to
45 prevent evasion of the tax hereby imposed, it shall be presumed that all
46 rents are subject to tax until the contrary is established, and the
47 burden of proving that a rent for occupancy is not taxable under this
48 chapter shall be upon the operator, the room remarketer, or the occu-
49 pant. Where an occupant claims exemption from the tax under the
50 provisions of subdivision c of this section, the rent shall be deemed
51 taxable under this chapter unless the operator or room remarketer shall
52 receive from the occupant claiming such exemption a copy of the exempt
53 organization certificate that is necessary to obtain exemption from the
54 tax imposed under subdivision (e) of section eleven hundred five of the
55 tax law, together with a certificate duly executed by the organization
56 named in such certificate certifying that the occupant is its agent,

1 representative or employee and that his or her occupancy is paid or to
2 be paid by, and is necessary or required in the course of or in
3 connection with the affairs of said organization.

4 k. No operator or room remarketer shall advertise or hold out to the
5 public in any manner, directly or indirectly, that the tax imposed by
6 this chapter is not considered as a mandatory addition to the rent
7 charged to the occupant.

8 1. An occupancy that an operator conveys or furnishes to a room
9 remarketer that the room remarketer intends to convey or furnish,
10 directly or indirectly, to an occupant for rent shall be exempt from the
11 taxes imposed by this section, provided that such room remarketer
12 furnishes the operator with a certificate in such form and containing
13 such information as may be prescribed by the commissioner of finance.
14 The operator shall retain such statement and provide it to the commis-
15 sioner of finance upon request.

16 § 11-2503 Records to be kept. a. Every operator and every room
17 remarketer shall keep records of every occupancy and of all rent paid,
18 charged or due thereon and of the tax payable thereon, in such form as
19 the commissioner of finance may by regulation require. Such records
20 shall be available for inspection and examination at any time upon
21 demand by the commissioner of finance or his or her duly authorized
22 agent or employee and shall be preserved for a period of three years,
23 except that the commissioner of finance may consent to their destruction
24 within that period or may require that they be kept longer.

25 b. Notwithstanding the provisions of sections three hundred five and
26 three hundred nine of the state technology law or any other law, the
27 commissioner may require any person who has elected to maintain in an
28 electronic format any portion of the records required to be maintained
29 by that person under this chapter, to make the electronic records avail-
30 able and accessible to the commissioner, notwithstanding that the
31 records are also maintained in a hard copy format.

32 § 11-2504 Returns. a. Every operator and every room remarketer shall
33 file with the commissioner of finance a return of occupancy and of
34 rents, and of the taxes payable thereon, for the quarterly periods
35 ending on the last day of February, May, August and November of each
36 year. Such returns shall be filed within twenty days after the end of
37 the quarterly period covered thereby. The commissioner of finance may
38 permit or require returns to be made by other periods and upon such
39 dates as he or she may specify. If the commissioner of finance deems it
40 necessary in order to insure the payment of the tax imposed by this
41 chapter, he or she may require returns to be made for shorter periods
42 than those prescribed pursuant to the provisions of this subdivision and
43 upon such dates as he or she may specify.

44 b. The forms of returns shall be prescribed by the commissioner of
45 finance and shall contain such information as he or she may deem neces-
46 sary for the proper administration of this chapter. The commissioner of
47 finance may require amended returns to be filed within twenty days after
48 notice and to contain the information specified in the notice.

49 c. If a return required by this chapter is not filed or if a return
50 when filed is incorrect or insufficient on its face the commissioner of
51 finance shall take the necessary steps to enforce the filing of such a
52 return or a corrected return.

53 § 11-2505 Payment of tax. At the time of filing a return of occupancy
54 and of rents each operator and room remarketer shall pay to the commis-
55 sioner of finance the taxes imposed by this chapter upon the rents
56 required to be included in such return, as well as all other moneys

1 collected by the operator or room remarketer acting or purporting to act
2 under the provisions of this chapter, even though it be judicially
3 determined that the tax collected is invalidly imposed. All the taxes
4 for the period for which a return is required to be filed shall be due
5 from the operator or room remarketer and payable to the commissioner of
6 finance on the date limited for the filing of the return for such peri-
7 od, without regard to whether a return is filed or whether the return
8 which is filed correctly shows the amount of rents and the taxes due
9 thereon. Where the commissioner of finance in his or her discretion
10 deems it necessary to protect revenues to be obtained under this chapter
11 he or she may require any operator or room remarketer required to
12 collect the tax imposed by this chapter to file with him or her a bond,
13 issued by a surety company authorized to transact business in this state
14 and approved by the superintendent of insurance of this state as to
15 solvency and responsibility, in such amount as the commissioner of
16 finance may fix, to secure the payment of any tax or penalties and
17 interest due or which may become due from such operator or room remark-
18 eter. In the event that the commissioner of finance determines that an
19 operator or room remarketer is to file such bond he or she shall give
20 notice to such operator or room remarketer to that effect specifying the
21 amount of the bond required. The operator or room remarketer shall file
22 such bond within five days after the giving of such notice unless within
23 such five days the operator or room remarketer shall request in writing
24 a hearing before the commissioner of finance at which the necessity,
25 propriety and amount of the bond shall be determined by the commissioner
26 of finance. Such determination shall be final and shall be complied with
27 within fifteen days after the giving of notice thereof. In lieu of such
28 bond, securities approved by the commissioner of finance or cash in such
29 amount as he or she may prescribe, may be deposited which shall be kept
30 in the custody of the commissioner of finance who may at any time with-
31 out notice to the depositor apply them to any tax or interest or penal-
32 ties due, and for that purpose the securities may be sold by him or her
33 at public or private sale without notice to the depositor thereof.

34 § 11-2506 Determination of tax. If a return required by this chapter
35 is not filed, or if a return when filed is incorrect or insufficient,
36 the amount of tax due shall be determined by the commissioner of finance
37 from such information as may be obtainable and, if necessary, the tax
38 may be estimated on the basis of external indices, such as number of
39 rooms, location, scale of rents, comparable rents, type of accommo-
40 dations and service, number of employees or other factors. Notice of
41 such determination shall be given to the person liable for the
42 collection and/or payment of the tax. Such determination shall finally
43 and irrevocably fix the tax unless the person against whom it is
44 assessed, within ninety days after giving of notice of such determi-
45 nation, or, if the commissioner of finance has established a concil-
46 iation procedure pursuant to section 11-124 of the code of the preceding
47 municipality and the taxpayer has requested a conciliation conference in
48 accordance therewith, within ninety days from the mailing of a concil-
49 iation decision or the date of the commissioner's confirmation of the
50 discontinuance of the conciliation proceeding, both (1) serves a peti-
51 tion upon the commissioner of finance and (2) files a petition with the
52 tax appeals tribunal for a hearing, or unless the commissioner of
53 finance of his or her own motion shall redetermine the same. Such hear-
54 ing and any appeal to the tax appeals tribunal sitting en banc from the
55 decision rendered in such hearing shall be conducted in the manner and
56 subject to the requirements prescribed by the tax appeals tribunal

1 pursuant to sections one hundred sixty-eight through one hundred seven-
2 ty-two of the charter of the preceding municipality as it existed Janu-
3 ary first, nineteen hundred ninety-four. After such hearing the tax
4 appeals tribunal shall give notice of its decision to the person against
5 whom the tax is assessed. A decision of the tax appeals tribunal
6 sitting en banc shall be reviewable for error, illegality or unconstitu-
7 tionality or any other reason whatsoever by a proceeding under article
8 seventy-eight of the civil practice law and rules if application there-
9 for is made to the supreme court by the person against whom the tax was
10 assessed, within four months after the giving of the notice of such tax
11 appeals tribunal decision. A proceeding under article seventy-eight of
12 the civil practice law and rules shall not be instituted by a person
13 liable for the tax unless: (a) the amount of any tax sought to be
14 reviewed, with penalties and interest thereon, if any, shall be first
15 deposited with the commissioner of finance and there shall be filed with
16 the commissioner of finance an undertaking, issued by a surety company
17 authorized to transact business in this state and approved by the super-
18 intendent of insurance of this state as to solvency and responsibility,
19 in such amount as a justice of the supreme court shall approve, to the
20 effect that if such proceeding be dismissed or the tax confirmed, such
21 person will pay all costs and charges which may accrue in the prose-
22 cution of the proceeding; or (b) at the option of such person such
23 undertaking filed with the commissioner of finance may be in a sum
24 sufficient to cover the taxes, penalties and interest thereon stated in
25 such decision plus the costs and charges which may accrue against it in
26 the prosecution of the proceeding, in which event such person shall not
27 be required to deposit such taxes, penalties and interest as a condition
28 precedent to the application.

29 § 11-2507 Refunds. a. In the manner provided in this section the
30 commissioner of finance shall refund or credit, without interest, any
31 tax, penalty or interest erroneously, illegally or unconstitutionally
32 collected or paid if written application to the commissioner of finance
33 for such refund shall be made within one year from the payment thereof.
34 Whenever a refund or credit is made or denied by the commissioner of
35 finance, he or she shall state his or her reasons therefor and give
36 notice thereof to the taxpayer in writing. Such application may be made
37 by the occupant, operator, room remarketer or other person who has actu-
38 ally paid the tax to the commissioner of finance. Such application may
39 also be made by an operator or room remarketer who has collected and
40 paid over such tax to the commissioner of finance provided that the
41 application is made within one year of the payment by the occupant to
42 the operator or room remarketer, but no actual refund of moneys shall be
43 made to such operator or room remarketer until he or she shall first
44 establish to the satisfaction of the commissioner of finance, under such
45 regulations as the commissioner of finance may prescribe, that he or she
46 has repaid to the occupant the amount for which the application for
47 refund is made. The commissioner of finance may, in lieu of any refund
48 required to be made, allow credit therefor on payments due from the
49 applicant.

50 b. Any determination of the commissioner of finance denying a refund
51 or credit pursuant to subdivision a of this section shall be final and
52 irrevocable unless the applicant for such refund or credit, within nine-
53 ty days from the mailing of notice of such determination, or, if the
54 commissioner of finance has established a conciliation procedure pursu-
55 ant to section 11-124 of the code of the preceding municipality and the
56 applicant has requested a conciliation conference in accordance there-

1 with, within ninety days from the mailing of a conciliation decision or
2 the date of the commissioner's confirmation of the discontinuance of the
3 conciliation proceeding, both (1) serves a petition upon the commission-
4 er of finance and (2) files a petition with the tax appeals tribunal for
5 a hearing. Such petition for a refund or credit, made as provided in
6 this section, shall be deemed an application for a revision of any tax,
7 penalty or interest complained of. Such hearing and any appeal to the
8 tax appeals tribunal sitting en banc from the decision rendered in such
9 hearing shall be conducted in the manner and subject to the requirements
10 prescribed by the tax appeals tribunal pursuant to sections one hundred
11 sixty-eight through one hundred seventy-two of the charter of the
12 preceding municipality as it existed January first, nineteen hundred
13 ninety-four. After such hearing, the tax appeals tribunal shall give
14 notice of its decision to the applicant and to the commissioner of
15 finance. The applicant shall be entitled to review such decision of the
16 tax appeals tribunal sitting en banc by a proceeding pursuant to article
17 seventy-eight of the civil practice law and rules, provided such
18 proceeding is instituted within four months after the giving of the
19 notice of such decision, and provided, in the case of an application by
20 a person liable for the tax, that a final determination of tax was not
21 previously made. Such a proceeding shall not be instituted by a person
22 liable for the tax unless an undertaking is filed with the commissioner
23 of finance in such amount and with such sureties as a justice of the
24 supreme court shall approve to the effect that if such proceeding be
25 dismissed or the tax confirmed, such person will pay all costs and
26 charges which may accrue in the prosecution of such proceeding.

27 c. A person shall not be entitled to a revision, refund or credit
28 under this section of a tax, interest or penalty which had been deter-
29 mined to be due pursuant to the provisions of section 11-2506 of this
30 chapter where he or she has had a hearing or an opportunity for a hear-
31 ing, as provided in said section, or has failed to avail himself or
32 herself of the remedies therein provided. No refund or credit shall be
33 made of a tax, interest or penalty paid after a determination by the
34 commissioner of finance made pursuant to section 11-2506 of this chapter
35 unless it be found that such determination was erroneous, illegal or
36 unconstitutional or otherwise improper, by the tax appeals tribunal
37 after a hearing or of the commissioner of finance's own motion, or, if
38 such tax appeals tribunal affirms in whole or in part the determination
39 of the commissioner of finance, in a proceeding under article seventy-
40 eight of the civil practice law and rules, pursuant to the provision of
41 said section, in which event refund or credit without interest shall be
42 made of the tax, interest or penalty found to have been overpaid.

43 § 11-2508 Reserves. In cases where the occupant, operator or room
44 remarketer has applied for a refund and has instituted a proceeding
45 under article seventy-eight of the civil practice law and rules to
46 review a determination adverse to such occupant, operator or room
47 remarketer on his or her application for refund, the comptroller shall
48 set up appropriate reserves to meet any decision adverse to the city.

49 § 11-2509 Remedies exclusive. The remedies provided by sections
50 11-2506 and 11-2507 of this chapter shall be the exclusive remedies
51 available to any person for the review of tax liability imposed by this
52 chapter; and no determination or proposed determination of tax or deter-
53 mination on any application for refund by the commissioner of finance,
54 nor any decision by the tax appeals tribunal or any of its administra-
55 tive law judges, shall be enjoined or reviewed by an action for declara-
56 tory judgment, and action for money had and received or by any action or

1 proceeding other than, in the case of a decision by the tax appeals
2 tribunal sitting en banc, a proceeding in the nature of a certiorari
3 proceeding under article seventy-eight of the civil practice law and
4 rules; provided, however, that a taxpayer may proceed by declaratory
5 judgment if he or she institutes suit within thirty days after a defi-
6 ciency assessment is made and pays the amount of the deficiency assess-
7 ment to the commissioner of finance prior to the institution of such
8 suit and posts a bond for costs as provided in section 11-2506 of this
9 chapter.

10 § 11-2510 Proceedings to recover tax. a. Whenever any operator or room
11 remarketer or any officer of a corporate operator or room remarketer or
12 any occupant or other person shall fail to collect and pay over any tax
13 and/or to pay any tax, penalty or interest imposed by this chapter as
14 provided, the corporation counsel shall, upon the request of the commis-
15 sioner of finance bring or cause to be brought an action to enforce the
16 payment of the same on behalf of the city of Staten Island in any court
17 of the state of New York or of any other state or of the United States.
18 If, however, the commissioner of finance in his or her discretion
19 believes that any such operator, or room remarketer, officer, occupant
20 or other person is about to cease business, leave the state or remove or
21 dissipate the assets out of which the tax, penalties or interest might
22 be satisfied, and that any such tax, penalty or interest will not be
23 paid when due, he or she may declare such tax, penalty or interest to be
24 immediately due and payable and may issue a warrant immediately.

25 b. As an additional or alternate remedy, the commissioner of finance
26 may issue a warrant, directed to the city sheriff commanding him or her
27 to levy upon and sell the real and personal property of the operator or
28 room remarketer or officer of a corporate operator or room remarketer or
29 of the occupant or other person liable for the tax, which may be found
30 within the city for the payment of the amount thereof, with any penal-
31 ties and interest, and the cost of executing the warrant, and to return
32 such warrant to the commissioner of finance and to pay to him or her the
33 money collected by virtue thereof within sixty days after the receipt of
34 such warrant. The city sheriff shall within five days after the receipt
35 of the warrant file with the county clerk a copy thereof, and thereupon
36 such clerk shall enter in the judgment docket the name of the person
37 mentioned in the warrant and the amount of the tax, penalties and inter-
38 est for which the warrant is issued and the date when such copy is
39 filed. Thereupon the amount of such warrant so docketed shall become a
40 lien upon the title to and interest in real and personal property of the
41 person against whom the warrant is issued. The city sheriff shall then
42 proceed upon the warrant, in the same manner, and with like effect, as
43 that provided by law in respect to executions issued against property
44 upon judgments of a court of record, and for services in executing the
45 warrant such sheriff shall be entitled to the same fees, which he or she
46 may collect in the same manner. In the discretion of the commissioner of
47 finance a warrant of like terms, force and effect may be issued and
48 directed to any officer or employee of the department of finance, and in
49 the execution thereof such officer or employee shall have all the powers
50 conferred by law upon sheriffs, but shall be entitled to no fee or
51 compensation in excess of the actual expenses paid in the performance of
52 such duty. If a warrant is returned not satisfied in full, the commis-
53 sioner of finance may from time to time issue new warrants and shall
54 also have the same remedies to enforce the amount due thereunder as if
55 the city had recovered judgment therefor and execution thereon had been
56 returned unsatisfied.

1 c. Whenever an operator shall make a sale, transfer, or assignment in
2 bulk of any part or the whole of such operator's hotel or of his or her
3 lease, license or other agreement or right to possess or operate such
4 hotel, or of the equipment, furnishings, fixtures, supplies or stock of
5 merchandise, or of the said premises or lease, license or other agree-
6 ment or right to possess or operate such hotel and the equipment,
7 furnishings, fixtures, supplies and stock of merchandise pertaining to
8 the conduct or operation of said hotel, otherwise than in the ordinary
9 and regular prosecution of business, the purchaser, transferee or assign-
10 nee shall at least ten days before taking possession of the subject of
11 said sale, transfer or assignment, or paying therefor, notify the
12 commissioner of finance by registered mail of the proposed sale and of
13 the price, terms and conditions thereof whether or not the seller,
14 transferor or assignor, has represented to, or informed the purchaser,
15 transferee or assignee that it owes any tax pursuant to this chapter,
16 and whether or not the purchaser, transferee or assignee has knowledge
17 that such taxes are owing, and whether any such taxes are in fact owing.

18 Whenever the purchaser, transferee or assignee shall fail to give
19 notice to the commissioner of finance as required by the opening para-
20 graph of this subdivision, or whenever the commissioner of finance shall
21 inform the purchaser, transferee or assignee that a possible claim for
22 such tax or taxes exists, any sums of money, property or choses in
23 action, or other consideration, which the purchaser, transferee or
24 assignee is required to transfer over to the seller, transferor or
25 assignor shall be subject to a first priority right and lien for any
26 such taxes theretofore or thereafter determined to be due from the sell-
27 er, transferor or assignor to the city, and the purchaser, transferee or
28 assignee is forbidden to transfer to the seller, transferor or assignor
29 any such sums of money, property or choses in action to the extent of
30 the amount of the city's claim. For failure to comply with the
31 provisions of this subdivision, the purchaser, transferee or assignee,
32 in addition to being subject to the liabilities and remedies imposed
33 under the provisions of article six of the uniform commercial code,
34 shall be personally liable for the payment to the city of any such taxes
35 theretofore or thereafter determined to be due to the city from the
36 seller, transferor or assignor, and such liability may be assessed and
37 enforced in the same manner as the liability for tax under this chapter.

38 d. The commissioner of finance, if he or she finds that the interests
39 of the city will not thereby be jeopardized, and upon such conditions as
40 the commissioner of finance may require, may release any property from
41 the lien of any warrant or vacate such warrant for unpaid taxes, addi-
42 tions to tax, penalties and interest filed pursuant to subdivision b of
43 this section, and such release or vacating of the warrant may be
44 recorded in the office of any recording officer in which such warrant
45 has been filed. The clerk shall thereupon cancel and discharge as of the
46 original date of docketing the vacated warrant.

47 § 11-2511 General powers of the commissioner of finance. In addition
48 to the powers granted to the commissioner of finance in this chapter, he
49 or she is hereby authorized and empowered:

50 1. To make, adopt and amend rules and regulations appropriate to the
51 carrying out of this chapter and the purposes thereof;

52 2. To extend, for cause shown, the time for filing any return for a
53 period not exceeding thirty days; and to compromise disputed claims in
54 connection with the taxes hereby imposed;

55 3. To request information from the tax commission of the state of New
56 York or the treasury department of the United States relative to any

1 person; and to afford information to such tax commission or such treas-
2 ury department relative to any person, any other provision of this chap-
3 ter to the contrary notwithstanding;

4 4. To delegate his or her functions under this section to a commis-
5 sioner or deputy commissioner in the department of finance or to any
6 employee or employees of the department of finance;

7 5. To prescribe methods for determining the rents for occupancy and to
8 determine the taxable and non-taxable rents;

9 6. To require any operator within the city to keep detailed records of
10 the nature and type of hotel maintained and the nature and type of
11 service rendered, and to require any operator or room remarketer to keep
12 detailed records of the rooms available and rooms occupied daily, leases
13 or occupancy contracts or arrangements, rents received, charged and
14 accrued, the names and addresses of the occupants, whether or not any
15 occupancy is claimed to be subject to the tax imposed by this chapter,
16 and to furnish such information upon request to the commissioner of
17 finance;

18 7. To assess, determine, revise and readjust the taxes imposed under
19 this chapter.

20 § 11-2512 Administration of oaths and compelling testimony. a. The
21 commissioner of finance, his or her employees or agents duly designated
22 and authorized by him or her, the tax appeals tribunal and any of its
23 duly designated and authorized employees or agents shall have power to
24 administer oaths and take affidavits in relation to any matter or
25 proceeding in the exercise of their powers and duties under this chap-
26 ter. The commissioner of finance and the tax appeals tribunal shall
27 have power to subpoena and require the attendance of witnesses and the
28 production of books, papers and documents to secure information perti-
29 nent to the performance of the duties of the commissioner or the tax
30 appeals tribunal under this chapter and of the enforcement of this chap-
31 ter and to examine them in relation thereto, and to issue commissions
32 for the examination of witnesses who are out of the state or unable to
33 attend before such commissioner or tax appeals tribunal or excused from
34 attendance.

35 b. A justice of the supreme court either in court or at chambers shall
36 have power summarily to enforce by proper proceedings the attendance and
37 testimony of witnesses and the production and examination of books,
38 papers and documents called for by the subpoena of the commissioner of
39 finance or the tax appeals tribunal under this chapter.

40 c. Cross-reference; criminal penalties. For failure to obey subpoenas
41 or for testifying falsely, see section 11-4007 of this title; for
42 supplying false or fraudulent information, see section 11-4009 of this
43 title.

44 d. The officers who serve the summons or subpoena of the commissioner
45 of finance or the tax appeals tribunal and witnesses attending in
46 response thereto shall be entitled to the same fees as are allowed to
47 officers and witnesses in civil cases in courts of record, except as
48 otherwise provided under this section. Such officers shall be the city
49 sheriff and his or her duly appointed deputies or any officers or
50 employees of the department of finance or the tax appeals tribunal,
51 designated to serve such process.

52 § 11-2513 Reference to tax. Whenever reference is made in placards
53 or advertisements or in any other publication to this tax, such refer-
54 ence shall be substantially in the following form: "city tax on occupan-
55 cy of hotel rooms", except that in any bill, receipt, statement or other

1 evidence or memorandum of occupancy or rent charge issued or employed by
2 the operator the words "city tax" will suffice.

3 § 11-2514 Registration. By June thirtieth, nineteen hundred seventy,
4 or in the case of operators or room remarketers commencing business or
5 opening new hotels after such date, within three days after such
6 commencement or opening, every operator or room remarketer shall file
7 with the commissioner of finance a certificate of registration in a form
8 prescribed by the commissioner of finance. The commissioner of finance
9 shall within five days after such registration issue without charge to
10 each operator or room remarketer a certificate of authority empowering
11 such operator or room remarketer to collect the tax from the occupant
12 and duplicate thereof for each additional hotel of such operator or room
13 remarketer. Each certificate or duplicate shall state the hotel to
14 which it is applicable. Such certificates of authority shall be promi-
15 nently displayed by the operator or room remarketer in such manner that
16 it may be seen and come to the notice of all occupants and persons seek-
17 ing occupancy. Such certificates shall be non-assignable and nontrans-
18 ferable and shall be surrendered immediately to the commissioner of
19 finance upon the cessation of business at the hotel named or upon its
20 sale or transfer, or upon cessation of business of the named room
21 remarketer.

22 § 11-2515 Interest and penalties. (a) Interest on underpayments. If
23 any amount of tax is not paid or paid over on or before the last date
24 prescribed for payment, without regard to any extension of time granted
25 for payment, interest on such amount at the rate set by the commissioner
26 of finance pursuant to subdivision (g) of this section, or, if no rate
27 is set, at the rate of seven and one-half percent per annum, shall be
28 paid for the period from such last date to the date of payment. In
29 computing the amount of interest to be paid, such interest shall be
30 compounded daily. Interest under this subdivision shall not be paid if
31 the amount thereof is less than one dollar.

32 (b) (1) Failure to file return. (A) In case of failure to file a
33 return under this chapter on or before the prescribed date, determined
34 with regard to any extension of time for filing, unless it is shown that
35 such failure is due to reasonable cause and not due to willful neglect,
36 there shall be added to the amount required to be shown as tax on such
37 return five percent of the amount of such tax if the failure is for not
38 more than one month, with an additional five percent for each additional
39 month or fraction thereof during which such failure continues, not
40 exceeding twenty-five percent in the aggregate.

41 (B) In the case of a failure to file a return of tax within sixty days
42 of the date prescribed for filing of such return, determined with regard
43 to any extension of time for filing, unless it is shown that such fail-
44 ure is due to reasonable cause and not due to willful neglect, the addi-
45 tion to tax under subparagraph (A) of this paragraph shall not be less
46 than the lesser of one hundred dollars or one hundred percent of the
47 amount required to be shown as tax on such return.

48 (C) For purposes of this paragraph, the amount of tax required to be
49 shown on the return shall be reduced by the amount of any part of the
50 tax which is paid on or before the date prescribed for payment of the
51 tax and by the amount of any credit against the tax which may be claimed
52 upon the return.

53 (2) Failure to pay tax shown on return. In case of failure to pay the
54 amount shown as tax on a return required to be filed under this chapter
55 on or before the prescribed date, determined with regard to any exten-
56 sion of time for payment, unless it is shown that such failure is due to

1 reasonable cause and not due to willful neglect, there shall be added to
2 the amount shown as tax on such return one-half of one percent of the
3 amount of such tax if the failure is not for more than one month, with
4 an additional one-half of one percent for each additional month or frac-
5 tion thereof during which such failure continues, not exceeding twenty-
6 five percent in the aggregate. For the purpose of computing the addition
7 for any month the amount of tax shown on the return shall be reduced by
8 the amount of any part of the tax which is paid on or before the begin-
9 ning of such month and by the amount of any credit against the tax which
10 may be claimed upon the return. If the amount of tax required to be
11 shown on a return is less than the amount shown as tax on such return,
12 this paragraph shall be applied by substituting such lower amount.

13 (3) Failure to pay tax required to be shown on return. In case of
14 failure to pay any amount in respect of any tax required to be shown on
15 a return required to be filed under this chapter which is not so shown,
16 including a determination made pursuant to section 11-2506 of this chap-
17 ter, within ten days of the date of a notice and demand therefor, unless
18 it is shown that such failure is due to reasonable cause and not due to
19 willful neglect, there shall be added to the amount of tax stated in
20 such notice and demand one-half of one percent of such tax if the fail-
21 ure is not for more than one month, with an additional one-half of one
22 percent for each additional month or fraction thereof during which such
23 failure continues, not exceeding twenty-five percent in the aggregate.
24 For the purpose of computing the addition for any month, the amount of
25 tax stated in the notice and demand shall be reduced by the amount of
26 any part of the tax which is paid before the beginning of such month.

27 (4) Limitations on additions.

28 (A) With respect to any return, the amount of the addition under para-
29 graph one of this subdivision shall be reduced by the amount of the
30 addition under paragraph two of this subdivision for any month to which
31 an addition applies under both paragraphs one and two. In any case
32 described in subparagraph (B) of paragraph one of this subdivision, the
33 amount of the addition under such paragraph one shall not be reduced
34 below the amount provided in such paragraph.

35 (B) With respect to any return, the maximum amount of the addition
36 permitted under paragraph three of this subdivision shall be reduced by
37 the amount of the addition under paragraph one of this subdivision,
38 determined without regard to subparagraph (B) of such paragraph one,
39 which is attributable to the tax for which the notice and demand is made
40 and which is not paid within ten days of such notice and demand.

41 (c) Underpayment due to negligence. (1) If any part of an underpayment
42 of tax is due to negligence or intentional disregard of this chapter or
43 any rules or regulations related thereto, but without intent to defraud,
44 there shall be added to the tax a penalty equal to five percent of the
45 underpayment.

46 (2) There shall be added to the tax, in addition to the amount deter-
47 mined under paragraph one of this subdivision, an amount equal to fifty
48 percent of the interest payable under subdivision (a) of this section
49 with respect to the portion of the underpayment described in such para-
50 graph one which is attributable to the negligence or intentional disre-
51 gard referred to in such paragraph one, for the period beginning on the
52 last date prescribed by law for payment of such underpayment, determined
53 without regard to any extension, and ending on the date of the assess-
54 ment of the tax, or, if earlier, the date of the payment of the tax.

1 (d) Underpayment due to fraud. (1) If any part of an underpayment of
2 tax is due to fraud, there shall be added to the tax a penalty equal to
3 two times of the underpayment.

4 (2) The penalty under this subdivision shall be in lieu of any other
5 addition to tax imposed by subdivision (b) or (c) of this section.

6 (e) Additional penalty. Any person who, with fraudulent intent, shall
7 fail to pay any tax imposed by this chapter, or to make, render, sign or
8 certify any return, or to supply any information within the time
9 required by or under this chapter, shall be liable for a penalty of not
10 more than one thousand dollars, in addition to any other amounts
11 required under this chapter to be imposed, assessed and collected by the
12 commissioner of finance. The commissioner of finance shall have the
13 power, in his or her discretion, to waive, reduce or compromise any
14 penalty under this subdivision.

15 (f) The interest and penalties imposed by this section shall be paid
16 and disposed of in the same manner as other revenues from this chapter.
17 Unpaid interest and penalties may be enforced in the same manner as the
18 tax imposed by this chapter.

19 (g)(1) Authority to set interest rates. The commissioner of finance
20 shall set the rate of interest to be paid pursuant to subdivision (a) of
21 this section, but if no such rate of interest is set, such rate shall be
22 deemed to be set at seven and one-half percent per annum. Such rate
23 shall be the rate prescribed in paragraph two of this subdivision but
24 shall not be less than seven and one-half percent per annum. Any such
25 rate set by the commissioner of finance shall apply to taxes, or any
26 portion thereof, which remain or become due on or after the date on
27 which such rate becomes effective and shall apply only with respect to
28 interest computed or computable for periods or portions of periods
29 occurring in the period in which such rate is in effect.

30 (2) General rule. The rate of interest set under this subdivision
31 shall be the sum of (i) the federal short-term rate as provided under
32 paragraph three of this subdivision, plus (ii) seven percentage points.

33 (3) Federal short-term rate. For purposes of this subdivision:

34 (A) The federal short-term rate for any month shall be the federal
35 short-term rate determined by the United States secretary of the treas-
36 ury during such month in accordance with subsection (d) of section
37 twelve hundred seventy-four of the internal revenue code for use in
38 connection with section six thousand six hundred twenty-one of the
39 internal revenue code. Any such rate shall be rounded to the nearest
40 full percent, or, if a multiple of one-half of one percent, such rate
41 shall be increased to the next highest full percent.

42 (B) Period during which rate applies.

43 (i) In general. Except as provided in clause (ii) of this subpara-
44 graph, the federal short-term rate for the first month in each calendar
45 quarter shall apply during the first calendar quarter beginning after
46 such month.

47 (ii) Special rule for the month of September, nineteen hundred eight-
48 y-nine. The federal short-term rate for the month of April, nineteen
49 hundred eighty-nine shall apply with respect to setting the rate of
50 interest for the month of September, nineteen hundred eighty-nine.

51 (4) Publication of interest rate. The commissioner of finance shall
52 cause to be published in the City Record, and give other appropriate
53 general notice of, the interest rate to be set under this subdivision no
54 later than twenty days preceding the first day of the calendar quarter
55 during which such interest rate applies. The setting and publication of
56 such interest rate shall not be included within paragraph (a) of subdi-

1 vision five of section one thousand forty-one of the city charter of the
2 preceding municipality as it existed January first, nineteen hundred
3 ninety-four relating to the definition of a rule.

4 (h) Miscellaneous. (1) Officers of a corporate operator or room
5 remarketer and partners in a partnership which is an operator or room
6 remarketer shall be personally liable for the tax collected or required
7 to be collected by such corporation or partnership under this chapter,
8 and subject to the penalties and interest imposed by this section.

9 (2) The certificate of the commissioner of finance to the effect that
10 a tax has not been paid, that a return, bond or registration certificate
11 has not been filed, or that information has not been supplied pursuant
12 to the provisions of this chapter, shall be presumptive evidence there-
13 of.

14 (3) Cross-reference: For criminal penalties, see chapter forty of this
15 title.

16 (i) Any person required to make or maintain records under this chapter
17 who fails to make or maintain or make available to the commissioner
18 these records is subject to a penalty not to exceed one thousand dollars
19 for the first quarterly period or part thereof for which the failure
20 occurs and not to exceed five thousand dollars for each additional quar-
21 terly period or part thereof for which the failure occurs. This penalty
22 is in addition to any other penalty provided for in this chapter but may
23 not be imposed and collected more than once for failures for the same
24 quarterly period or part thereof. If the commissioner determines that a
25 failure to make or maintain or make available records in any quarterly
26 period was entirely due to reasonable cause and not to willful neglect,
27 the commissioner must remit the penalty imposed for that quarterly peri-
28 od. These penalties will be paid and disposed of in the same manner as
29 other revenues from this chapter. These penalties will be determined,
30 assessed, collected, paid and enforced in the same manner as the tax
31 imposed by this chapter, and all the provisions of this chapter relating
32 to tax will be deemed also to apply to the penalties imposed by this
33 subdivision. For purposes of the penalty imposed by this subdivision, a
34 person will be considered to have failed to make or maintain the
35 required records when the commissioner of finance determines that the
36 records made or maintained by that person for a quarterly period do not
37 enable the commissioner to verify occupancy or the amounts received for
38 such occupancy or the taxability of that occupancy and to conduct a
39 complete audit.

40 (j) Any person required to make or maintain records under this chapter
41 who fails to present and make available these records in an auditable
42 form is subject to a penalty not to exceed one thousand dollars for each
43 quarterly period or part thereof for which records maintained by that
44 person are not presented and made available by that person in auditable
45 form, even if these records are adequate to verify credits, receipts,
46 and the taxability thereof and to perform a complete audit. This penal-
47 ty is in addition to any other penalty provided for in this chapter, but
48 will not be imposed and collected more than once for these failures for
49 the same quarterly period or part thereof. If the commissioner deter-
50 mines that any failure described in this subdivision for a quarterly
51 period was entirely due to reasonable cause and not to willful neglect,
52 the commissioner must remit the penalty imposed for that quarter. The
53 penalties imposed by this subdivision will be paid and disposed of in
54 the same manner as other revenues from this chapter. These penalties
55 will be determined, assessed, collected, paid and enforced in the same
56 manner as the tax imposed by this chapter, and all the provisions of

1 this chapter relating to tax will be deemed also to apply to the penal-
2 ties imposed by this subdivision. For purposes of the penalty imposed by
3 this subdivision, a person will be considered to have failed to present
4 and make records available in auditable form when the records presented
5 by that person for that quarter lack sufficient organization, such as by
6 date, invoice number, sales receipts, or sequential numbering, or are
7 otherwise inadequate, without reorganizing, reordering or otherwise
8 rearranging the records into an auditable form, to permit direct recon-
9 ciliation of the receipts, invoices or other source documents with the
10 entries for the quarterly period in the books and records and on the
11 returns of that person.

12 (k) Any person who, having elected to maintain in an electronic format
13 any portion or all of the records he or she is required to make and
14 maintain by this chapter, fails to present and make these records avail-
15 able and accessible to the commissioner in electronic format, is subject
16 to a penalty not to exceed five thousand dollars for each quarterly
17 period or part thereof for which these electronic records are not
18 presented and made available and accessible upon request, notwithstand-
19 ing that the records may also be maintained and available in hard copy
20 format. This penalty is in addition to any other penalty provided for in
21 this chapter, but may not be imposed and collected more than once for a
22 failure for the same quarterly period or part thereof. Provided, howev-
23 er, nothing in this subdivision will prevent the separate imposition, if
24 applicable, of any penalty imposed by subdivision (i) or (j) of this
25 section for the same quarterly period or part thereof. If the commis-
26 sioner determines that the failure to present and make electronically
27 maintained records available and accessible for a quarterly period was
28 entirely due to reasonable cause and not to willful neglect, the commis-
29 sioner must remit the penalty imposed for that quarter. These penalties
30 will be paid and disposed of in the same manner as other revenues from
31 this chapter. These penalties will be determined, assessed, collected,
32 paid and enforced in the same manner as the tax imposed by this chapter,
33 and all the provisions of this chapter relating to tax will be deemed
34 also to apply to the penalty imposed by this subdivision. For purposes
35 of the penalty imposed by this subdivision, a failure to present and
36 make available and accessible a record maintained in electronic format
37 includes not only the denial of access to the requested records that
38 were maintained electronically, but also the failure to make available
39 to the commissioner the information, knowledge, or means necessary to
40 access and otherwise use the electronically maintained records in the
41 inspection and examination of these records.

42 (l) Aiding or assisting in the giving of fraudulent returns, reports,
43 statements or other documents. Any person who, with the intent that tax
44 be evaded, for a fee or other compensation or as an incident to the
45 performance of other services for which that person receives compen-
46 sation, aids or assists in, or procures, counsels, or advises the prepa-
47 ration or presentation under this chapter, or in connection with any
48 matter arising under this chapter, of any return, report, declaration,
49 statement or other document that is fraudulent or false as to any mate-
50 rial matter, or supplies any false or fraudulent information, whether or
51 not such falsity or fraud is with the knowledge or consent of the person
52 authorized or required to present that return, report, declaration,
53 statement or other document, will pay a penalty not exceeding five thou-
54 sand dollars. The definitions in subsection (l) of section one thousand
55 eighty-five of the tax law apply for the purposes of this penalty.

1 (m) False or fraudulent document penalty. Any taxpayer that submits a
2 false or fraudulent document to the department will be subject to a
3 penalty of one hundred dollars per document submitted, or five hundred
4 dollars per tax return submitted. This penalty will be in addition to
5 any other penalty provided by law.

6 § 11-2516 Returns to be secret. a. Except in accordance with proper
7 judicial order, or as otherwise provided by law, it shall be unlawful
8 for the commissioner of finance, any officer or employee of the depart-
9 ment of finance, any person engaged or retained on an independent
10 contract basis, the tax appeals tribunal, any commissioner or employee
11 of such tribunal, or any person who, pursuant to this section, is
12 permitted to inspect any return or to whom a copy, an abstract or a
13 portion of any return is furnished, or to whom any information contained
14 in any return is furnished, to divulge or make known in any manner the
15 rents or other information relating to the business of a taxpayer
16 contained in any return required under this chapter. The officers
17 charged with the custody of such returns shall not be required to
18 produce any of them or evidence of anything contained in them in any
19 action or proceeding in any court, except on behalf of the commissioner
20 of finance in an action or proceeding under the provisions of this chap-
21 ter or on behalf of any party to any action or proceeding under the
22 provisions of this chapter when the returns or facts shown thereby are
23 directly involved in such action or proceeding, in either of which
24 events the court may require the production of, and may admit in
25 evidence, so much of said returns or of the facts shown thereby, as are
26 pertinent to the action or proceeding and no more. Nothing in this
27 section shall be construed to prohibit the delivery to a taxpayer or his
28 or her duly authorized representative of a certified copy of any return
29 filed in connection with his or her tax; nor to prohibit the delivery of
30 such a certified copy of such return or of any information contained in
31 or relating thereto, to the United States of America or any department
32 thereof, to the state of New York or any department thereof, or to any
33 agency or department of the city of Staten Island, provided the same is
34 requested for official business; nor to prohibit the inspection for
35 official business of such returns by the corporation counsel or other
36 legal representatives of the city or by the district attorney of any
37 county within the city; nor to prohibit the publication of statistics so
38 classified as to prevent the identification of particular returns and
39 the items thereof. Returns shall be preserved for three years and ther-
40 eafter until the commissioner of finance permits them to be destroyed.

41 b. (1) Any officer or employee of the city who willfully violates the
42 provisions of subdivision a of this section shall be dismissed from
43 office and be incapable of holding any public office for a period of
44 five years thereafter.

45 (2) Cross-reference: For criminal penalties, see chapter forty of this
46 title.

47 c. This section shall be deemed a state statute for purposes of para-
48 graph (a) of subdivision two of section eighty-seven of the public offi-
49 cers law.

50 d. Notwithstanding anything in subdivision a of this section to the
51 contrary, if a taxpayer has petitioned the tax appeals tribunal for
52 administrative review as provided in section one hundred seventy of the
53 charter of the preceding municipality as it existed January first, nine-
54 teen hundred ninety-four, the commissioner of finance shall be author-
55 ized to present to the tribunal any report or return of such taxpayer,
56 or any information contained therein or relating thereto, which may be

1 material or relevant to the proceeding before the tribunal. The tax
2 appeals tribunal shall be authorized to publish a copy or a summary of
3 any decision rendered pursuant to section one hundred seventy-one of the
4 charter of the preceding municipality as it existed January first, nine-
5 teen hundred ninety-four.

6 § 11-2517 Notices and limitations of time. a. Any notice authorized or
7 required under the provisions of this chapter may be given by mailing
8 the same to the person for whom it is intended in a postpaid envelope
9 addressed to such person at the address given in the last return filed
10 by him or her pursuant to the provisions of this chapter or in any
11 application made by him or her or, if no return has been filed or appli-
12 cation made, then to such address as may be obtainable. The mailing of
13 such notice shall be presumptive evidence of the receipt of the same by
14 the person to whom addressed. Any period of time which is determined
15 according to the provisions of this chapter by the giving of notice
16 shall commence to run from the date of mailing of such notice.

17 b. The provisions of the civil practice law and rules or any other law
18 relative to limitations of time for the enforcement of a civil remedy
19 shall not apply to any proceeding or action taken by the city to levy,
20 appraise, assess, determine or enforce the collection of any tax or
21 penalty provided by this chapter. However, except in the case of a
22 wilfully false or fraudulent return with intent to evade the tax, no
23 assessment of additional tax shall be made after the expiration of more
24 than three years from the date of the filing of a return; provided,
25 however, that where no return has been filed as provided by law the tax
26 may be assessed at any time.

27 c. Where, before the expiration of the period prescribed in this
28 section for the assessment of an additional tax, a taxpayer has
29 consented in writing that such period be extended, the amount of such
30 additional tax due may be determined at any time within such extended
31 period. The period so extended may be further extended by subsequent
32 consents in writing made before the expiration of the extended period.

33 d. If any return, claim, statement, notice, application, or other
34 document required to be filed, or any payment required to be made, with-
35 in a prescribed period or on or before a prescribed date under authority
36 of any provision of this chapter is, after such period or such date,
37 delivered by United States mail to the commissioner of finance, the tax
38 appeals tribunal, bureau, office, officer or person with which or with
39 whom such document is required to be filed, or to which or to whom such
40 payment is required to be made, the date of the United States postmark
41 stamped on the envelope shall be deemed to be the date of delivery. This
42 subdivision shall apply only if the postmark date falls within the
43 prescribed period or on or before the prescribed date for the filing of
44 such document, or for making the payment, including any extension grant-
45 ed for such filing or payment, and only if such document or payment was
46 deposited in the mail, postage prepaid, properly addressed to the
47 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
48 cer or person with which or with whom the document is required to be
49 filed or to which or to whom such payment is required to be made. If any
50 document is sent by United States registered mail, such registration
51 shall be prima facie evidence that such document was delivered to the
52 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
53 cer or person to which or to whom addressed, and the date of registra-
54 tion shall be deemed the postmark date. The commissioner of finance and,
55 where relevant, the tax appeals tribunal are authorized to provide by
56 regulation the extent to which, such provisions with respect to prima

1 facie evidence of delivery and the postmark date, shall apply to certi-
2 fied mail. Except as provided in subdivision f of this section, this
3 subdivision shall apply in the case of postmarks not made by the United
4 States postal service only if and to the extent provided by regulation
5 of the commissioner of finance or, where relevant, the tax appeals
6 tribunal.

7 e. When the last day prescribed under authority of this chapter,
8 including any extension of time, for performing any act falls on a
9 Saturday, Sunday or legal holiday in the state, the performance of such
10 act shall be considered timely if it is performed on the next succeeding
11 day which is not a Saturday, Sunday or legal holiday.

12 f. (1) Any reference in subdivision d of this section to the United
13 States mail shall be treated as including a reference to any delivery
14 service designated by the secretary of the treasury of the United States
15 pursuant to section seventy-five hundred two of the internal revenue
16 code and any reference in subdivision d of this section to a United
17 States postmark shall be treated as including a reference to any date
18 recorded or marked in the manner described in section seventy-five
19 hundred two of the internal revenue code by a designated delivery
20 service. If the commissioner of finance finds that any delivery service
21 designated by such secretary is inadequate for the needs of the city,
22 the commissioner of finance may withdraw such designation for purposes
23 of this title. The commissioner of finance may also designate additional
24 delivery services meeting the criteria of section seventy-five hundred
25 two of the internal revenue code for purposes of this title, or may
26 withdraw any such designation if the commissioner of finance finds that
27 a delivery service so designated is inadequate for the needs of the
28 city. Any reference in subdivision d of this section to the United
29 States mail shall be treated as including a reference to any delivery
30 service designated by the commissioner of finance and any reference in
31 subdivision d of this section to a United States postmark shall be
32 treated as including a reference to any date recorded or marked in the
33 manner described in section seventy-five hundred two of the internal
34 revenue code by a delivery service designated by the commissioner of
35 finance, provided, however any withdrawal of designation or additional
36 designation by the commissioner of finance shall not be effective for
37 purposes of service upon the tax appeals tribunal, unless and until such
38 withdrawal of designation or additional designation is ratified by the
39 president of the tax appeals tribunal.

40 (2) Any equivalent of registered or certified mail designated by the
41 United States secretary of the treasury, or as may be designated by the
42 commissioner of finance pursuant to the same criteria used by such
43 secretary for such designations pursuant to section seventy-five hundred
44 two of the internal revenue code, shall be included within the meaning
45 of registered or certified mail as used in subdivision d of this
46 section. If the commissioner of finance finds that any equivalent of
47 registered or certified mail designated by such secretary or the commis-
48 sioner of finance is inadequate for the needs of the city, the commis-
49 sioner of finance may withdraw such designation for purposes of this
50 title, provided, however, any withdrawal of designation or additional
51 designation by the commissioner of finance shall not be effective for
52 purposes of service upon the tax appeals tribunal, unless and until such
53 withdrawal of designation or additional designation is ratified by the
54 president of the tax appeals tribunal.

55 § 11-2518 Construction and enforcement. This chapter shall be
56 construed and enforced in conformity with chapter one hundred sixty-one

1 of the laws of nineteen hundred seventy, as amended by chapter one
2 hundred sixty-two of the laws of nineteen hundred seventy, pursuant to
3 which it is enacted.
4 § 11-2519 Tourism and convention fund. Notwithstanding any provision
5 of law to the contrary, with respect to the additional tax imposed at
6 the rate of six percent on and after September first, nineteen hundred
7 ninety and before December first, nineteen hundred ninety-four pursuant
8 to subparagraph (B) of paragraph three of subdivision a of section
9 11-2502 of this chapter, four and one-sixth percent of the total reven-
10 ues resulting from the imposition of such tax, including four and one-
11 sixth percent of any interest or penalties thereon, shall be credited to
12 and deposited in a special tourism and convention fund, which shall be
13 used solely for the purpose of promoting tourism and conventions in the
14 city. Seven-eighths of the moneys in such fund shall be made available
15 to the New York Convention and Visitor's Bureau, Inc. pursuant to an
16 annual contract with the city which may specify, among other things, the
17 services which shall be provided by such bureau with such moneys and the
18 content and number of reports which will have to be provided by such
19 bureau to the city concerning the expenditure of such moneys, and
20 provided that the annual budget and business plan of such bureau is
21 approved by the mayor of the city or his or her designee. The remaining
22 one-eighth of the fund shall be spent for promoting tourism and
23 conventions which may include, at the mayor's discretion, moneys spent
24 in connection with additional contracts made with the New York Con-
25 vention and Visitor's Bureau, Inc. For purposes of this section, the term
26 "promoting tourism and conventions" shall mean developing, placing and
27 purchasing advertising promoting the city, and engaging in such other
28 efforts as are designed to attract tourists and conventions to the city.

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CHAPTER 26
TAX ON MORTGAGES

31 § 11-2601 Imposition of tax. a. A tax of fifty cents for each one
32 hundred dollars and each remaining major fraction thereof of principal
33 debt or obligation which is, or under any contingency may be secured at
34 the date of execution thereof or at any time thereafter by a mortgage on
35 real property situated within the city and recorded on or after August
36 first, nineteen hundred seventy-one and prior to February first, nine-
37 teen hundred eighty-two, is hereby imposed on each such mortgage and
38 shall be collected and paid as provided in this chapter. If the princi-
39 pal debt or obligation which is or by any contingency may be secured by
40 such mortgage is less than one hundred dollars, a tax of fifty cents is
41 hereby imposed on such mortgage, and shall be collected and paid as
42 provided in this chapter.

43 b. With respect to: (1) one, two or three-family houses, individual
44 cooperative apartments and individual residential condominium units, and
45 (2) real property securing a principal debt or obligation of less than
46 five hundred thousand dollars, a tax of fifty cents, and with respect to
47 all other real property a tax of one dollar and twelve and one-half
48 cents, for each one hundred dollars and each remaining major fraction
49 thereof of principal debt or obligation which is, or under any contin-
50 gency may be secured at the date of execution thereof or at any time
51 thereafter by a mortgage on such real property situated within the city
52 and recorded on or after February first, nineteen hundred eighty-two and
53 before July first, nineteen hundred eighty-two, is hereby imposed on
54 each such mortgage and shall be collected and paid as provided in this

1 chapter. If the principal debt or obligation which is or by any contin-
2 gency may be secured by such mortgage is less than one hundred dollars,
3 a tax of one dollar is hereby imposed on such mortgage, and shall be
4 collected and paid as provided in this chapter.

5 c. With respect to: (1) real property securing a principal debt or
6 obligation of less than five hundred thousand dollars, a tax of fifty
7 cents, (2) with respect to one, two or three-family houses, individual
8 cooperative apartments and individual residential condominium units
9 securing a principal debt or obligation of five hundred thousand dollars
10 or more, a tax of sixty-two and one-half cents, and (3) with respect to
11 all other real property, a tax of one dollar and twenty-five cents, for
12 each one hundred dollars and each remaining major fraction thereof of
13 principal debt or obligation which is, or under any contingency may be
14 secured at the date of execution thereof or at any time thereafter by a
15 mortgage on such real property situated within the city and recorded on
16 or after July first, nineteen hundred eighty-two and before August
17 first, nineteen hundred ninety, is hereby imposed on each such mortgage
18 and shall be collected and paid as provided in this chapter. If the
19 principal debt or obligation which is or by any contingency may be
20 secured by such mortgage is less than one hundred dollars, a tax of one
21 dollar is hereby imposed on such mortgage and shall be collected and
22 paid as provided in this chapter.

23 d. With respect to: (1) real property securing a principal debt or
24 obligation of less than five hundred thousand dollars, a tax of one
25 dollar, (2) with respect to one, two or three-family houses and individ-
26 ual residential condominium units securing a principal debt or obli-
27 gation of five hundred thousand dollars or more, a tax of one dollar and
28 twelve and one-half cents, and (3) with respect to all other real prop-
29 erty, a tax of one dollar and seventy-five cents, for each one hundred
30 dollars and each remaining major fraction thereof of principal debt or
31 obligation which is, or under any contingency may be secured at the date
32 of execution thereof, or at anytime thereafter by a mortgage on such
33 real property situated within the city and recorded on or after August
34 first, nineteen hundred ninety, is hereby imposed on each such mortgage
35 and shall be collected and paid as provided in this chapter. If the
36 principal debt or obligation which is or by any contingency may be
37 secured by such mortgage is less than one hundred dollars, a tax of one
38 dollar is hereby imposed on such mortgage and shall be collected and
39 paid as provided in this chapter.

40 e. (1) For the purpose of determining whether a mortgage is subject to
41 the tax imposed by subdivision b or c of this section at a rate in
42 excess of fifty cents, or by subdivision d of this section at a rate in
43 excess of one dollar, for each one hundred dollars and each remaining
44 major fraction thereof of principal debt or obligation, the principal
45 debt or obligation which is or under any contingency may be secured at
46 the date of execution thereof, or at any time thereafter, by such mort-
47 gage shall be aggregated with the principal debt or obligation which is
48 or under any contingency may be secured at the date of execution there-
49 of, or at any time thereafter, by any other mortgage, where such mort-
50 gages form part of the same or related transactions and have the same or
51 related mortgagors. If the commissioner of taxation and finance finds
52 that a mortgage transaction or mortgage transactions have been formu-
53 lated for the purpose of avoiding or evading a rate of tax imposed under
54 this section in excess of the lowest such rate, rather than solely for
55 an independent business or financial purpose, such commissioner shall
56 treat all of the mortgages forming part of such transaction or trans-

1 actions as a single mortgage for the purpose of determining the applica-
2 ble rate of tax. For the purposes of this subdivision, all mortgages
3 having the same or related mortgagors offered for recording within a
4 period of twelve consecutive months shall be presumed to form part of a
5 related transaction, unless clear and convincing evidence is offered to
6 the contrary. The commissioner of taxation and finance may require such
7 affidavits and forms, and may prescribe such rules and regulations, as
8 he or she determines to be necessary to enforce the provisions of this
9 subdivision.

10 (2) The term "related", when used in this subdivision with reference
11 to mortgagors, shall include, but shall not be limited to, the following
12 relationships:

13 (i) members of a family, including spouses, ancestors, lineal descend-
14 ants, and brothers and sisters, whether by the whole or half blood;

15 (ii) a shareholder and a corporation more than fifty percent of the
16 value of the outstanding stock of which is owned or controlled directly
17 or indirectly by such shareholder;

18 (iii) a partner and a partnership more than fifty percent of the capi-
19 tal or profits interest in which is owned or controlled directly or
20 indirectly by such partner;

21 (iv) a beneficiary and a trust more than fifty percent of the benefi-
22 cial interest in which is owned or controlled directly or indirectly by
23 such beneficiary;

24 (v) two or more corporations, partnerships, associations, or trusts,
25 or any combination thereof, which are owned or controlled, either
26 directly or indirectly, by the same person, corporation or other entity,
27 or interests; and

28 (vi) a grantor of a trust and such trust.

29 f. Notwithstanding any provision to the contrary in paragraph (a) of
30 subdivision one of section two hundred fifty-five of the tax law, the
31 taxes imposed by subdivision c or d of this section shall also apply to
32 principal indebtedness or obligation secured by or which under any
33 contingency may be secured by a supplemental instrument or additional
34 mortgage, whether or not there is any new or further indebtedness or
35 obligation other than the principal indebtedness or obligation secured
36 by a recorded primary mortgage, where (1) the supplemental instrument or
37 additional mortgage imposes the lien of a recorded mortgage upon real
38 property situated within the city not previously subject to the mortgage
39 or where an additional mortgage upon such additional property is
40 recorded as additional or substitute security for indebtedness or obli-
41 gation already secured by a recorded mortgage and (2) the recorded
42 primary mortgage was on real property outside the city and recorded
43 without payment of the city tax.

44 § 11-2602 Payment and payment over of taxes. The taxes imposed by
45 this chapter shall be payable on the recording of each mortgage of real
46 property subject to taxes pursuant to such chapter. Such taxes shall be
47 paid to the recording officer of the county in which the real property
48 or any part thereof is situated, except where real property is situated
49 within and without the city, the recording officer of the county in
50 which the mortgage is first recorded shall collect the tax imposed by
51 this chapter, as required by subdivision three of section two hundred
52 fifty-three-a of the tax law. It shall be the duty of such recording
53 officer to indorse upon each mortgage a receipt for the amount of the
54 tax so paid. Any mortgage so endorsed may thereupon or thereafter be
55 recorded by any recording officer and the receipt for such tax indorsed
56 upon each mortgage shall be recorded therewith. The record of such

1 receipt shall be conclusive proof that the amount of tax stated therein
2 has been paid upon such mortgage. Upon the first day of each month the
3 city register and the recording officer of Richmond county shall pay
4 over to the commissioner of finance of the city for credit to the gener-
5 al fund of such city, the balance of the moneys received during the
6 preceding month upon account of taxes paid to him or her as prescribed
7 in this section, after deducting the necessary expenses of his or her
8 office as provided in section two hundred sixty-two of the tax law,
9 except taxes paid upon mortgages which are first to be apportioned by
10 the commissioner of taxation and finance, which taxes and money shall be
11 paid over by him or her as provided by the determination of the said
12 commissioner of taxation and finance, provided, however, in each
13 instance where the tax imposed pursuant to section 11-2601 of this chap-
14 ter is one dollar and twenty-five cents for each one hundred dollars and
15 each remaining major fraction thereof of such principal debt or obli-
16 gation, fifty percent of the total amount of such tax, including fifty
17 percent of any interest or penalties thereon, shall be set aside in a
18 special account by the commissioner of finance, and in each instance
19 where the tax imposed pursuant to that section is one dollar and seven-
20 ty-five cents for each one hundred dollars and each remaining major
21 fraction thereof of such principal debt or obligation, thirty-five and
22 seven-tenths percent of the total amount of such tax, including thirty-
23 five and seven-tenths percent of any interest or penalties thereon,
24 shall also be set aside in such special account. Moneys in such account
25 shall be used for payment by such commissioner to the state comptroller
26 for deposit in the urban mass transit operating assistance account of
27 the mass transportation operating assistance fund of any amount of
28 insufficiency certified by the state comptroller pursuant to the
29 provisions of subdivision six of section eighty-eight-a of the state
30 finance law, and on the fifteenth day of each month, such commissioner
31 shall transmit all funds in such account at the end of the preceding
32 month, except the amount required for the payment of any amount of
33 insufficiency certified by the state comptroller and such amount as he
34 or she deems necessary for refunds and such other amounts necessary as to
35 finance the city transportation disabled committee and the city para-
36 transit system as established by section fifteen-b of the transportation
37 law, provided, however, that such amounts shall not exceed six percent
38 of the total funds in the account but in no event be less than two
39 hundred twenty-five thousand dollars beginning April first, nineteen
40 hundred eighty-six, and further that beginning November fifteenth, nine-
41 teen hundred eighty-four and during the entire period prior to operation
42 of such system, the total of such amounts shall not exceed three hundred
43 seventy-five thousand dollars for the administrative expenses of such
44 committee and fifty thousand dollars for the expenses of the agency
45 designated pursuant to paragraph b of subdivision five of such section,
46 and other amounts necessary to finance the operating needs of the
47 private bus companies franchised by the city of Staten Island and eligi-
48 ble to receive state operating assistance under section eighteen-b of
49 the transportation law, provided, however, that such amounts shall not
50 exceed four percent of the total funds in the account, to the New York
51 city transit authority for mass transit within the city.

52 § 11-2603 Manner of administration and collection. The taxes imposed
53 under this chapter shall be administered and collected in the same
54 manner as the taxes imposed under subdivision one of section two hundred
55 fifty-three and subdivision one of section two hundred fifty-five of the
56 tax law. All the provisions of article eleven of the tax law relating

1 to or applicable to the administration and collection of the taxes
2 imposed by subdivision one of section two hundred fifty-three and subdi-
3 vision one of section two hundred fifty-five of the tax law shall apply
4 to the taxes imposed under this chapter with the same force and effect
5 as if those provisions had been set forth in full in this chapter except
6 to the extent that any such provision is either inconsistent with a
7 provision of this chapter or not relevant to the tax imposed by this
8 chapter. For purposes of this chapter any reference in article eleven
9 of the tax law to the tax or taxes imposed by such article shall be
10 deemed to refer to a tax imposed by this chapter, and any reference to
11 the phrase "within this state" shall be read as "within this city"
12 unless a different meaning is clearly required. Whenever real property
13 covered by the mortgage is partly within and partly without the city of
14 Staten Island, the portion of the mortgage taxable under this chapter
15 shall be determined in the manner prescribed in the first paragraph of
16 section two hundred sixty of the tax law where the property without the
17 city is located within the state and, in the manner prescribed in the
18 second paragraph of such section of the tax law, where the property
19 without the city is located without the state.

20 § 11-2604 Tax additional. The tax imposed by this chapter shall be
21 in addition to any taxes imposed by section two hundred fifty-three of
22 the tax law.

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CHAPTER 27
ANNUAL VAULT CHARGE

25 § 11-2701 Definitions. When used in this chapter, the following terms
26 shall mean or include:

27 1. "Person." An individual, partnership, society, association, joint-
28 stock company, corporation, estate, receiver, lessee, trustee, assignee,
29 referee, or any other person acting in a fiduciary or representative
30 capacity, whether appointed by a court or otherwise, and any combination
31 of individuals.

32 2. "Vault." Any subsurface opening, structure or erection, whether or
33 not wholly or partly covered over, to the extent that it extends from
34 the building line into any street of the city, for the erection of which
35 a license fee is required pursuant to the charter of the city or this
36 code.

37 3. "Street." Every public street, avenue, road, alley, lane, highway,
38 boulevard, concourse, parkway, driveway, culvert, sidewalk, crosswalk
39 and viaduct, and every other class of public highway, road, square and
40 place within or belonging to the city.

41 4. "Using, occupying or maintaining." Any right or authority to
42 install, store or maintain property of any kind in a vault, or otherwise
43 to use, occupy or maintain such vault for any purpose whatsoever. Such
44 right or authority shall be deemed to exist wherever a vault has not
45 been filled in or closed by the licensee or abutting property owner and
46 the street restored to its original condition pursuant to the require-
47 ments of the charter of the city or this code.

48 5. "City surveyor." Any person appointed a surveyor of the city of
49 Staten Island pursuant to the code of the city.

50 6. "Owner of the premises immediately adjoining the vault." Any person
51 who is the owner of record of real property located in whole or in part
52 within the city, from which a vault has been extended.

53 7. "Depth." The vertical distance from the ceiling, roof or top of a
54 vault to the floor, bottom or lowest point thereof.

- 1 8. "City." The city of Staten Island.
- 2 9. "Comptroller." The comptroller of the city.
- 3 10. "Commissioner of finance." The commissioner of finance of the
4 city.
- 5 11. "Return." Any return required to be filed as under this chapter
6 provided.
- 7 12. "Tax appeals tribunal." The tax appeals tribunal established by
8 section one hundred sixty-eight of the charter of the preceding munici-
9 pality as it existed January first, nineteen hundred ninety-four.
- 10 § 11-2702 Imposition of charge. (a) In addition to any and all
11 other license fees, charges and taxes, there is hereby imposed and there
12 shall be paid an annual vault charge, beginning as of July first, nine-
13 teen hundred sixty-two, for the privilege of occupying, using or main-
14 taining a vault in the streets of the city, to be paid by the owner of
15 the premises immediately adjoining the vault.
- 16 (A) For periods prior to July first, nineteen hundred seventy-one such
17 annual vault charges shall be at the following rates:
- 18 1. On any vault occupying up to two hundred and fifty square feet in
19 plane or surface area but no more than twelve feet in depth, thirty-five
20 cents per square foot but not less than five dollars for the total occu-
21 pancy;
- 22 2. On any vault occupying more than two hundred fifty square feet in
23 plane or surface area but not more than twelve feet in depth, thirty-
24 five cents per square foot for the first two hundred fifty square feet
25 of an area and sixty cents per square foot for that portion of the area
26 in excess of two hundred fifty square feet;
- 27 3. On any vault more than twelve feet in depth, an additional charge
28 for each additional ten feet in depth or fraction thereof calculated by
29 adding the plane or surface area for each such additional depth to the
30 area calculated pursuant to subparagraphs one and two and by applying to
31 such total area the same rates as provided in subparagraphs one and two.
32 The additional area for any additional depth of ten feet or fraction
33 thereof shall however, be reduced by ten percent for each foot of depth
34 less than ten feet.
- 35 (B) For periods beginning on or after July first, nineteen hundred
36 seventy-one and ending on or before May thirty-first, nineteen hundred
37 eighty, such annual vault charges shall be at the following rates:
- 38 1. On any vault occupying no more than twelve feet in depth, one
39 dollar per square foot of plane or surface area but not less than five
40 dollars for the total occupancy;
- 41 2. On any vault more than twelve feet in depth, an additional charge
42 for each additional ten feet in depth, or fraction thereof calculated by
43 adding the plane or surface area for each such additional depth to the
44 area calculated pursuant to subparagraph one of this paragraph and by
45 applying to such total area the same rate as provided in subparagraph
46 one of this paragraph. The additional area for any additional depth of
47 ten feet or fraction thereof shall however, be reduced by ten percent
48 for each foot of depth less than ten feet.
- 49 (C) For periods beginning on or after June first, nineteen hundred
50 eighty such annual vault charge shall be at the following rates:
- 51 1. On any vault occupying no more than twelve feet in depth, two
52 dollars per square foot of plane or surface area;
- 53 2. On any vault more than twelve feet in depth, an additional charge
54 for each additional ten feet in depth, or fraction thereof calculated by
55 adding the plane or surface area for each such additional depth to the
56 area calculated pursuant to subparagraph one of this paragraph and by

1 applying to such total area the same rate as provided in subparagraph
2 one of this paragraph. The additional area for any additional depth of
3 ten feet or fraction thereof shall however, be reduced by ten percent
4 for each foot of depth less than ten feet.

5 (D) Notwithstanding any provision of law to the contrary, no annual
6 vault charge or additional charge shall be imposed pursuant to this
7 chapter on or after June first, nineteen hundred ninety-eight.

8 (b) Where the owner of the premises immediately adjoining the vault
9 is exempt from or otherwise not liable for the annual vault charge, the
10 tenant, lessee or any other person using, occupying or maintaining such
11 vault shall be liable therefor.

12 (c) The annual vault charge imposed by this section shall be due from,
13 and shall be paid by, the person who is the owner of the premises imme-
14 diately adjoining the vault on the first day of July of the year for
15 which such charge is imposed except that, on and after June first, nine-
16 teen hundred seventy-two, such charge shall be due from, and shall be
17 paid by the person who is the owner of the premises immediately adjoin-
18 ing the vault on the first day of June of the year for which such charge
19 is imposed. Where the annual vault charge is imposed pursuant to subdivi-
20 sion (b) of this section, such annual vault charge shall be due from
21 and paid by, the tenant, lessee or any other person using, occupying or
22 maintaining the vault on the first day of July of the year for which
23 such charge is imposed, except that for years beginning on or after June
24 first, nineteen hundred seventy-two, such charge shall be due from, and
25 paid by, the tenant, lessee or any other person using, occupying or
26 maintaining the vault on the first day of June of the year for which
27 such charge is imposed.

28 (d) In the event that the annual vault charge as imposed by this chap-
29 ter shall be held invalid, then such annual vault charge shall be deemed
30 a tax on the same basis and at the same rates as provided in this chap-
31 ter and all other provisions of this chapter shall be equally applica-
32 ble.

33 (e) Where, prior to the first day of August in any year in which the
34 annual vault charge imposed under this chapter shall be due and payable,
35 if a vault or part thereof is made unavailable for use or occupancy, the
36 annual vault charge paid for such year, pursuant to the provisions of
37 this chapter, shall be refunded in full upon application to and furnish-
38 ing of such proof as the commissioner of finance may require. Where
39 such closing of a vault occurs prior to the last day of December in any
40 such year, fifty percent of the annual vault charge due and actually
41 paid for such year shall be refunded to the payor upon application to
42 and furnishing of such proof as the commissioner of finance may require.
43 Where such closing is limited to a part of a vault, such a refund shall
44 be granted only to the extent that the closing reduces the area of the
45 vault and thereby the amount of the charge for the vault.

46 § 11-2703 Exemptions. The charges imposed by this chapter shall not
47 apply to the following:

48 1. The state of New York, or any public corporation, including a
49 public corporation created pursuant to agreement or compact with another
50 state or the Dominion of Canada, improvement district or other political
51 subdivision of the state;

52 2. The United States of America, insofar as it is immune from taxa-
53 tion;

54 3. The United Nations or other world-wide international organizations
55 of which the United States of America is a member;

1 4. Any corporation, or association, or trust, or community chest, fund
2 or foundation, organized and operated exclusively for religious, chari-
3 table, or educational purposes, or for the prevention of cruelty to
4 children or animals, and no part of the net earnings of which inures to
5 the benefit of any private shareholder or individual and no substantial
6 part of the activities of which is carrying on propaganda, or otherwise
7 attempting to influence legislation; provided, however, that nothing in
8 this subdivision shall include an organization operated for the primary
9 purpose of carrying on a trade or business for profit, whether or not
10 all of its profits are payable to one or more organizations described in
11 this subdivision.

12 5. Any vault constituting property defined as a special franchise in
13 section one hundred two of the real property tax law or assessed as such
14 pursuant to article six of such law.

15 6. Any vault to the extent that it is used, occupied or maintained
16 pursuant to a revocable consent granted pursuant to section three
17 hundred seventy-four of the charter of the preceding municipality as it
18 existed January first, nineteen hundred ninety-four.

19 7. Any vault immediately adjoining a building or structure designed
20 for and used exclusively as a single-family or a two-family dwelling
21 house or any other real property which is classified as class one real
22 property pursuant to section eighteen hundred two of the real property
23 tax law.

24 8. Any street occupancy usable solely and exclusively for the melting
25 of snow and ice, or for delivery into the immediately adjoining prem-
26 ises, of coal, oil or other fuel for the heating thereof.

27 9. Any vault occupying no more than thirty-six square feet in plane or
28 surface area, irrespective of the depth of such vault.

29 § 11-2704 Filing of returns. a. Every person subject to the annual
30 vault charge under this chapter shall, on or before the first day of
31 August, nineteen hundred sixty-two, and on or before the fifteenth day
32 of July of every year thereafter, file with the commissioner of finance
33 a return showing the dimensions of the vault as to length, width and
34 depth, except that the return required to be filed on or before July
35 fifteenth, nineteen hundred seventy-two shall be filed on or before June
36 fifteenth, nineteen hundred seventy-two and those due in later years
37 shall be required to be filed on or before June fifteenth of such years.
38 The commissioner of finance, if he or she deems it necessary to insure
39 adequate information with regard to the proper charge to be imposed, may
40 require information returns from other persons, including the owners of
41 real property regardless of whether a vault has been extended therefrom,
42 the users or lessees of the vault or lessees or tenants of the property
43 adjoining the vault.

44 b. The forms of returns shall be prescribed by the commissioner of
45 finance and shall contain such information as he or she may deem neces-
46 sary for the proper administration of this chapter; and the commissioner
47 of finance or his or her duly authorized agents or employees shall be
48 empowered to require supplemental returns. If a return required by this
49 chapter is not filed or if the return when filed is incorrect or insuf-
50 ficient on its face, the commissioner of finance shall take the neces-
51 sary steps to enforce the filing of such a return or of a corrected
52 return. Upon failure to comply with a notice to furnish a return or a
53 sufficient return, the commissioner of finance may require the filing of
54 a certificate signed by a city surveyor specifying the dimensions of the
55 vault.

1 c. For each annual vault charge year beginning on or after June first,
2 nineteen hundred eighty-nine, the commissioner of finance shall, at
3 least thirty days prior to the commencement of such year, mail to each
4 person who has filed an annual vault charge return for the immediately
5 preceding year an annual vault charge return form on which shall be
6 shown the amount of the charge for such immediately preceding year. Such
7 return form shall be accompanied by instructions which explain in clear
8 and simple terms how to determine the dimensions and extent of street
9 occupancy of a vault, how to calculate the amount of the charge, and
10 such other matters as the commissioner considers necessary or helpful to
11 an understanding of the requirements of this chapter, provided, however,
12 neither the failure of the commissioner to mail such return form and
13 instructions nor the failure of any person to receive the same shall
14 relieve any person of the obligation to file any return required under
15 this section or of liability for the charge, interest or penalties
16 imposed by this chapter.

17 d. If no form or other notice has previously been sent to a person
18 subject to the annual vault charge with respect to the amount of vault
19 charge owed for any year, the commissioner of finance shall notify such
20 person of the amount owed as soon as practicable after discovering that
21 such amount is owed.

22 § 11-2705 Payment of vault charges. a. At the time of filing a return
23 as required by this chapter the person subject to the annual vault
24 charge shall pay to the commissioner of finance the charge imposed by
25 this chapter. Such charge shall be due and payable on the last day on
26 which such return is required to be filed, without regard to whether a
27 return is filed or whether the return which is filed correctly shows the
28 amount due.

29 b. The charge otherwise required to be paid with the return due on or
30 before June fifteenth, nineteen hundred eighty shall be paid in two
31 equal installments as follows: one-half of the charge shall be paid with
32 the return on or before June fifteenth, nineteen hundred eighty, and
33 one-half of the charge shall be paid on or before September fifteenth,
34 nineteen hundred eighty.

35 § 11-2706 Presumption and burden of proof. For the purpose of the
36 proper administration of this chapter and to prevent evasion of the
37 annual vault charge hereby imposed, it shall be presumed, except where
38 the depth of a vault exceeds twelve feet, that the size of the vault as
39 indicated upon the license therefor originally issued by the former
40 borough president of Staten Island up to and including December thirty-
41 first, nineteen hundred sixty-two, and the commissioner of transporta-
42 tion thereafter is a proper measure of the charge until the contrary is
43 established, and the burden of proving that the size of the vault is not
44 accurately stated upon the license shall be upon the person so claiming.
45 In cases where no license of record has been issued for a vault or where
46 the depth of a vault exceeds twelve feet, the burden of proving the
47 actual size of the vault shall be upon the person liable for the vault
48 charge.

49 § 11-2707 Determination of vault charge. If a return required by this
50 chapter is not filed or if a return when filed is incorrect or insuffi-
51 cient, the amount of the vault charge due shall be determined by the
52 commissioner of finance from such information as may be obtainable and,
53 if necessary, the charge may be estimated on the basis of external
54 indices, including but not limited to the records of the department of
55 transportation, the reports of tax assessors, the reports of inspectors
56 and investigators in the offices of the commissioner of finance and

1 commissioner of transportation, or other information or factors. Notice
2 of such determination shall be given to the person liable for the
3 payment thereof. Such determination shall finally and irrevocably fix
4 the vault charge unless the person against whom it is assessed shall,
5 within ninety days after the giving of notice of such determination, or,
6 if the commissioner of finance has established a conciliation procedure
7 pursuant to section 11-124 of the code of the preceding municipality and
8 such person has requested a conciliation conference in accordance there-
9 with, within ninety days from the mailing of a conciliation decision or
10 the date of the commissioner's confirmation of the discontinuance of the
11 conciliation proceeding, both (1) serves a petition upon the commission-
12 er of finance and (2) files a petition with the tax appeals tribunal, or
13 unless the commissioner of finance of his or her own motion shall rede-
14 termine the same. Upon such hearing the tax appeals tribunal may
15 require the filing of a certificate signed by a city surveyor specifying
16 the dimensions of the vault. After such hearing the tax appeals tribu-
17 nal shall give notice of its decision to the person against whom the
18 vault charge is assessed. A decision of the tax appeals tribunal
19 sitting en banc shall be reviewable for error, illegality or unconstitu-
20 tionality or any other reason whatsoever by a proceeding under article
21 seventy-eight of the civil practice law and rules if application there-
22 for is made to the supreme court by the person against whom the vault
23 charge was assessed within four months after the giving of the notice of
24 such tax appeals tribunal decision. A proceeding under article seventy-
25 eight of the civil practice law and rules shall not be instituted by a
26 person against whom the vault charge is assessed unless (a) the amount
27 of any vault charge sought to be reviewed, with penalties and interest
28 thereon, if any, shall be first deposited with the commissioner of
29 finance and there shall be filed with the commissioner of finance an
30 undertaking in such amount and with such sureties as a justice of the
31 supreme court shall approve, to the effect that if such proceeding be
32 dismissed or the vault charge confirmed the person against whom the
33 vault charge is assessed will pay all costs and charges which may accrue
34 in the prosecution of the proceeding, or (b) at the option of such
35 person, such undertaking filed with the commissioner of finance may be
36 in a sum sufficient to cover the vault charge, penalties and interest
37 thereon stated in such decision plus the costs and charges which may
38 accrue against him or her in the prosecution of the proceeding, in which
39 event such person shall not be required to deposit such vault charge,
40 penalties and interest as a condition precedent to the application.

41 § 11-2708 Refunds. a. In the manner provided in this section, the
42 commissioner of finance shall refund or credit, without interest, any
43 vault charge, penalty or interest erroneously, illegally or unconstitu-
44 tionally collected or paid if application to the commissioner of finance
45 for such refund shall be made within one year from the payment thereof.
46 Whenever a refund is made or denied by the commissioner of finance, he
47 or she shall state his or her reason therefor and give notice thereof to
48 the applicant in writing. Such application may be made by the owner of
49 the premises, or other person, who has actually paid the vault charge.
50 The commissioner of finance may, in lieu of any refund required to be
51 made, allow credit therefor on payments due from the applicant.

52 b. Any determination of the commissioner of finance denying a refund
53 or credit pursuant to subdivision a of this section shall be final and
54 irrevocable unless the applicant for such refund or credit, within nine-
55 ty days from the mailing of notice of such determination, or, if the
56 commissioner of finance has established a conciliation procedure pursu-

1 ant to section 11-124 of the code of the preceding municipality and the
2 applicant has requested a conciliation conference in accordance there-
3 with, within ninety days from the mailing of a conciliation decision or
4 the date of the commissioner's confirmation of the discontinuance of the
5 conciliation proceeding, both (1) serves a petition upon the commission-
6 er of finance and (2) files a petition with the tax appeals tribunal for
7 a hearing. Such petition for a refund or credit, made as provided in
8 this section, shall be deemed an application for a revision of any vault
9 charge, penalty or interest complained of. Such hearing and any appeal
10 to the tax appeals tribunal sitting en banc from the decision rendered
11 in such hearing shall be conducted in the manner and subject to the
12 requirements prescribed by the tax appeals tribunal pursuant to sections
13 one hundred sixty-eight through one hundred seventy-two of the charter
14 of the preceding municipality as it existed January first, nineteen
15 hundred ninety-four. After such hearing, the tax appeals tribunal shall
16 give notice of its decision to the applicant and to the commissioner of
17 finance. The applicant shall be entitled to review such decision of the
18 tax appeals tribunal sitting en banc by a proceeding pursuant to article
19 seventy-eight of the civil practice law and rules, provided such
20 proceeding is instituted within four months after the giving of the
21 notice of such decision, and provided, in the case of an application by
22 a person against whom the vault charge is assessed, that a final deter-
23 mination of the vault charge due was not previously made. Such a
24 proceeding shall not be instituted by a person against whom the vault
25 charge is assessed unless an undertaking is filed with the commissioner
26 of finance in such amount and with such sureties as a justice of the
27 supreme court shall approve to the effect that if such proceeding be
28 dismissed or the vault charge confirmed, such person will pay all costs
29 and charges which may accrue in the prosecution of such proceeding.

30 c. A person shall not be entitled to a revision, refund or credit
31 under this section of a vault charge, interest or penalty which had been
32 determined to be due pursuant to the provisions of section 11-2707 of
33 this chapter where he or she has had a hearing or an opportunity for a
34 hearing, as provided in said section, or has failed to avail himself or
35 herself of the remedies therein provided. No refund or credit shall be
36 made of annual vault charge, interest or penalty paid after a determi-
37 nation by the commissioner of finance made pursuant to section 11-2707
38 of this chapter unless it be found that such determination was errone-
39 ous, illegal or unconstitutional or otherwise improper, by the tax
40 appeals tribunal after a hearing or on the commissioner's own motion,
41 or, if such tax appeals tribunal affirms in whole or in part the deter-
42 mination of the commissioner of finance, in a proceeding under article
43 seventy-eight of the civil practice law and rules, pursuant to the
44 provisions of said section, in which event refund or credit without
45 interest shall be made of the vault charge, interest or penalty found to
46 have been overpaid.

47 § 11-2709 Reserves. In cases where the person or persons liable for
48 the vault charge imposed by this chapter has applied for a refund and
49 has instituted a proceeding under article seventy-eight of the civil
50 practice law and rules to review a determination adverse to him or her
51 on his or her application for refund, the comptroller shall set up
52 appropriate reserves to meet any decision adverse to the city.

53 § 11-2710 Remedies exclusive. The remedies provided by sections
54 11-2707 and 11-2708 of this chapter shall be the exclusive remedies
55 available to any person for the review of the liability imposed under
56 this chapter, and no determination or proposed determination of an annu-

1 al vault charge or determination on any application for refund by the
2 commissioner of finance, nor any decision by the tax appeals tribunal or
3 any of its administrative law judges, shall be enjoined or reviewed by
4 an action for declaratory judgment, an action for money had and received
5 or by any action or proceeding other than, in the case of a decision by
6 the tax appeals tribunal sitting en banc, a proceeding in the nature of
7 a certiorari proceeding under article seventy-eight of the civil prac-
8 tice law and rules; provided, however, that a person liable for the
9 annual vault charge may proceed by declaratory judgment if he or she
10 institutes suit within thirty days after a deficiency assessment is made
11 and pays the amount of the deficiency assessment to the commissioner of
12 finance prior to the institution of such suit and posts a bond for costs
13 as provided in section 11-2707 of this chapter.

14 § 11-2711 Proceedings to recover annual vault charge. a. Whenever any
15 person shall fail to pay any vault charge, penalty or interest imposed
16 by this chapter as provided in this chapter, the corporation counsel
17 shall, upon the request of the commissioner of finance bring, or cause
18 to be brought, an action to enforce the payment of the same on behalf of
19 the city of Staten Island in any court of the state of New York or of
20 any other state or of the United States.

21 b. As an additional remedy or as an alternate remedy, the commissioner
22 of finance may issue a warrant, directed to the city sheriff, commanding
23 him or her to levy upon and sell the real and personal property of the
24 person liable for vault charges which may be found within the city for
25 the payment of the amount thereof, with any penalties and interest, and
26 the cost of executing the warrant, and to return such warrant to the
27 commissioner of finance and to pay to him or her the money collected by
28 virtue thereof within sixty days after the receipt of such warrant. The
29 city sheriff shall within five days after the receipt of the warrant
30 file with the county clerk a copy thereof, and thereupon such clerk
31 shall enter in the judgment docket the name of the person mentioned in
32 the warrant and the amount of the vault charge, penalty and interest for
33 which the warrant is issued and the date when such copy is filed. Ther-
34 eupon the amount of such warrant so docketed shall become a lien upon
35 the title to and interest in real and personal property of the person
36 against whom the warrant is issued. The city sheriff shall then proceed
37 upon the warrant in the same manner, and with like effect, as that
38 provided by law in respect to executions issued against property upon
39 judgments of a court of record and for services in executing the warrant
40 he or she shall be entitled to the same fees, which he or she may
41 collect in the same manner. In the discretion of the commissioner of
42 finance a warrant of like terms, force and effect may be issued and
43 directed to an officer or employee of the department of finance, and in
44 the execution thereof such officer or employee shall have all the powers
45 conferred by law upon sheriffs, but shall be entitled to no fee or
46 compensation in excess of the actual expenses paid in the performance of
47 such duty. If a warrant is returned not satisfied in full, the commis-
48 sioner of finance may from time to time issue new warrants and shall
49 also have the same remedies to enforce the amount due thereunder as if
50 the city had recovered judgment therefor and execution thereon had been
51 returned unsatisfied.

52 c. In addition to any other lien provided for in this section, the
53 annual vault charge imposed by this chapter shall become a lien, binding
54 upon the premises immediately adjoining such vault, on the date such
55 charge is required to be paid until the same is paid in full.

1 d. The commissioner of finance, if he or she finds that the interests
2 of the city will not thereby be jeopardized, and upon such conditions as
3 the commissioner of finance may require, may release any property from
4 the lien of any warrant or vacate such warrant for unpaid vault charges,
5 additions to vault charges, penalties and interest filed pursuant to
6 subdivision b of this section, and such release or vacating of the
7 warrant may be recorded in the office of any recording officer in which
8 such warrant has been filed. The clerk shall thereupon cancel and
9 discharge as of the original date of docketing the vacated warrant.

10 § 11-2712 General powers of the commissioner of finance. In addition
11 to all other powers granted to the commissioner of finance in this chap-
12 ter, he or she is hereby authorized and empowered:

13 1. To make, adopt and amend rules and regulations appropriate to the
14 carrying out of this chapter and the purpose thereof;

15 2. To extend, for cause shown, the time for filing any return for a
16 period not exceeding sixty days; and to compromise disputed claims in
17 connection with the vault charges imposed under this chapter;

18 3. To delegate his or her functions under this chapter to a deputy
19 commissioner of finance or any employee or employees of the department
20 of finance;

21 4. To prescribe methods for determining the size, dimensions, depth
22 and extent of street occupancy of a vault; to set forth the manner of
23 computing the vault charges under this chapter; to prescribe standards
24 or methods, by regulation or otherwise, for determining whether a vault
25 has been made unavailable for use or occupancy; and the commissioner of
26 finance or his or her designated employees or agents shall have power to
27 inspect premises for the purpose of determining the extent, if any, of
28 liability imposed by this chapter.

29 5. To require any owner of premises or licensee or other person using,
30 occupying or maintaining a vault to obtain from the commissioner of
31 finance a certificate stating the dimensions and depth of the vault and
32 that the vault charge thereon has been paid and to exhibit the same to
33 duly authorized employees at the premises or real property adjoining the
34 said vault, and to keep such records, and for such length of time, as
35 may be required for the proper administration of this chapter, and to
36 furnish such records to the commissioner of finance upon request;

37 6. To assess, reassess, determine, revise and readjust the vault
38 charges imposed under this chapter;

39 7. Where he or she has exercised his or her authorized power to
40 require the filing of a certificate signed by a city surveyor specifying
41 the dimensions of a vault and the owner of the premises has failed to
42 comply, he or she may obtain such certificate and, in such situation,
43 the necessary expense of obtaining such certificate shall constitute a
44 lien against such premises until paid.

45 8. The commissioner of finance or his or her designated employees or
46 agents shall have power to inspect premises for the purpose of determin-
47 ing the extent, if any, of liability imposed by this chapter.

48 § 11-2713 Administration of oaths and compelling testimony. a. The
49 commissioner of finance, his or her employees duly designated and
50 authorized by the commissioner, the tax appeals tribunal and any of its
51 duly designated and authorized employees shall have power to administer
52 oaths and take affidavits in relation to any matter or proceeding in the
53 exercise of their powers and duties under this chapter. The commissioner
54 of finance and the tax appeals tribunal shall have power to subpoena and
55 require the attendance of witnesses and the production of books, papers
56 and documents to secure information pertinent to the performance of the

1 duties of the commissioner or of the tax appeals tribunal under this
2 chapter and of the enforcement of this chapter and to examine them in
3 relation thereto, and to issue commissions for the examination of
4 witnesses who are out of the state or unable to attend before such
5 commissioner or the tax appeals tribunal or excused from attendance.

6 b. A justice of the supreme court either in court or at chambers shall
7 have power summarily to enforce by proper proceedings the attendance and
8 testimony of witnesses and the production and examination of books,
9 papers and documents called for by the subpoena of the commissioner of
10 finance or the tax appeals tribunal under this chapter.

11 c. Cross-reference; criminal penalties. For failure to obey subpoenas
12 or for testifying falsely, see section 11-4007 of this title; for
13 supplying false or fraudulent information, see section 11-4009 of this
14 title.

15 d. The officers who serve the summons or subpoena of the commissioner
16 of finance or the tax appeals tribunal under this chapter and witnesses
17 attending in response thereto shall be entitled to the same fees as are
18 allowed to officers and witnesses in civil cases in courts of record,
19 except as otherwise provided under this chapter. Such officers shall be
20 the city sheriff and his or her duly appointed deputies or any officers
21 or employees of the department of finance or the tax appeals tribunal,
22 designated to serve such process.

23 § 11-2714 Interest and penalties. (a) Interest on underpayments. If
24 any annual vault charge is not paid on or before the last date
25 prescribed for payment, without regard to any extension of time granted
26 for payment, interest on such amount at the rate set by the commissioner
27 of finance pursuant to subdivision (g) of this section, or, if no rate
28 is set, at the rate of seven and one-half percent per annum, shall be
29 paid for the period from such last date to the date of payment. In
30 computing the amount of interest to be paid, such interest shall be
31 compounded daily. Interest under this subdivision shall not be paid if
32 the amount thereof is less than one dollar.

33 (b) (1) Failure to file return. (A) In case of failure to file a
34 return under this chapter on or before the prescribed date, determined
35 with regard to any extension of time for filing, unless it is shown that
36 such failure is due to reasonable cause and not due to willful neglect,
37 there shall be added to the amount required to be shown as vault charge
38 on such return five percent of the amount of such charge if the failure
39 is for not more than one month, with an additional five percent for each
40 additional month or fraction thereof during which such failure contin-
41 ues, not exceeding twenty-five percent in the aggregate.

42 (B) In the case of a failure to file a vault charge return within
43 sixty days of the date prescribed for filing of such return, determined
44 with regard to any extension of time for filing, unless it is shown that
45 such failure is due to reasonable cause and not due to willful neglect,
46 the addition to the vault charge under subparagraph (A) of this para-
47 graph shall not be less than the lesser of one hundred dollars or one
48 hundred percent of the amount required to be shown as vault charge on
49 such return.

50 (C) For purposes of this paragraph, the amount of vault charge
51 required to be shown on the return shall be reduced by the amount of any
52 part of the charge which is paid on or before the date prescribed for
53 payment of the charge and by the amount of any credit against the charge
54 which may be claimed upon the return.

55 (2) Failure to pay vault charge shown on return. In case of failure to
56 pay the amount shown as vault charge on a return required to be filed

1 under this chapter on or before the prescribed date, determined with
2 regard to any extension of time for payment, unless it is shown that
3 such failure is due to reasonable cause and not due to willful neglect,
4 there shall be added to the amount shown as vault charge on such return
5 one-half of one percent of the amount of such charge if the failure is
6 not for more than one month, with an additional one-half of one percent
7 for each additional month or fraction thereof during which such failure
8 continues, not exceeding twenty-five percent in the aggregate. For the
9 purpose of computing the addition for any month the amount of vault
10 charge shown on the return shall be reduced by the amount of any part of
11 the charge which is paid on or before the beginning of such month and by
12 the amount of any credit against the charge which may be claimed upon
13 the return. If the amount of vault charge required to be shown on a
14 return is less than the amount shown as such charge on such return, this
15 paragraph shall be applied by substituting such lower amount.

16 (3) Failure to pay vault charge required to be shown on return. In
17 case of failure to pay any amount in respect of any vault charge
18 required to be shown on a return required to be filed under this chapter
19 which is not so shown, including a determination made pursuant to
20 section 11-1106 of this title, within ten days of the date of a notice
21 and demand therefor, unless it is shown that such failure is due to
22 reasonable cause and not due to willful neglect, there shall be added to
23 the amount of vault charge stated in such notice and demand one-half of
24 one percent of such charge if the failure is not for more than one
25 month, with an additional one-half of one percent for each additional
26 month or fraction thereof during which such failure continues, not
27 exceeding twenty-five percent in the aggregate. For the purpose of
28 computing the addition for any month, the amount of vault charge stated
29 in the notice and demand shall be reduced by the amount of any part of
30 the charge which is paid before the beginning of such month.

31 (4) Limitations on additions.

32 (A) With respect to any return, the amount of the addition under para-
33 graph one of this subdivision shall be reduced by the amount of the
34 addition under paragraph two of this subdivision for any month to which
35 an addition applies under both paragraphs one and two. In any case
36 described in subparagraph (B) of paragraph one of this subdivision, the
37 amount of the addition under such paragraph one shall not be reduced
38 below the amount provided in such subparagraph.

39 (B) With respect to any return, the maximum amount of the addition
40 permitted under paragraph three of this subdivision shall be reduced by
41 the amount of the addition under paragraph one of this subdivision,
42 determined without regard to subparagraph (B) of such paragraph one,
43 which is attributable to the charge for which the notice and demand is
44 made and which is not paid within ten days of such notice and demand.

45 (c) Underpayment due to negligence. (1) If any part of an underpayment
46 of a vault charge is due to negligence or intentional disregard of this
47 chapter or any rules or regulations pursuant thereto, but without intent
48 to defraud, there shall be added to the charge a penalty equal to five
49 percent of the underpayment.

50 (2) There shall be added to the charge, in addition to the amount
51 determined under paragraph one of this subdivision, an amount equal to
52 fifty percent of the interest payable under subdivision (a) of this
53 section with respect to the portion of the underpayment described in
54 such paragraph one which is attributable to the negligence or inten-
55 tional disregard referred to in such paragraph one, for the period
56 beginning on the last date prescribed by law for payment of such under-

1 payment, determined without regard to any extension, and ending on the
2 date of the assessment of the charge, or, if earlier, the date of the
3 payment of the charge.

4 (d) Underpayment due to fraud. (1) If any part of an underpayment of a
5 vault charge is due to fraud, there shall be added to the charge a
6 penalty equal to fifty percent of the underpayment.

7 (2) There shall be added to the charge, in addition to the penalty
8 determined under paragraph one of this subdivision, an amount equal to
9 fifty percent of the interest payable under subdivision (a) of this
10 section with respect to the portion of the underpayment described in
11 such paragraph one which is attributable to fraud, for the period begin-
12 ning on the last day prescribed by law for payment of such underpayment,
13 determined without regard to any extension, and ending on the date of
14 the assessment of the charge, or, if earlier, the date of the payment of
15 the charge.

16 (3) The penalty under this subdivision shall be in lieu of any other
17 addition to the vault charge imposed by subdivision (b) or (c) of this
18 section.

19 (e) Additional penalty. Any person who, with fraudulent intent, shall
20 fail to pay any vault charge imposed by this chapter, or to make,
21 render, sign or certify any return, or to supply any information within
22 the time required by or under this chapter, shall be liable for a penal-
23 ty of not more than one thousand dollars, in addition to any other
24 amounts required under this chapter to be imposed, assessed and
25 collected by the commissioner of finance. The commissioner of finance
26 shall have the power, in his or her discretion, to waive, reduce or
27 compromise any penalty under this subdivision.

28 (f) The interest and penalties imposed by this section shall be paid
29 and disposed of in the same manner as other revenues from this chapter.
30 Unpaid interest and penalties may be enforced in the same manner as the
31 vault charge imposed by this chapter.

32 (g)(1) Authority to set interest rates. The commissioner of finance,
33 shall set the rate of interest to be paid pursuant to subdivision (a) of
34 this section, but if no such rate of interest is set, such rate shall be
35 deemed to be set at seven and one-half percent per annum. Such rate
36 shall be the rate prescribed in paragraph two of this subdivision but
37 shall not be less than seven and one-half percent per annum. Any such
38 rate set by the commissioner of finance shall apply to vault charges, or
39 any portion thereof, which remain or become due on or after the date on
40 which such rate becomes effective and shall apply only with respect to
41 interest computed or computable for periods or portions of periods
42 occurring in the period in which such rate is in effect.

43 (2) General rule. The rate of interest set under this subdivision
44 shall be the sum of (i) the federal short-term rate as provided under
45 paragraph three of this subdivision, plus (ii) five percentage points.

46 (3) Federal short-term rate. For purposes of this subdivision:

47 (A) The federal short-term rate for any month shall be the federal
48 short-term rate determined by the United States secretary of the treas-
49 ury during such month in accordance with subsection (d) of section
50 twelve hundred seventy-four of the internal revenue code for use in
51 connection with section six thousand six hundred twenty-one of the
52 internal revenue code. Any such rate shall be rounded to the nearest
53 full percent, or, if a multiple of one-half of one percent, such rate
54 shall be increased to the next highest full percent.

55 (B) Period during which rate applies.

1 (i) In general. Except as provided in clause (ii) of this subpara-
2 graph, the federal short-term rate for the first month in each calendar
3 quarter shall apply during the first calendar quarter beginning after
4 such month.

5 (ii) Special rule for the month of September, nineteen hundred eight-
6 y-nine. The federal short-term rate for the month of April, nineteen
7 hundred eighty-nine shall apply with respect to setting the rate of
8 interest for the month of September, nineteen hundred eighty-nine.

9 (4) Publication of interest rate. The commissioner of finance shall
10 cause to be published in the City Record, and give other appropriate
11 general notice of, the interest rate to be set under this subdivision no
12 later than twenty days preceding the first day of the calendar quarter
13 during which such interest rate applies. The setting and publication of
14 such interest rate shall not be included within paragraph (a) of subdi-
15 vision five of section one thousand forty-one of the city charter of the
16 preceding municipality as it existed January first, nineteen hundred
17 ninety-four relating to the definition of a rule.

18 (h) Miscellaneous. (1) The certificate of the commissioner of finance
19 to the effect that a vault charge has not been paid, that a vault has
20 not been licensed, that a return has not been filed, that access has not
21 been allowed, or that information has not been supplied pursuant to the
22 provisions of this chapter, shall be presumptive evidence thereof.

23 (2) Cross-reference: For criminal penalties, see chapter forty of this
24 title.

25 § 11-2715 Notices and limitations of time. a. Any notice authorized
26 or required under the provisions of this chapter may be given to the
27 person for whom it is intended by mailing it in a postpaid envelope
28 addressed to such person at the address given in the return filed by him
29 or her pursuant to the provisions of this chapter or in any application
30 made by him or her or, if no such return has been filed or application
31 made, then to the address of the premises immediately adjoining the
32 vault. The mailing of a notice as in this subdivision provided, shall
33 be presumptive evidence of the receipt of the same by the person to whom
34 addressed. Any period of time which is determined according to the
35 provisions of this chapter by the giving of notice shall commence to run
36 from the date of mailing of such notice as in this subdivision provided.

37 b. The provisions of the civil practice law and rules or any other law
38 relative to limitations of time for the enforcement of a civil remedy
39 shall not apply to any proceeding or action taken by the city to
40 appraise, assess, determine, levy or enforce the collection of any vault
41 charge or penalty provided by this chapter. However, except in the case
42 of a wilfully false or fraudulent return with intent to evade the vault
43 charge, no assessment shall be made after the expiration of more than
44 three years from the date of such return; provided, however, that where
45 no return has been filed as provided by law, the annual vault charge may
46 be assessed at any time.

47 c. Where, before the expiration of the period prescribed in this
48 section for the assessment of an additional vault charge, a person has
49 consented in writing that such period be extended, the amount of such
50 additional vault charge due may be determined at any time within such
51 extended period. The period so extended may be further extended by
52 subsequent consents in writing made before the expiration of the
53 extended period.

54 d. If any return, claim, statement, notice, application, or other
55 document required to be filed, or any payment required to be made, with-
56 in a prescribed period or on or before a prescribed date under authority

1 of any provision of this chapter is, after such period or such date,
2 delivered by United States mail to the commissioner of finance, the tax
3 appeals tribunal, bureau, office, officer or person with which or with
4 whom such document is required to be filed, or to which or to whom such
5 payment is required to be made, the date of the United States postmark
6 stamped on the envelope shall be deemed to be the date of delivery.
7 This subdivision shall apply only if the postmark date falls within the
8 prescribed period or on or before the prescribed date for the filing of
9 such document, or for making the payment, including any extension grant-
10 ed for such filing or payment, and only if such document or payment was
11 deposited in the mail, postage prepaid, properly addressed to the
12 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
13 cer or person with which or with whom the document is required to be
14 filed or to which or to whom such payment is required to be made. If any
15 document is sent by United States registered mail, such registration
16 shall be prima facie evidence that such document was delivered to the
17 commissioner of finance, the tax appeals tribunal, bureau, office, offi-
18 cer or person to which or to whom addressed, and the date of registra-
19 tion shall be deemed the postmark date. The commissioner of finance and,
20 where relevant, the tax appeals tribunal are authorized to provide by
21 regulation the extent to which, such provisions with respect to prima
22 facie evidence of delivery and the postmark date, shall apply to certi-
23 fied mail. This subdivision shall apply in the case of postmarks not
24 made by the United States postal service only if and to the extent
25 provided by regulation of the commissioner of finance or, where rele-
26 vant, the tax appeals tribunal.

27 e. When the last day prescribed under authority of this chapter,
28 including any extension of time, for performing any act falls on a
29 Saturday, Sunday or legal holiday in the state, the performance of such
30 act shall be considered timely if it is performed on the next succeeding
31 day which is not a Saturday, Sunday or legal holiday.

32 § 11-2715.1 Vault charge amnesty program. a. Notwithstanding any other
33 provision of law to the contrary, there is hereby established a nine-
34 month amnesty program, beginning January first, nineteen hundred eight-
35 y-nine and ending September thirtieth, nineteen hundred eighty-nine
36 (hereinafter referred to as the "amnesty period"), for all persons owing
37 the annual vault charge imposed by this chapter. Such amnesty program
38 shall be administered by the commissioner of finance and shall apply to
39 liabilities for annual vault charge years ending prior to June first,
40 nineteen hundred eighty-nine.

41 b. (1) A person seeking amnesty pursuant to this section must, during
42 the amnesty period, file a written application therefor with the commis-
43 sioner of finance, on a form prescribed by the commissioner, and must
44 provide such information as the commissioner may require. In order to
45 qualify for amnesty, such person must pay all annual vault charges for
46 which he or she is liable. Upon payment by such person to the commis-
47 sioner of all such charges as provided in this subdivision, the commis-
48 sioner shall waive any applicable penalties and interest, and no civil,
49 administrative or criminal action or proceeding shall be brought against
50 such person with respect to the charges so paid. In addition, the
51 commissioner shall release the lien binding upon the premises immedi-
52 ately adjoining the vault pursuant to subdivision c of section 11-2711 of
53 this chapter for charges which became payable prior to the time such
54 person acquired title to the premises. Failure to pay all charges as
55 provided in this subdivision shall invalidate any amnesty granted pursu-
56 ant to this section.

1 (2) In the case of any vault adjoining premises owned by a person who
2 (A) prior to January first, nineteen hundred eighty-nine, paid all annu-
3 al vault charges and interest and penalties for which he or she was
4 liable, and (B) is otherwise in full compliance with this chapter, the
5 commissioner of finance shall release the lien binding upon the premises
6 immediately adjoining the vault pursuant to subdivision c of section
7 11-2711 of this chapter for charges which became payable prior to the
8 time such person acquired title to the premises.

9 c. Amnesty shall not be granted to any person subject to the annual
10 vault charge who is a party to any civil litigation which is pending on
11 the date of such person's application in any court of this state or the
12 United States for nonpayment or other delinquency in relation to the
13 annual vault charge. A civil litigation shall not be deemed to be pend-
14 ing if such person withdraws from such litigation prior to the granting
15 of amnesty.

16 d. No refund or credit shall be granted of any penalty or interest
17 paid prior to the time the person subject to the annual vault charge
18 makes a request for amnesty pursuant to subdivision b of this section.

19 e. Unless the commissioner of finance on his or her own motion rede-
20 termines the amount of the annual vault charge, no refund or credit
21 shall be granted of any charges paid under this section.

22 f. The commissioner of finance shall formulate such regulations as are
23 necessary, issue forms and instructions, and take any and all other
24 actions necessary to implement the provisions of this section. Further-
25 more, prior to and throughout the duration of the amnesty period, the
26 commissioner of finance shall implement a plan for prominently announc-
27 ing and explaining the amnesty program. Such plan shall be reasonably
28 calculated to inform all property owners who may be liable for vault
29 charges and may include written announcements sent in tax bills and
30 other mailings done by the city of Staten Island to property owners,
31 public service announcements, advertisements in newspapers of general
32 circulation and notification of community boards. The plan shall
33 include, but not be limited to, information which explains the determi-
34 nation of vault size and charge.

35 § 11-2715.3 Severability. If any clause, sentence, paragraph, section
36 or part of this chapter or the application thereof to any person or
37 circumstance shall for any reason be adjudged by a court of competent
38 jurisdiction to be invalid, such judgment shall not affect, impair or
39 invalidate the remainder of this chapter or the application thereof to
40 other persons or circumstances, but shall be confined in its operation
41 to the clause, sentence, paragraph, section or part thereof directly
42 involved in the controversy in which such judgment shall have been
43 rendered and to the person or circumstance involved.

44 § 11-2716 Construction and enforcement. This chapter shall be
45 construed and enforced in conformity with chapter nine hundred forty-
46 nine of the laws of nineteen hundred sixty-two, pursuant to which it is
47 enacted.

48 § 11-2717 Effective date. This chapter shall take effect July first,
49 nineteen hundred sixty-two and shall remain in effect so long as the
50 power of the city to adopt such laws for revenue purposes shall exist.

51 CHAPTER 28

52 CLAIMS AGAINST FIRE INSURANCE PROCEEDS

1 § 11-2801 Claims against fire insurance proceeds. Definitions. 1. As
2 used in this chapter, any inconsistent provision of law notwithstanding,
3 the following terms shall have the following meanings:

4 (a) "Commissioner" means the commissioner of finance.

5 (b) "Real property" means property upon which there is erected any
6 residential, commercial or industrial building or structure except a one
7 or two family residential structure.

8 (c) "Lien" means any lien including liens for taxes, special ad valo-
9 rem levies, special assessments and municipal charges arising by opera-
10 tion of law against property in favor of the city and remaining undisc-
11 charged for a period of one year or more.

12 (d) "Board" means the board created by subdivision five of this
13 section.

14 (e) "Special lien" means a lien upon fire insurance proceeds pursuant
15 to this chapter and chapter seven hundred thirty-eight of the laws of
16 nineteen hundred seventy-seven.

17 (f) "Fund" means the fire insurance proceeds fund created pursuant to
18 subdivision ten of this section.

19 2. The commissioner shall file a notice of intention to claim against
20 the proceeds of fire insurance policies pursuant to section twenty-two
21 of the general municipal law with the state superintendent of insurance
22 for entry in the index of liens maintained by him or her as provided in
23 section three hundred thirty-one of the insurance law.

24 3. Prior to the payment of any proceeds of a policy of insurance for
25 damages caused by fire to real property, which policy insures the inter-
26 est of an owner and is issued on real property located within the city,
27 and following notification to the commissioner by an insurer of the
28 filing of a claim for payment of such proceeds, the commissioner shall
29 claim, by serving a certificate of lien, against such proceeds to the
30 extent of any lien, including interest and penalties to the date of the
31 claim, thereon, which claim when made and perfected in the manner
32 provided for in section twenty-two of the general municipal law and
33 section three hundred thirty-one of the insurance law, shall constitute
34 a special lien against such proceeds and shall, as to such proceeds, be
35 prior to all other liens and claims except the claim of a mortgagee of
36 record named in such policy. Notice of the service of the certificate
37 of the special lien shall be given to the insured by certified mail.

38 4. The provisions of this chapter shall not be deemed or construed to
39 alter or impair the right of the city to acquire or enforce any lien
40 against property but shall be in addition to any other power provided by
41 law to acquire or enforce such right.

42 5. The fire insurance proceeds claims board is hereby established to
43 administer the provisions of subdivisions six through thirteen of this
44 section. The board shall consist of the first deputy mayor, who shall
45 be chairperson, the commissioner of buildings, the commissioner of hous-
46 ing preservation and development, and the commissioner of finance, each
47 of whom shall have the power to designate an alternate to represent him
48 or her at board meetings with all the rights and powers, including the
49 right to vote, reserved to all board members, provided that such desig-
50 nation shall be in writing to the chairperson. So far as practicable and
51 subject to the approval of the mayor, the services of all other city
52 departments and agencies shall be made available by their respective
53 heads to the board for the carrying out of its functions. Each member
54 shall serve without additional compensation except for expenses actually
55 incurred.

1 6. Whenever the proceeds of policy of fire insurance which will be or
2 has been paid to the city instead of an insured, all or part of such
3 proceeds may be paid or released to the insured if the insured satisfies
4 the board that the affected premises have been or will be repaired or
5 restored, that such repairs or restoration are in the public interest,
6 and the insured is issued and complies with a certificate of the board
7 pursuant to this chapter. To secure such payment or release of proceeds
8 the insured must notify the board within forty-five days after the mail-
9 ing to the insured of a notice of the service of the certificate of
10 special lien pursuant to subdivision three of this section, of the
11 intention to restore or repair the affected premises and must file with
12 the board a completed application with all required supporting documen-
13 tation pursuant to subdivision seven of this section within sixty days
14 thereafter, unless the board grants an extension for a stated period of
15 time.

16 7. The release or return to the insured of any amounts to which he or
17 she or it would otherwise be entitled to claim shall be subject to the
18 following conditions:

19 (a) Such release or return shall be subject to the repair or restora-
20 tion of the affected premises, in accordance with applicable building
21 laws, to the condition it was in prior to the time the lien of the city
22 arose, or to an improved condition.

23 (b) The insured shall file with the board an application in affidavit
24 form, with such supporting documentation as the board shall require,
25 containing the following:

26 (i) A complete description of the nature and extent of the damage to
27 the insured premises and of the condition of the premises prior to the
28 time the lien of the city arose;

29 (ii) A complete description of the nature of the repairs or restora-
30 tion to be undertaken and the cost thereof;

31 (iii) A statement as to the source of funds needed to complete such
32 repairs or restoration if the insurance proceeds are not sufficient
33 therefor;

34 (iv) The name and address of each contractor who will effect such
35 repairs or restoration;

36 (v) An estimated time schedule showing how long the repairs or resto-
37 ration, and each phase thereof, will take; and

38 (vi) Such other information as may be required by the board to enable
39 it to determine whether the repairs or restoration are in the public
40 interest and will be or have been timely and properly made.

41 (c) Upon a preliminary approval by the board of an application pursu-
42 ant to paragraph (b) of this subdivision, the board may issue a certif-
43 icate, to be signed by the chairperson or his or her designee; evidenc-
44 ing the right of release to the insured of amounts representing
45 insurance proceeds, upon such conditions as may be set forth therein.
46 The repairs or restoration required by the board shall be completed in
47 compliance with the terms and conditions of the certificate prior to the
48 release or return of any part of the insurance proceeds, provided howev-
49 er that the board may, upon the written request of the insured and in
50 its sole discretion, approve a prior release of such proceeds or a
51 portion thereof, in a lump sum or in installments, where the insured
52 certifies and demonstrates that such release is required to permit such
53 repairs or restoration to go forward. Any such insurance proceeds
54 released or returned prior to the completion of the repairs or restora-
55 tion required by the board may be paid directly to the contractor or
56 contractors responsible for making such repairs or restoration. Such

1 payment shall, to the extent thereof, release the board from further
2 liability to the insured.

3 8. If the insured: (i) fails to notify the city of his or her or its
4 intention to repair or restore the affected premises as required in
5 subdivision six of this section, (ii) fails to file a completed applica-
6 tion pursuant to this chapter, or (iii) fails to obtain a certificate
7 from the board or comply therewith within the time set forth, the right
8 of the insured to assert a claim against the insurance proceeds, except
9 to the extent they exceed the amount of the lien, shall terminate.

10 9. Until such termination, any insurance proceeds received by the city
11 shall be deposited in a special fund and shall be retained therein.
12 Upon termination of the insured's right to claim against the proceeds,
13 the proceeds and any interest accrued thereon shall be applied to the
14 liens affecting the premises in a manner determined by the board and may
15 be transferred to the general fund.

16 10. There shall be established in the office of the commissioner a
17 fund for the deposit of fire insurance proceeds to be held and applied
18 in accordance with this chapter. Such funds shall not be held together
19 with the general tax levies in the general fund.

20 11. The lien or liens against the affected premises upon which the
21 special lien against proceeds is based shall continue in full force and
22 effect except to the extent that such lien or liens are or have been
23 paid.

24 12. The board may, pursuant to this chapter, release, compromise or
25 adjust the special lien upon insurance proceeds created by this chapter.
26 Any certificate issued by such board pursuant to this chapter shall be
27 for the purpose of preserving and evidencing the right of release of the
28 special lien created by this chapter, shall be subject solely to the
29 provisions of this chapter, and shall not be deemed to be a contract
30 subject to city regulation. Any repair or restoration performed in
31 anticipation of a release of insurance proceeds shall not be deemed to
32 be a public work or municipal project nor to have been done pursuant to
33 a municipal contract.

34 13. The board shall be empowered to promulgate rules and regulations
35 and to adopt approved forms to be used by applicants.

36 CHAPTER 40

37 CRIMES AND OTHER OFFENSES: SEIZURES AND FORFEITURES

38 § 11-4001 Definitions. (a) As used in this chapter, the term "person"
39 shall include, but shall not be limited to, an individual, corporation
40 (including a dissolved corporation), partnership, association, trust or
41 estate.

42 (b) As used in this chapter, the term "person" shall also include an
43 officer, employee or agent of a corporation; a member, employee or agent
44 of a partnership or association; an employee or agent of an individual
45 proprietorship; an employee or agent of an estate or trust; or a fiduci-
46 ary.

47 (c) As used in this chapter, the term "felony" and the term "misdemea-
48 nor" shall have the same meaning as they have in the penal law, and the
49 disposition of such offenses and the sentences imposed therefor shall be
50 as provided in such law, except: (1) notwithstanding the provisions of
51 paragraph a of subdivision one of section 80.00 and paragraph (a) of
52 subdivision one of section 80.10 of the penal law relating to the fine
53 for a felony, the court may impose a fine not to exceed the greater of
54 double the amount of the underpaid tax liability resulting from the

1 commission of the crime or fifty thousand dollars, or, in the case of a
2 corporation the fine may not exceed the greater of double the amount of
3 the underpaid tax liability resulting from the commission of the crime
4 or two hundred fifty thousand dollars, and (2) notwithstanding the
5 provisions of subdivision one of section 80.05 and paragraph (b) of
6 subdivision one of section 80.10 of the penal law relating to the fine
7 for a class A misdemeanor, the court may impose a fine not to exceed ten
8 thousand dollars, except that in the case of a corporation the fine may
9 not exceed twenty thousand dollars.

10 (d) As used in this chapter:

11 (1) "city" shall mean the city of Staten Island; and

12 (2) "state" shall mean the state of New York.

13 § 11-4002 Tax fraud acts. (a) As used in this chapter, "tax fraud act"
14 means willfully engaging in an act or acts or willfully causing another
15 to engage in an act or acts pursuant to which a person:

16 (1) fails to make, render, sign, certify, or file any return or report
17 required under the provisions of any designated chapter of this title or
18 any rule or regulation promulgated thereunder within the time required
19 by or under the provisions of any designated chapter of this title or
20 such rule or regulation;

21 (2) knowing that a return, report, statement or other document under
22 any designated chapter of this title contains any materially false or
23 fraudulent information, or omits any material information, files or
24 submits that return, report, statement or document with the city or the
25 state, or with any public office or public officer of the city or the
26 state;

27 (3) knowingly supplies or submits materially false or fraudulent
28 information in connection with any return, audit, investigation, or
29 proceeding or fails to supply information within the time required by or
30 under the provisions of any designated chapter of this title or any rule
31 or regulation promulgated under any designated chapter of this title;

32 (4) engages in any scheme to defraud the city or the state or a
33 government instrumentality of the city or of the state by false or frau-
34 dulent pretenses, representations or promises as to any material matter,
35 in connection with any tax imposed under any designated chapter of this
36 title or any matter under any designated chapter of this title;

37 (5) fails to remit any tax collected in the name of the city or the
38 state or on behalf of the city or the state when such collection is
39 required under any designated chapter of this title;

40 (6) fails to collect any tax required to be collected under chapter
41 twelve, thirteen, twenty-three-A, twenty-three-B or twenty-five of this
42 title;

43 (7) with intent to evade any tax imposed under any designated chapter
44 of this title, fails to pay such tax; or

45 (8) issues an exemption certificate, interdistributor sales certif-
46 icate, resale certificate, or any other document capable of evidencing a
47 claim that taxes imposed under a designated chapter of this title do not
48 apply to a transaction, which he or she does not believe to be true and
49 correct as to any material matter, which omits any material information,
50 or which is false, fraudulent, or counterfeit.

51 (b) For purposes of this section, the term "willfully" shall mean
52 acting with either intent to defraud, intent to evade the payment of
53 taxes or intent to avoid a requirement of this title, a lawful require-
54 ment of the commissioner or a known legal duty.

55 (c) For purposes of this chapter, the term "designated chapter" shall
56 mean chapter five, six, seven, eight, nine, eleven, twelve, thirteen,

1 fourteen, fifteen, twenty-one, twenty-two, twenty-three-A, twenty-four,
2 twenty-five or twenty-seven of this title.

3 § 11-4003 City criminal tax fraud in the fifth degree. A person
4 commits city criminal tax fraud in the fifth degree when he or she
5 commits a tax fraud act. City criminal tax fraud in the fifth degree is
6 a class A misdemeanor.

7 § 11-4004 City criminal tax fraud in the fourth degree. A person
8 commits city criminal tax fraud in the fourth degree when he or she
9 commits a tax fraud act or acts and, with the intent to evade any tax
10 due under any designated chapter of this title, or to defraud the city
11 or the state or any instrumentality of the city or the state, the person
12 pays the city or the state or any public office or public officer of the
13 city or the state or any instrumentality of the city or state, whether
14 by means of underpayment or receipt of refund or both, in a period of
15 not more than one year in excess of three thousand dollars less than the
16 tax liability that is due. City criminal tax fraud in the fourth degree
17 is a class E felony.

18 § 11-4005 City criminal tax fraud in the third degree. A person
19 commits city criminal tax fraud in the third degree when he or she
20 commits a tax fraud act or acts and, with the intent to evade any tax
21 due under any designated chapter of this title, or to defraud the city
22 or the state or any instrumentality of the city or the state, the person
23 pays the city or the state or any public office or public officer of the
24 city or the state or any instrumentality of the city or state, whether
25 by means of underpayment or receipt of refund or both, in a period of
26 not more than one year in excess of ten thousand dollars less than the
27 tax liability that is due. City criminal tax fraud in the third degree
28 is a class D felony.

29 § 11-4006 City criminal tax fraud in the second degree. A person
30 commits city criminal tax fraud in the second degree when he or she
31 commits a tax fraud act or acts and, with the intent to evade any tax
32 due under any designated chapter of this title, or to defraud the city
33 or the state or any instrumentality of the city or the state, the person
34 pays the city or the state or any public office or public officer of the
35 city or the state or any instrumentality of the city or state, whether
36 by means of underpayment or receipt of refund or both, in a period of
37 not more than one year in excess of fifty thousand dollars less than the
38 tax liability that is due. City criminal tax fraud in the second degree
39 is a class C felony.

40 § 11-4007 City criminal tax fraud in the first degree. A person
41 commits city criminal tax fraud in the first degree when he or she
42 commits a tax fraud act or acts and, with the intent to evade any tax
43 due under any designated chapter of this title, or to defraud the city
44 or the state or any instrumentality of the city or the state, the person
45 pays the city or the state or any public office or public officer of the
46 city or the state or any instrumentality of the city or state, whether
47 by means of underpayment or receipt of refund or both, in a period of
48 not more than one year in excess of one million dollars less than the
49 tax liability that is due. City criminal tax fraud in the first degree
50 is a class B felony.

51 § 11-4008 Aggregation. For purposes of this chapter, the payments due
52 and not paid under any designated chapter of this title pursuant to a
53 common scheme or plan or due and not paid, within one year, may be
54 charged in a single count, and the amount of underpaid tax liability
55 incurred, within one year, may be aggregated in a single count.

1 § 11-4009 Non-preemption; penal law anticipatory offenses and accessorial liability apply. (a) Unless expressly stated otherwise, the penalties provided in this chapter or under any other chapter of this title shall not preclude prosecution for any offense under the penal law or any other criminal statute.

6 (b) The offenses specified in title G of the penal law and the provisions of article twenty of the penal law are applicable to all offenses defined in this chapter.

9 § 11-4010 Failure to obey subpoenas; false testimony. (a) Any person who, being duly subpoenaed, pursuant to chapter five, six, seven, eight, nine, eleven, twelve, thirteen, fourteen, fifteen, twenty-one, twenty-two, twenty-four, twenty-five or twenty-seven of this title or the provisions of the civil practice law and rules, in connection with a matter arising under any of such chapters, to attend as a witness or to produce books, accounts, records, memoranda, documents or other papers, (i) fails or refuses to attend without lawful excuse, (ii) refuses to be sworn, (iii) refuses to answer any material and proper question, or (iv) refuses, after reasonable notice, to produce books, papers and documents in his or her possession or under his or her control which constitute material and proper evidence shall be guilty of a misdemeanor.

21 (b) Any person who shall testify falsely in any material matter pending before the commissioner of finance with respect to any of the chapters specified in subdivision (a) of this section shall be guilty of and punishable for perjury.

25 § 11-4011 Failure to file bond. Any person willfully failing to file a bond where such filing is required pursuant to section 11-1203, 11-1304 or 11-2505 of this title shall be guilty of a misdemeanor. (a) Any person who willfully attempts in any manner to evade or defeat any tax imposed by chapter thirteen of this title or payment thereof where such tax is unpaid on ten thousand cigarettes or more or has previously been convicted two or more times of a crime set forth in this chapter relating to cigarette taxes; shall be guilty of a class E felony.

33 (b) Any person, other than an agent so authorized by the commissioner of finance, who possesses or transports for the purpose of sale any unstamped or unlawfully stamped packages of cigarettes subject to tax under chapter thirteen of this title, or who sells or offers for sale unstamped or unlawfully stamped packages of cigarettes in violation of the provisions of such chapter shall be guilty of a misdemeanor. Any person who violates the provisions of this subdivision after having previously been convicted of a violation of this subdivision within the preceding five years shall be guilty of a class E felony.

42 (c) (1) Any person, other than an agent so authorized by the commissioner of finance, who willfully possesses or transports for the purpose of sale ten thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale ten thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class E felony.

49 (2) Any person, other than an agent appointed by the commissioner of finance, who willfully possesses or transports for the purpose of sale thirty thousand or more cigarettes subject to the tax imposed by chapter thirteen of this title in any unstamped or unlawfully stamped packages or who willfully sells or offers for sale thirty thousand or more cigarettes in any unstamped or unlawfully stamped packages in violation of such chapter shall be guilty of a class D felony.

1 (d) For the purposes of this section, the possession or transportation
2 within this city by any person, other than an agent, at any one time of
3 five thousand or more cigarettes in unstamped or unlawfully stamped
4 packages shall be presumptive evidence that such cigarettes are
5 possessed or transported for the purpose of sale and are subject to the
6 tax imposed by chapter thirteen of this title. With respect to such
7 possession or transportation, any provisions of chapter thirteen of this
8 title providing for a time period during which a use tax imposed by such
9 chapter may be paid on unstamped cigarettes or unlawfully or improperly
10 stamped cigarettes or during which such cigarettes may be returned to an
11 agent shall not apply. The possession within this city of more than four
12 hundred cigarettes in unstamped or unlawfully stamped packages by any
13 person other than an agent at any one time shall be presumptive evidence
14 that such cigarettes are subject to tax as provided by chapter thirteen
15 of this title.

16 (e) Nothing in this section shall apply to common or contract carriers
17 or warehouseman while engaged in lawfully transporting or storing
18 unstamped packages of cigarettes as merchandise, nor to any employee of
19 such carrier or warehouseman acting within the scope of his employment,
20 nor to public officers or employees in the performance of their official
21 duties requiring possession or control of unstamped or unlawfully
22 stamped packages of cigarettes, nor to temporary incidental possession
23 by employees or agents of persons lawfully entitled to possession, not
24 to persons whose possession is for the purpose of aiding police officers
25 in performing their duties.

26 (f) Any willful act or omission, other than those described in section
27 11-4002 of this chapter or subdivision (a), (b), (c), (d), (e) or (g) of
28 this section, by any person which constitutes a violation of any
29 provision of chapter thirteen of this title or subchapter one of chapter
30 two of title twenty of the code of the preceding municipality shall
31 constitute a misdemeanor.

32 (g) Any person who falsely or fraudulently makes, alters or counter-
33 feits any stamp prescribed by the commissioner of finance under the
34 provisions of chapter thirteen of this title, or causes or procures to
35 be falsely or fraudulently made, altered or counterfeited any such
36 stamp, or knowingly and willfully utters, purchases, passes or tenders
37 as true any such false, altered or counterfeited stamp, or knowingly and
38 willfully possess any cigarettes in packages bearing any such false,
39 altered or counterfeited stamp, and any person who knowingly and will-
40 fully makes, causes to be made, purchases or receives any device for
41 forging or counterfeiting any stamp, prescribed by the commissioner of
42 finance under the provisions of chapter thirteen of this title, or who
43 knowingly and willfully possesses any such device, shall be guilty of a
44 class E felony. For the purposes of this subdivision, the words "stamp
45 prescribed by the commissioner of finance" shall include a stamp,
46 impression or imprint made by a metering machine, the design of which
47 has been approved by the commissioner of finance and the state tax
48 commission.

49 § 11-4012.1 Tobacco products tax. (a) Attempt to evade or defeat tax.
50 Any person who willfully attempts in any manner to evade or defeat any
51 tax imposed by section 11-1302.1 of this chapter or the payment thereof
52 shall, in addition to any other penalties provided by law, be guilty of
53 a misdemeanor.

54 (b) Any willful act or omission with respect to the tax imposed by
55 section 11-1302.1 of this chapter, with the exception of those described
56 in subdivision (a) of this section, by any person which constitutes a

1 violation of any provision of chapter thirteen of this title or chapter
2 two of title twenty of the code of the preceding municipality shall
3 constitute a misdemeanor.

4 § 11-4014 Tax on commercial motor vehicles and motor vehicles for
5 transportation of passengers. (a) Any person who counterfeits or forges,
6 or causes or procures to be counterfeited or forged, or aids or assists
7 in counterfeiting or forging, by any way, art, or means, any stamp,
8 indicia of payment or indicia that no tax is payable authorized by chap-
9 ter eight of this title, or who knowingly acquires, possesses, disposes
10 of or uses such a counterfeited or forged stamp, indicia of payment or
11 indicia that no tax is payable, or who transfers a stamp, indicia of
12 payment or indicia that no tax is payable where such a transfer is not
13 authorized by such chapter shall be guilty of a misdemeanor.

14 (b) The owner or driver of any motor vehicle subject to the tax
15 imposed by chapter eight who, upon demand, shall fail to exhibit the
16 stamp or other indicia of payment of the tax to the commissioner of
17 finance, his duly authorized agent or employee, or any police officer of
18 this city or state, as required by subdivision a of section 11-809 of
19 this chapter, shall be guilty of a misdemeanor.

20 § 11-4015 Tax on owners of motor vehicles. (a) Any person who counter-
21 feits or forges, or causes or procures to be counterfeited or forged, or
22 aids or assists in counterfeiting or forging, by any way, art, or means,
23 any receipt or other document evidencing payment or exemption from the
24 tax imposed by chapter twenty-two of this title, or who knowingly
25 acquires, possesses, disposes of or uses such a counterfeited or forged
26 receipt or other document, shall be guilty of a misdemeanor.

27 (b) Any person who uses, operates or parks or permits the use, opera-
28 tion or parking upon any public highway or street of a motor vehicle
29 owned by him or her or under his or her control for which the tax
30 imposed by chapter twenty-two of this title has not been paid in accord-
31 ance with the provisions of such chapter and the regulations prescribed
32 thereunder shall be guilty of a misdemeanor. For the purpose of this
33 subdivision any person using, operating or parking a motor vehicle shall
34 be presumed to be doing so with the permission of the owner of such
35 motor vehicle.

36 (c) To the extent that any other section of this chapter is applicable
37 to the tax imposed by chapter twenty-two of this title, any reference in
38 such section to the commissioner of finance shall be deemed a reference
39 to the commissioner of motor vehicles or to the commissioner of finance
40 if designated as his or her agent.

41 § 11-4016 Hotel room occupancy tax. (a) Any person who willfully fails
42 to file a registration certificate as required pursuant to the
43 provisions of chapter twenty-five of this title and such data in
44 connection therewith as the commissioner of finance by regulation or
45 otherwise may require, or willfully fails to display or surrender a
46 certificate of authority as required by chapter twenty-five of this
47 title, or willfully assigns or transfers such certificate of authority,
48 shall be guilty of a misdemeanor, provided, however, that the provisions
49 of this subdivision shall not apply to a failure to surrender a certif-
50 icate of authority which is required to be surrendered where business
51 never commenced.

52 (b) Any person who willfully fails to charge separately the tax
53 imposed under chapter twenty-five of this title or willfully fails to
54 state such tax separately on any bill, statement, memorandum or receipt
55 issued or employed by such person upon which the tax is required to be
56 stated separately as provided in such chapter, or who shall refer or

1 cause reference to be made to this tax in a form or manner other than
2 required by such chapter, shall be guilty of a misdemeanor.

3 § 11-4017 Violation of secrecy provisions. Any person who violates the
4 provisions of subdivision a of section 11-1214, subdivision (a) of
5 section 11-2415, subdivision a of section 11-2115, subdivision a of
6 section 11-1516, subdivision a of section 11-818, subdivision a of
7 section 11-716, subdivision a of section 11-2215, subdivision a of
8 section 11-1116, subdivision one of section 11-688, subdivision one of
9 section 11-538, subdivision a of section 11-2516, or subdivision a of
10 section 11-1414 of this title shall be guilty of a misdemeanor.

11 § 11-4018 Other offenses. (a) Any person who willfully fails to keep
12 or retain any records required to be kept or retained by chapter seven,
13 twelve, fourteen, twenty-one, twenty-two, twenty-four or twenty-seven of
14 this title shall be guilty of a misdemeanor.

15 (b) Any person willfully simulating, altering, defacing, destroying or
16 removing any evidence of the filing of a return or the payment of a tax
17 provided for in chapter twenty-one of this title shall be guilty of a
18 misdemeanor.

19 (c) Any person failing to file a certificate of registration or infor-
20 mation registration certificate as required by chapter eight of this
21 title shall be guilty of a misdemeanor.

22 (d) Any person refusing access to personnel authorized by the commis-
23 sioner of finance to inspect any vault or any premises concerning which
24 a return or information return may be required under chapter twenty-sev-
25 en of this title shall be guilty of a misdemeanor.

26 § 11-4019 Jurisdiction. For purposes of the taxes imposed by chapter
27 five or six of this title, any prosecution under this chapter may be
28 conducted in any county where the person against whom a violation or
29 violations of any of the provisions of this chapter are charged resides
30 or has a place of business, or from which such person received any
31 income, or in any county in which any such violation is committed.

32 (a) Notwithstanding any other provision of law, the corporation coun-
33 sel shall have concurrent jurisdiction with any district attorney in the
34 prosecution of any offenses under this chapter.

35 (b) Notwithstanding any other provision of law, the attorney general
36 shall have concurrent jurisdiction with the corporation counsel and with
37 any district attorney in the prosecution of any offenses under this
38 chapter relating to the tax imposed by chapter thirteen of this title,
39 as well as any offenses arising out of such prosecution.

40 § 11-4020 Disposition of fines. All fines levied under this chapter
41 shall be paid to the commissioner of finance and deposited in the gener-
42 al fund of the city.

43 § 11-4021 Seizure and forfeiture of cigarettes. (a) Whenever a police
44 officer designated in section 1.20 of the criminal procedure law or a
45 peace officer designated in subdivision five of section 2.10 of such
46 law, acting pursuant to his or her special duties, shall discover any
47 cigarettes subject to any tax provided by chapter thirteen of this
48 title, and upon which the tax has not been paid or the stamps not
49 affixed as required by such chapter, they are hereby authorized and
50 empowered forthwith to seize and take possession of such cigarettes,
51 together with any vending machine or receptacle in which they are held
52 for sale. Such cigarettes, vending machine or receptacle seized by a
53 police officer or such peace officer shall be turned over to the commis-
54 sioner of finance.

55 (b) The seized cigarettes and any vending machine or receptacle seized
56 therewith, but not the money contained in such vending machine or recep-

1 tacle shall thereupon be forfeited to the city, unless the person from
2 whom the seizure is made, or the owner of such seized cigarettes, vend-
3 ing machine or receptacle, or any other person having an interest in
4 such property, shall within ten days of such seizure, apply to the
5 commissioner of finance for a hearing to determine the propriety of the
6 seizure, or unless the commissioner of finance shall on his or her own
7 motion release the seized cigarettes, vending machine or receptacle.
8 After such hearing the commissioner of finance shall give notice of his
9 or her decision to the petitioner. The decision of the commissioner
10 shall be reviewable for error, illegality, unconstitutionality or any
11 other reason whatsoever by a proceeding under article seventy-eight of
12 the civil practice law and rules if application therefor is made to the
13 supreme court within thirty days after the giving of the notice of such
14 decision. Such proceeding shall not be instituted unless there shall
15 first be filed with the commissioner of finance an undertaking, issued
16 by a surety company authorized to transact business in New York state
17 and approved by the superintendent of insurance of New York state as to
18 solvency and responsibility, in such amount as a justice of the supreme
19 court shall approve, to the effect that if such proceeding be dismissed,
20 or the seizure confirmed, the petitioner will pay all costs and charges
21 which may accrue in the prosecution of the proceeding.

22 (c) The commissioner of finance may, within a reasonable time after
23 the forfeiture to the city of such vending machines or receptacles, upon
24 publication of a notice to such effect for at least five successive
25 days, in a newspaper published or circulated in the city, sell such
26 forfeited vending machines or receptacles at public sale and pay the
27 proceeds into the treasury of the city to the credit of the general
28 fund. Such seized vending machines or receptacles may be sold prior to
29 forfeiture if the owner of the seized property consents to the sale.
30 Notwithstanding any other provision of this section, the commissioner of
31 finance may enter into an agreement with the state tax commission to
32 provide for the disposition between the city and state of the proceeds
33 from any such sale. The commissioner of finance may also transfer any
34 seized cigarettes to the state for destruction. All cigarettes forfeited
35 to the state shall be destroyed or used for law enforcement purposes,
36 except that cigarettes that violate, or are suspected of violating,
37 federal trademark laws or import laws shall not be used for law enforce-
38 ment purposes. If the commissioner determines the cigarettes may not be
39 used for law enforcement purposes, the commissioner of finance must,
40 within a reasonable time after the forfeiture to the city of such ciga-
41 rettes, upon publication of a notice to such effect for at least five
42 successive days, prior to destruction, in a newspaper published or
43 circulated in the city, destroy such forfeited cigarettes. Such commis-
44 sioner may, prior to any destruction of cigarettes, permit the true
45 holder of the trademark rights in the cigarettes to inspect such
46 forfeited cigarettes in order to assist in any investigation regarding
47 such cigarettes.

48 (d) In the alternative, the commissioner of finance, on reasonable
49 notice by mail or otherwise, may permit the person from whom said ciga-
50 rettes were seized to redeem the said cigarettes, and any vending
51 machine or receptacle seized therewith, or may permit the owner of any
52 such cigarettes, vending machine or receptacle to redeem the same, by
53 the payment of the tax due, plus a penalty of fifty percent thereof,
54 plus interest on the amount of tax due for each month or fraction there-
55 of after such tax became due, determined without regard to any extension
56 of time for filing or paying, at the rate applicable under subdivision d

1 of section 11-1317 of this title and the costs incurred in such proceed-
2 ing, which total payment shall not be less than five dollars; provided,
3 however, that such seizure and sale or redemption shall not be deemed to
4 relieve any person from fine or imprisonment provided for in this chap-
5 ter for violation of any provisions of this chapter or chapter thirteen
6 of this title.

7 (e) In the alternative, the commissioner of finance may dispose of any
8 cigarettes seized pursuant to this section, except those that violate,
9 or are suspected of violating, federal trademark laws or import laws, by
10 transferring them to the department of correction for sale to or use by
11 incarcerated individuals in such institutions.

12 § 11-4022 Filing of documents. For purposes of the prosecution of
13 offenses under the provisions of this title, reports, returns, state-
14 ments, other documents or other information required to be filed with or
15 delivered to the commissioner of finance shall include such items which
16 under the provisions of this title are required to be recorded or filed
17 with, served upon or delivered to another person, including, but not
18 limited to, a recording officer of any county within the state, county
19 clerk, any other governmental agency or entity, or other entity in its
20 capacity as an agent of the commissioner of finance.

21 § 11-4023 Authority to seal premises. (a) If any person has been
22 finally determined to have engaged in the acts described in subdivision
23 (b) of this section, the commissioner of finance shall be authorized to
24 order:

25 (1) the sealing of any premises operated by such person where such
26 acts occurred; and

27 (2) the removal, sealing or making inoperable of any devices, items or
28 goods used in connection with any of such acts.

29 (b) The following acts shall serve as the basis for a sealing order
30 pursuant to this section:

31 (1) the violation of subdivision a or b of section 11-1303 of this
32 title or section 17-703 or 20-202 of the code of the preceding munici-
33 pality on at least two occasions within a three-year period; or

34 (2) the violation of any provision of chapter thirteen of this title
35 or any of sections 17-703, 17-703.2, 17-704, 17-705, subdivision a or b
36 of section 17-706, 17-715 or 20-202 of the code of the preceding munici-
37 pality on at least three occasions within a three-year period; or

38 (3) the violation of any provision of section 10-203 of the code of
39 the preceding municipality on at least two occasions within a three-year
40 period.

41 (c) Orders of the commissioner to seal premises. (1) Orders of the
42 commissioner issued pursuant to this section shall be posted at the
43 premises at which the acts described in subdivision (b) of this section
44 have occurred.

45 (2) Ten days after the date of such posting, and upon the written
46 directive of the commissioner, police officers designated in section
47 1.20 of the criminal procedure law and peace officers employed by the
48 department of finance, including but not limited to the sheriff, under-
49 sheriff and deputy sheriffs of the city of New York designated as peace
50 officers in subdivision two of section 2.10 of the criminal procedure
51 law, are authorized to act upon and enforce such orders.

52 (3) Any devices, items or goods removed pursuant to this section,
53 shall be stored in a garage, pound or other place of safety and the
54 owner or other person lawfully entitled to the possession of such
55 devices, items or goods may be charged with reasonable costs for removal

1 and storage payable prior to the release of such devices, items or goods
2 to such owner or such other person.

3 (4) The owner or other person lawfully entitled to reclaim the
4 devices, items or goods described in paragraph three of this subdivision
5 shall reclaim such devices, items or goods. If such owner or such other
6 person does not reclaim such devices, items or goods within ninety days
7 of their removal, such devices, items or goods shall be subject to
8 forfeiture upon notice and judicial determination in accordance with
9 provisions of law. Upon forfeiture the department shall, upon a public
10 notice of at least five days, sell such forfeited devices, items or
11 goods at public sale. The net proceeds of such sale, after deduction of
12 the lawful expenses incurred, shall be paid into the general fund of the
13 city.

14 (d) Unsealing of premises. The commissioner shall order that any prem-
15 ises which are sealed pursuant to this section shall be unsealed and
16 that any devices, items or goods removed, sealed or otherwise made inop-
17 erable pursuant to this section shall be released, unsealed or made
18 operable upon:

19 (1) payment of all outstanding cigarette taxes and civil penalties and
20 all reasonable costs for removal and storage; and

21 (2) the expiration of a period of time from the date of enforcement of
22 the order to be determined by the commissioner not to exceed sixty days.

23 (e) Any person aggrieved by an order issued pursuant to this section
24 may seek judicial review of such order through a proceeding pursuant to
25 article seventy-eight of the civil practice law and rules.

26 (f) Removal of seal. Any person who removes the seal on any premises
27 or removes the seal on or makes operable any devices, items or goods
28 sealed or otherwise made inoperable in accordance with an order of the
29 commissioner shall be guilty of a misdemeanor.

30 § 11-4024 Seizure and forfeiture of taxed and lawfully stamped ciga-
31 rettes sold or possessed by unlicensed retail or wholesale dealers,
32 flavored tobacco products, flavored electronic cigarettes and flavored
33 e-liquid. (a) Whenever a police officer designated in section 1.20 of
34 the criminal procedure law or a peace officer employed by the department
35 of finance, including but not limited to the sheriff, undersheriff or
36 deputy sheriffs of the city of New York designated as peace officers in
37 subdivision two of section 2.10 of the criminal procedure law, shall
38 discover (1) any cigarettes subject to any tax provided by chapter thir-
39 teen of this title, and upon which the tax has been paid and the stamps
40 affixed as required by such chapter, but such cigarettes are sold,
41 offered for sale or possessed by a person in violation of section
42 11-1303 of this code or section 17-703 or 20-202 of the code of the
43 preceding municipality, or (2) any flavored tobacco product that is
44 sold, offered for sale or possessed with intent to sell in violation of
45 section 17-715 of the code of the preceding municipality, he or she is
46 hereby authorized and empowered forthwith to seize and take possession
47 of such cigarettes or flavored tobacco product, together with any vend-
48 ing machine or receptacle in which such cigarettes or flavored tobacco
49 product are held for sale. Such cigarettes or flavored tobacco product,
50 vending machine or receptacle seized by such police officer or such
51 peace officer shall be turned over to the commissioner of finance.

52 (b) The seized cigarettes or flavored tobacco product and any vending
53 machine or receptacle seized therewith, but not the money contained in
54 such vending machine or receptacle, shall thereupon be forfeited to the
55 city, unless the person from whom the seizure is made, or the owner of
56 such seized cigarettes, flavored tobacco product, vending machine or

1 receptacle, or any other person having an interest in such property,
2 shall within ten days of such seizure, apply to the commissioner of
3 finance for a hearing to determine the propriety of the seizure, or
4 unless the commissioner of finance shall on his or her own motion
5 release the seized cigarettes, flavored tobacco product, vending machine
6 or receptacle. After such hearing the commissioner of finance shall give
7 notice of his or her decision to the petitioner. The decision of the
8 commissioner shall be reviewable for error, illegality, unconstitution-
9 ality or any other reason whatsoever by a proceeding under article
10 seventy-eight of the civil practice law and rules.

11 (c) The commissioner of finance may, within a reasonable time after
12 the forfeiture to the city of such vending machine or receptacle under
13 this section, upon publication of a notice to such effect for at least
14 five successive days, in a newspaper published or circulated in the
15 city, sell such forfeited vending machine or receptacle at public sale
16 and pay the proceeds into the general fund of the city. Such seized
17 vending machine or receptacle may be sold prior to forfeiture if the
18 owner of the seized property consents to the sale. Cigarettes or
19 flavored tobacco product forfeited to the city under this section shall
20 be destroyed or used for law enforcement purposes, except that ciga-
21 rettes that violate, or are suspected of violating, federal trademark
22 laws or import laws shall not be used for law enforcement purposes. If
23 the commissioner determines the cigarettes forfeited under this section
24 may not be used for law enforcement purposes, the commissioner of
25 finance must, within a reasonable time after the forfeiture to the city
26 of such cigarettes, upon publication of a notice to such effect for at
27 least five successive days, prior to destruction, in a newspaper
28 published or circulated in the city, destroy such forfeited cigarettes.

29 (d) In the alternative, the commissioner of finance, on reasonable
30 notice by mail or otherwise, may permit the person from whom a seizure
31 of cigarettes or flavored tobacco product under this section was made,
32 to redeem any vending machine or receptacle seized with such cigarettes
33 or flavored tobacco product, or may permit the owner of any such vending
34 machine or receptacle to redeem the same, upon the payment of any civil
35 penalty imposed pursuant to chapter seven of title seventeen or subchap-
36 ter one of chapter two of title twenty of the code of the preceding
37 municipality and the costs incurred in such proceeding.

38 (e) For purposes of this section, a flavored tobacco product means a
39 flavored tobacco product, flavored electronic cigarette or flavored
40 e-liquid.

41 § 11-4025 Seizure and forfeiture of untaxed tobacco products. (a)
42 Whenever a police officer designated in section 1.20 of the criminal
43 procedure law or a peace officer employed by the department of finance,
44 including but not limited to the sheriff, undersheriff or deputy sher-
45 iffs of the city designated as peace officers in subdivision two of
46 section 2.10 of the criminal procedure law, discovers any tobacco
47 products subject to any tax provided by chapter thirteen of this title,
48 and upon which the tax has not been paid, he or she is hereby authorized
49 and empowered forthwith to seize and take possession of such tobacco
50 products, together with any vending machine or receptacle in which such
51 tobacco products are held for sale. Such tobacco products, vending
52 machine or receptacle seized by such police officer or such peace offi-
53 cer shall be turned over to the commissioner of finance.

54 (b) The seized tobacco products and any vending machine or receptacle
55 seized therewith, but not the money contained in such vending machine or
56 receptacle, shall thereupon be forfeited to the city, unless the person

1 from whom the seizure is made, or the owner of such seized tobacco
2 products, vending machine or receptacle, or any other person having an
3 interest in such property, shall within ten days of such seizure, apply
4 to the commissioner of finance for a hearing to determine the propriety
5 of the seizure, or unless the commissioner of finance shall on his or
6 her own motion release the seized tobacco products, vending machine or
7 receptacle. After such hearing the commissioner of finance shall give
8 notice of his or her decision to the petitioner. The decision of the
9 commissioner shall be reviewable for error, illegality, unconstitution-
10 ality or any other reason whatsoever by a proceeding under article
11 seventy-eight of the civil practice law and rules.

12 (c) The commissioner of finance may, within a reasonable time after
13 the forfeiture to the city of such vending machine or receptacle under
14 this section, upon publication of a notice to such effect for at least
15 five successive days, in a newspaper published or circulated in the
16 city, sell such forfeited vending machine or receptacle at public sale
17 and pay the proceeds into the general fund of the city. Such seized
18 vending machine or receptacle may be sold prior to forfeiture if the
19 owner of the seized property consents to the sale. Tobacco products
20 forfeited to the city under this section shall be destroyed or used for
21 law enforcement purposes, except that tobacco products that violate, or
22 are suspected of violating, federal trademark laws or import laws shall
23 not be used for law enforcement purposes. If the commissioner determines
24 the tobacco products forfeited under this section may not be used for
25 law enforcement purposes, the commissioner of finance must, within a
26 reasonable time after the forfeiture to the city of such cigarettes,
27 upon publication of a notice to such effect for at least five successive
28 days, prior to destruction, in a newspaper published or circulated in
29 the city, destroy such forfeited tobacco products.

30 (d) In the alternative, the commissioner of finance, on reasonable
31 notice by mail or otherwise, may permit the person from whom a seizure
32 of tobacco products under this section was made, to redeem any vending
33 machine or receptacle seized with such tobacco products, or may permit
34 the owner of any such vending machine or receptacle to redeem the same,
35 upon the payment of any civil penalty imposed pursuant to chapter seven
36 of title seventeen or subchapter one of chapter two of title twenty of
37 the code of the preceding municipality and the costs incurred in such
38 proceeding.

39 § 11-4026 Seizure and forfeiture of taxed tobacco products sold or
40 possessed by unlicensed retail or wholesale dealers other than flavored
41 tobacco products subject to seizure under section 11-4024 of this chap-
42 ter.

43 (a) Whenever a police officer designated in section 1.20 of the crimi-
44 nal procedure law or a peace officer employed by the department of
45 finance, including but not limited to the sheriff, undersheriff or depu-
46 ty sheriffs of the city designated as peace officers in subdivision two
47 of section 2.10 of the criminal procedure law, discovers any tobacco
48 products, other than flavored tobacco products, subject to any tax
49 provided by chapter thirteen of this title, and upon which the tax has
50 been paid, but such tobacco products are sold, offered for sale or
51 possessed by a person in violation of section 11-1303 of this code or
52 section 17-703 or 20-202 of the code of the preceding municipality, he
53 or she is hereby authorized and empowered forthwith to seize and take
54 possession of such tobacco products, together with any vending machine
55 or receptacle in which such tobacco products are held for sale. Such
56 tobacco products, vending machine or receptacle seized by such police

1 officer or such peace officer shall be turned over to the commissioner
2 of finance.

3 (b) The seized tobacco products and any vending machine or receptacle
4 seized therewith, but not the money contained in such vending machine or
5 receptacle, shall thereupon be forfeited to the city, unless the person
6 from whom the seizure is made, or the owner of such seized tobacco
7 products, vending machine or receptacle, or any other person having an
8 interest in such property, shall within ten days of such seizure, apply
9 to the commissioner of finance for a hearing to determine the propriety
10 of the seizure, or unless the commissioner of finance shall on his or
11 her own motion release the seized tobacco products, vending machine or
12 receptacle. After such hearing the commissioner of finance shall give
13 notice of his or her decision to the petitioner. The decision of the
14 commissioner shall be reviewable for error, illegality, unconstitution-
15 ality or any other reason whatsoever by a proceeding under article
16 seventy-eight of the civil practice law and rules.

17 (c) The commissioner of finance may, within a reasonable time after
18 the forfeiture to the city of such vending machine or receptacle under
19 this section, upon publication of a notice to such effect for at least
20 five successive days, in a newspaper published or circulated in the
21 city, sell such forfeited vending machine or receptacle at public sale
22 and pay the proceeds into the general fund of the city. Such seized
23 vending machine or receptacle may be sold prior to forfeiture if the
24 owner of the seized property consents to the sale. Tobacco products
25 forfeited to the city under this section shall be destroyed or used for
26 law enforcement purposes, except that tobacco products that violate, or
27 are suspected of violating, federal trademark laws or import laws shall
28 not be used for law enforcement purposes. If the commissioner determines
29 the tobacco products forfeited under this section may not be used for
30 law enforcement purposes, the commissioner of finance must, within a
31 reasonable time after the forfeiture to the city of such tobacco
32 products, upon publication of a notice to such effect for at least five
33 successive days, prior to destruction, in a newspaper published or
34 circulated in the city, destroy such forfeited tobacco products.

35 (d) In the alternative, the commissioner of finance, on reasonable
36 notice by mail or otherwise, may permit the person from whom a seizure
37 of tobacco products under this section was made, to redeem any vending
38 machine or receptacle seized with such tobacco products, or may permit
39 the owner of any such vending machine or receptacle to redeem the same,
40 upon the payment of any civil penalty imposed pursuant to chapter seven
41 of title seventeen or subchapter one of chapter two of title twenty of
42 the code of the preceding municipality and the costs incurred in such
43 proceeding.

44 Title 12 - Personnel and Labor

45 § 12-101 Office of payroll administration. There shall be within the
46 comptroller's office an office of payroll administration which shall:

- 47 1. Support the implementation of a computerized payroll management
48 system;
- 49 2. Maintain the integrity and accuracy of the payroll system;
- 50 3. Develop uniform procedures for payroll processing and development;
- 51 4. Distribute and account for payroll and administer payroll
52 deductions; and
- 53 5. Render services to, and receive information and assistance from,
54 public corporations upon such terms and conditions as may be agreed to
55 by the office and each such corporation.

1 All city agencies shall cooperate with the office as may be necessary
2 and proper to ensure efficient operation of the payroll management
3 system.

4 § 12-102 Executive director; staff. The comptroller shall appoint an
5 executive director of payroll administration. Within the appropriations
6 therefor, the office shall employ such other officers and employees as
7 may be required to perform its duties.

8 Title 13 - Reserved

9 Title 14 - Police

10 § 14-101 Definitions. As used in this title, the following terms have
11 the following meanings:

12 1. Civil enforcement. The term "civil enforcement" means the issuance
13 of a civil summons.

14 2. Civil summons. The term "civil summons" means a civil notice of
15 violation.

16 3. Commissioner. The term "commissioner" means the commissioner of the
17 department.

18 4. Criminal enforcement. The term "criminal enforcement" means the
19 charging of a misdemeanor or violation.

20 5. Criminal summons. The term "criminal summons" means an appearance
21 ticket issued by the department pursuant to article one hundred fifty of
22 the criminal procedure law that is an accusatory instrument pursuant to
23 article one hundred of the criminal procedural law, and returnable to
24 the criminal court.

25 6. Department. The term "department" means the police department of
26 the city of New York.

27 7. Desk appearance ticket. The term "desk appearance ticket" means an
28 appearance ticket issued by the department pursuant to article one
29 hundred fifty of the criminal procedure law that is not an accusatory
30 instrument pursuant to article one hundred of the criminal procedure
31 law.

32 8. Specified unlawful act. The term "specified unlawful act" means an
33 act that violates any of the following provisions: subdivision b of
34 section 10-125 of the code of the preceding municipality, subdivision
35 one of section 16-118 of the code of the preceding municipality, subdi-
36 vision six of section 16-118 of the code of the preceding municipality
37 with respect to the act of public urination, subdivision a of section
38 24-218 of the code of the preceding municipality, section 18-146 of the
39 code of the preceding municipality, section 18-147 of the code of the
40 preceding municipality, and rules and regulations of the department of
41 parks and recreation described in paragraph nine of subdivision a of
42 section five hundred thirty-three of the charter of the preceding muni-
43 cipality.

44 § 14-102 Composition of force. Until otherwise provided by the mayor,
45 upon the recommendation of the commissioner, the police force in the
46 police department, shall consist of the following ranks of members, to
47 wit:

48 1. Captains of police, not exceeding in number one to each fifty of
49 the total number of police officers, in addition to the number detailed
50 to act as inspectors;

51 2. Lieutenants of police, not exceeding four in number to each fifty
52 of the total number of police officers;

1 3. Sergeants not exceeding six in number to each fifty police offi-
2 cers;

3 4. Surgeons of police, not exceeding forty in number, one of whom
4 shall be chief surgeon;

5 5. A veterinarian;

6 6. Police officers to the number of seven thousand eight hundred thir-
7 ty-nine.

8 § 14-103 Detective bureau. a. The commissioner shall organize and
9 maintain a bureau for detective purposes to be known as the detective
10 bureau and shall, from time to time, detail to service in said bureau as
11 many members of the force as the commissioner may deem necessary and may
12 at any time revoke any such detail.

13 b. Of the members of the force so detailed the commissioner may desig-
14 nate: (1) police officers not exceeding two hundred eighty in number,
15 as detectives of the first grade, who while performing duty in such
16 bureau and while so designated as detectives of the first grade, shall
17 be paid the same salary as lieutenants; and (2) a certain number of
18 police officers, as detectives of the second grade, who while performing
19 duty in such bureau and while so designated as detectives of the second
20 grade, shall be paid the same salary as sergeants; and a certain number
21 of police officers as detectives of the third grade, who while perform-
22 ing duty in such bureau and while so designated as detectives of the
23 third grade shall be paid such salary as may be determined by the mayor.
24 Any person who has received permanent appointment as a police officer
25 and is temporarily assigned to perform the duties of a detective shall,
26 whenever such assignment exceeds eighteen months in duration, be
27 appointed as a detective and receive the compensation ordinarily paid to
28 a detective performing such duties.

29 c. The commissioner may designate lieutenants as commanders of detec-
30 tive squads, and sergeants as supervisors of detective squads, who while
31 performing duty in such bureau and while so designated as commanders of
32 detective squads or supervisors of detective squads shall be paid such
33 salary as may be determined by the mayor.

34 d. Any member of the force detailed to such bureau while so detailed
35 shall retain his or her rank in the force and shall be eligible for
36 promotion the same as if serving in the uniformed force, and the time
37 during which he or she serves in such bureau shall count for all
38 purposes as if served in his or her rank or grade in the uniformed
39 force.

40 e. The commissioner may at his or her pleasure revoke any designation
41 made pursuant to the provision of this section after complying with the
42 provisions of section seventy-five of the civil service law.

43 § 14-104 Juvenile bureau. a. There shall be a bureau in the department
44 organized and maintained for the prevention of crime and delinquency
45 among minors and for the performance of such other duties as the commis-
46 sioner may assign thereto.

47 b. Any member of the force assigned to such juvenile bureau shall
48 retain his or her rank and pay in the force and shall be eligible for
49 promotion as if serving in the uniformed force and the time served in
50 such bureau shall count for all purposes as if served in his or her rank
51 or grade in the uniformed force of the department.

52 § 14-105 Bureau of taxis, limousines and liveries. The purpose of the
53 bureau of taxis, limousines and liveries shall be the continuance,
54 further development and improvement of taxi, limousine and livery
55 service in the city of Staten Island.

1 It shall be the further purpose of the bureau, consonant with the
2 promotion and protection of the public comfort and convenience to adopt
3 and establish an overall public transportation policy governing taxi,
4 coach, limousine and wheelchair accessible van services as it relates to
5 the overall public transportation network of the city; to require the
6 filing of rates, standards of service, standards of insurance and mini-
7 mum coverage; standards for driver safety; standards for equipment safe-
8 ty and design; standards for noise and air pollution control; and to set
9 standards and criteria for the licensing of vehicles, drivers and chauff-
10 feurs, owners and operators engaged in such services.

11 § 14-106 Jurisdiction, powers and duties of the bureau. 1. The juris-
12 diction, powers and duties of the bureau shall include the regulation
13 and supervision of the business and industry of transportation of
14 persons by licensed vehicles for hire in the city.

15 2. Such regulations and supervision shall extend to:

16 (a) The supervision of rates to be charged and collected.

17 (b) The regulation and supervision of standards and conditions of
18 service.

19 (c) The revocation and suspension of licenses for vehicles, other than
20 licenses issued pursuant to state law, provided, however, that taxicab
21 licenses represented by medallions heretofore issued shall in all
22 respects remain valid in accordance with their terms and transferable
23 according to law.

24 3. The bureau or an administrative tribunal which may be established
25 by the police commissioner to adjudicate charges of violations of
26 provisions of the administrative code, rules and regulations promulgated
27 thereunder and public complaints of discrimination or overcharging,
28 shall have the power to enforce its decisions and orders imposing civil
29 penalties, not to exceed ten thousand dollars for each respondent, for
30 violations relating to unlicensed vehicles for hire and unlicensed driv-
31 ers of vehicles for hire and for violations relating to the operation of
32 commuter van services without authorization and the operation of unli-
33 censed commuter vans and unlicensed drivers of commuter vans pursuant to
34 provisions of the administrative code.

35 Before a judgment based upon a default may be so entered the bureau or
36 administrative tribunal shall have first notified the respondent by
37 first class mail in such form as the bureau may direct (a) of the
38 default and order and the penalty imposed; (b) that a judgment will be
39 entered in the civil court of the city; and (c) that entry of such judg-
40 ment may be avoided by requesting a stay of default for good cause and
41 either requesting a hearing or entering a plea pursuant to the rules of
42 the bureau or administrative tribunal within thirty days of the mailing
43 of such notice.

44 Title 15 - Fire Prevention and Control

45 § 15-101 Definitions; bureaus, divisions and offices. 1. For the
46 purposes of this title the following terms shall have the following
47 meanings:

48 (a) "Commissioner" shall mean the fire commissioner.

49 (b) "Department" shall mean the fire department.

50 2. In addition to such other bureaus, divisions and offices as the
51 commissioner may organize pursuant to section eleven hundred two of the
52 charter of the preceding municipality, there shall be in the department:

1 (a) A fire bureau in the charge of the chief of the department which
2 shall have charge of the extinguishment of fires and the necessary and
3 incidental protection of life and property in connection therewith.

4 In such bureau there shall be a bureau of fire prevention and such
5 bureau shall be in the charge of a member of the uniformed force of the
6 department, of a rank above that of captain, to be designated by the
7 commissioner. Such bureau shall perform the duties and exercise the
8 powers of the commissioner in relation to (1) combustibles, chemicals,
9 explosives, flammables, or other dangerous substances, articles,
10 compounds or mixtures, (2) the prevention of fires or danger to life or
11 property therefrom, excluding provisions relating to structural condi-
12 tions and (3) protection against fire and panic, obstruction of aisles,
13 passageways and means of egress, standees, fire protection and fire
14 extinguishing appliances, and fire prevention in licensed places of
15 assembly. In the performance of their official duties, the uniformed and
16 civilian members of the bureau of fire prevention shall have the powers
17 and perform the duties of peace officers, but their power to make
18 arrests and serve process in criminal actions shall be restricted to
19 cases arising under laws relating to (1) the manufacture, storage, sale,
20 transportation or use of combustibles, chemicals, explosives, flammables
21 or other dangerous substances, articles, compounds or mixtures and the
22 control of fire hazards, (2) the prevention of fires or danger to life
23 or property therefrom, excluding provisions relating to structural
24 conditions and (3) fire perils.

25 (b) A chief and deputy chief fire marshal, appointed by the commis-
26 sioner, who shall be members of the department.

27 3. Notwithstanding any inconsistent provision of any general, special
28 or local law, or rule or regulation, a chief of the department shall not
29 serve in any other capacity to the department during his or her term of
30 office of chief. Any person violating the provisions of this section
31 shall be deemed to have vacated the office of chief so held.

32 § 15-102 Commissioner. The head of the fire department shall be the
33 commissioner. The mayor may designate the chief of the fire department
34 to serve as commissioner, and shall exercise the powers and duties of
35 commissioner and shall receive the salary of the commissioner. While
36 serving as commissioner, the chief shall forfeit none of his or her
37 pension rights and privileges as chief or his or her civil service
38 status.

39 The commissioner may appoint deputies, one of whom may perform all the
40 duties and exercise all the powers of the commissioner except appoint-
41 ment or promotion, detail or dismissal of any member of the uniformed
42 force when authorized by instrument in writing to be filed in the
43 offices of the mayor and the comptroller.

44 The commissioner shall be the treasurer of the department and shall
45 file in the office of the comptroller a bond for the faithful perform-
46 ance of his or her duties as treasurer.

47 § 15-103 Powers. The commissioner shall have sole and exclusive power
48 and perform all duties for the government, discipline, management, main-
49 tenance and direction of the fire department and the premises and prop-
50 erty, however the commissioner shall provide written notice with
51 supporting documentation at least forty-five days prior to the permanent
52 closing of any firehouse or permanent removal or relocation of any fire
53 fighting unit to the council members whose districts are served by such
54 facility and to the clerk of the council. The term "permanent" shall
55 mean a time period in excess of six months.

1 The department shall have the sole and exclusive power and authority
2 to extinguish fires at any place within the jurisdiction of the city and
3 still have power and authority to extinguish fires upon any vessel in
4 the port of New York or upon any dock, wharf, pier, warehouse or other
5 structure bordering or adjacent to such port.

6 The commissioner shall have sole and exclusive jurisdiction over the
7 approval of the installation of all containers for combustibles, chemi-
8 cals, explosives, inflammable or other dangerous substances, except
9 storage tanks for oilburning equipment.

10 The commissioner shall have the sole and exclusive power to designate
11 and fix the location of all fire alarm telegraph, signal and alarm
12 stations in the city and to control the same for the purpose of the
13 department; except the commissioner shall give forty-five days notice to
14 council members whose districts are served by such equipment and to the
15 city clerk in the case of removal.

16 § 15-104 Enforcement of fire laws. 1. The commissioner shall have the
17 power and it shall be his or her duty to enforce all laws and the rules
18 and regulations with respect to:

19 (a) the manufacture, storage, sale, transportation or use of combusti-
20 bles, chemicals or dangerous substances;

21 (b) investigation of the cause and origin of fires and suppression of
22 arson; and

23 (c) the prevention of fires or danger to life or property.

24 2. The commissioner shall have the power to cause any building, struc-
25 ture, tunnel, vessel or premises to be inspected for fire hazards by an
26 officer or employee of the department; and to inspect and test any auto-
27 matic or other fire alarm system or fire extinguishing equipment.

28 3. The commissioner shall have the power and it shall be his or her
29 duty to order in writing the remedying of any condition in violation of
30 any regulation which he or she is empowered to enforce. The commissioner
31 may take proceedings for the enforcement of any order of the commission-
32 er which is not complied with within the time fixed in the order for
33 such compliance to be enforced. Every order, requirement, decision or
34 determination of the commissioner shall be in writing.

35 4. The commissioner and his or her deputies and such other officers or
36 employees of the department as are authorized by the commissioner may
37 without fee or hindrance enter and inspect all buildings, premises,
38 vessels, structures and all underground passages of every sort in the
39 city or in the port of New York for compliance with provisions of law or
40 rules and regulations enforced by the department. Any refusal to permit
41 such entry or inspection shall be triable by a judge and punishable by
42 not more than thirty days imprisonment or by a fine of not more than
43 fifty dollars, or both.

44 § 15-105 Other officer. No member of the uniformed force of the fire
45 department shall accept any additional place of public trust or civil
46 emolument.

47 The chief of the fire department shall not serve in any other capacity
48 to the department during his or her term of office or shall be deemed to
49 have vacated the office of chief.

50 Title 16 - Sanitation

51 Chapter 1

52 GENERAL

53 § 16-101 Definitions. When used in this title the following terms
54 shall have the following meanings:

- 1 1. "Department" shall mean the department of sanitation.
2 2. "Commissioner" shall mean the commissioner of sanitation.
3 3. "Street" includes street, avenue, road, alley, lane, highway,
4 boulevard, concourse, driveway, culvert and crosswalk, and every class
5 of road, square and place, and all parkways and through vehicular park
6 drives except a road within any park or a wharf, pier, bulkhead, or slip
7 by law committed to the custody, and control of the department of ports
8 and terminals.

9 § 16-102 Commissioner. The head of the sanitation department shall be
10 the commissioner.

11 § 16-103 Powers and duties of the commissioner. 1. The commissioner
12 shall have charge and control of and be responsible for all those func-
13 tions and operations of the city relating to the cleanliness of the
14 streets and the disposal of waste, including, without limitation, the
15 following:

16 (a) the sweeping, cleaning, sprinkling, flushing, washing and sanding
17 of the streets;

18 (b) the removal and disposition of ashes, street sweepings, garbage,
19 refuse, rubbish and waste;

20 (c) the removal of ice and snow from the streets;

21 (d) the removal of encumbrances from the streets and the storage or
22 disposal of such encumbrances, except that the mayor may provide by
23 regulation that the removal and storage of household effects or other
24 chattels shall be a responsibility of the department of general services
25 and contracting;

26 (e) plans, design, construction, operation, repair, maintenance,
27 enlargement and regulation of the use of incinerators, landfills and
28 other plants, facilities and equipment; and

29 (f) recovery and reuse of recyclable material.

30 2. The commissioner may adopt regulations specifying the kind of
31 ashes, garbage, refuse, rubbish or other material or substance that will
32 be collected by the city, the time when it will be collected and the
33 place at which it shall be deposited for collection.

34 3. The regulations shall be enforced by order of the commissioner.
35 Such order shall be addressed to the owner or owners, lessees or occu-
36 pants of the building, structure, enclosure, vessel, place or premises
37 affected thereby. It shall not be necessary to designate such owner or
38 owners, lessees or occupants by name, however the premises shall be
39 designated in the address so that it may be readily identified.

40 § 16-104 Duties and obligations of property owner. The owner of any
41 property shall keep any vacant lot or lots in a clean and sanitary
42 manner and free of debris and other litter at the owner's expense. In
43 the event that an owner of property fails to comply with these
44 provisions, or rules and regulations, the department may provide for
45 cleaning of a vacant lot at the expense of the property owner.

46

Chapter 2

47

SOLID WASTE RECYCLING

48 § 16-301 Short title. Sections 16-301 through 16-324 of this title
49 shall be known and may be cited as the "City of Staten Island Recycling
50 Law".

51 § 16-302 Declaration of policy. It is hereby declared to be the public
52 policy of the city to reduce environmental pollution and dangers to
53 health, to decrease the demand for scarce landfill space, to minimize
54 the size and cost of the proposed resource recovery program, and to

1 encourage the conservation of valuable natural resources and energy. It
2 is the policy of the city to promote the recovery of materials from the
3 city of Staten Island solid waste stream for the purpose of recycling
4 such materials and returning them to the economy. This title shall be
5 liberally construed in order to effectuate the purposes set forth in
6 this section.

7 § 16-303 Definitions. When used in this title:

8 1. "Architectoral paint" means interior and exterior architectural
9 coatings, including paints and stains purchased for commercial or resi-
10 dential use, but does not include architectural coatings purchased for
11 industrial use or for use in the manufacture of products.

12 2. "Organic waste" means any material found in the waste stream that
13 can be broken down into, or otherwise become part of, usable compost,
14 such as food scraps, soiled paper, and plant trimmings. As determined by
15 the commissioner, such term may also include disposable plastic food
16 service ware and bags that meet the ASTM International standard specifi-
17 cations for compostable plastics, but shall not include liquids and
18 textiles.

19 3. "Department-managed solid waste" means all solid waste that the
20 department and its contractors collect, all solid waste that the depart-
21 ment receives for free disposal, all solid waste collected for recycling
22 or reuse through special events or programs promoted, operated or funded
23 by the department, and all solid waste diverted from collection by the
24 department that is accepted through non-department infrastructure for
25 recycling or reuse and counted towards the department's recycling goals
26 as set forth in subdivision a of section 16-305 of this chapter.

27 4. "Household" means a single dwelling or a residential unit within a
28 multiple dwelling, hotel, motel, campsite, ranger station, public or
29 private recreation area, or other residence.

30 5. "Household and institutional compostable waste" means any composta-
31 ble waste, excluding yard waste, in or otherwise destined for any waste
32 stream collected by the department.

33 6. "Household hazardous waste" means:

34 a. any household waste that is ignitable, corrosive, reactive or toxic
35 and that, but for its point of generation, would be a hazardous waste
36 under part three hundred seventy-one of title six of the New York code,
37 rules and regulations, as may be amended from time to time, and includes
38 all pesticides, as defined in article thirty-three of the environmental
39 conservation law, and hazardous waste, as defined in section 27-0901 of
40 the environmental conservation law, as such laws may be amended from
41 time to time; and

42 b. any other household waste that the commissioner determines, by
43 rule, to be hazardous and require special handling.

44 7. "Post-collection separation" means the dividing of solid waste into
45 some or all of its component parts after the point of collection.

46 8. "Post-consumer material" means those products generated by a busi-
47 ness or a consumer which have served their intended end uses, and which
48 have been separated or diverted from solid waste for the purposes of
49 collection, recycling and disposition.

50 9. "Private carter" means any person required to be licensed or
51 permitted pursuant to chapter one of title sixteen-A of the code of the
52 preceding municipality.

53 10. "Publicly accessible textile drop-off bin" means any enclosed
54 container that allows for members of the public to deposit textiles into
55 such container for reuse or recycling in accordance with the textile

1 reuse and recycling program established by section 16-310.1 of this
2 chapter.

3 11. "Recyclable materials" means solid waste that may be separated,
4 collected, processed, marketed and returned to the economy in the form
5 of raw paper, plastic, yard waste and any other solid waste required to
6 be recycled or composted pursuant to this chapter, solid waste collected
7 for recycling or reuse through special events or programs promoted,
8 operated or funded by the department, and solid waste accepted through
9 non-department infrastructure for recycling or reuse.

10 12. "Recycled" or "recycling" means any process by which recyclable
11 materials are separated, collected, processed, marketed and returned to
12 the economy in the form of raw materials or products.

13 13. "Recycling center" means any facility operated to facilitate the
14 separation, collection, processing or marketing of recyclable materials
15 for reuse or sale.

16 14. "Recycling district" means any borough or smaller geographic area
17 the commissioner deems appropriate for the purpose of implementing this
18 chapter.

19 15. "Rigid plastic container" means any plastic container having a
20 semi-flexible or inflexible finite shape or form that is capable of
21 maintaining its shape while holding other products and is designed to
22 hold food, beverages, and consumer household products, including, but
23 not limited to, the following types of containers: plastic bottles,
24 plastic jugs, plastic tubs, plastic trays, plastic cups, plastic buck-
25 ets, plastic crates and plastic flower pots, and any other rigid plastic
26 material that the commissioner may designate by rule, but not including
27 containers made of polystyrene foam.

28 16. "Solid waste" means all putrescible and non-putrescible materials
29 or substances, except as described in paragraph c of this subdivision,
30 that are discarded or rejected as being spent, useless, worthless or in
31 excess to the owners at the time of such discard or rejection, including
32 but not limited to, garbage, refuse, industrial and commercial waste,
33 rubbish, tires, ashes, contained gaseous material, incinerator residue,
34 construction and demolition debris, discarded automobiles and offal.

35 a. A material is discarded if it is abandoned by being:

36 i. disposed of;

37 ii. burned or incinerated, including being burned as a fuel for the
38 purpose of recovering useable energy; or

39 iii. accumulated, stored, or physically, chemically or biologically
40 treated, other than burned or incinerated, instead of or before being
41 disposed of.

42 b. A material is disposed of if it is discharged, deposited, injected,
43 dumped, spilled, leaked, or placed into or on any land or water so that
44 such material or any constituent thereof may enter the environment or be
45 emitted into the air or discharged into groundwater or surface water.

46 c. The following are not solid waste for the purpose of this chapter:

47 i. domestic sewage;

48 ii. any mixture of domestic sewage and other wastes that passes
49 through a sewer system to a publicly owned treatment works for treat-
50 ment, except (A) any material that is introduced into such system in
51 order to avoid the provisions of this chapter or the state regulations
52 promulgated to regulate solid waste management facilities pursuant to 6
53 NYCRR part 360 or (B) food waste;

54 iii. industrial wastewater discharges that are actual point source
55 discharges subject to permits under article seventeen of the environ-
56 mental conservation law; industrial wastewaters while they are being

1 collected, stored, or treated before discharge and sludges that are
2 generated by industrial wastewater treatment are solid wastes;
3 iv. irrigation return flows;
4 v. radioactive materials that are source, special nuclear, or by-pro-
5 duct material as defined by the Atomic Energy Act of 1954, as amended,
6 42 U.S.C. § 2011 et seq.;

7 vi. materials subject to in-situ mining techniques which are not
8 removed from the ground as part of the extraction process;

9 vii. hazardous waste as defined in section 27-0901 of the environ-
10 mental conservation law; and

11 viii. regulated medical waste or other medical waste as described in
12 section 16-120.1 of this title.

13 17. "Source separation" means the dividing of solid waste into some or
14 all of its component parts at the point of generation.

15 18. "Yard waste" means leaves, grass clippings, garden debris, and
16 vegetative residue that is recognizable as part of a plant or vegetable,
17 small or chipped branches, and similar material.

18
19

Chapter 3
CITYWIDE RECYCLING PROGRAM

20 § 16-305 Recycling of department-managed solid waste. 1. a. The
21 following recycling percentage goals are established for the recycling
22 of department-managed solid waste:

23 i. by July first, two thousand eleven, sixteen percent of department-
24 managed solid waste;

25 ii. by July first, two thousand thirteen, nineteen percent of depart-
26 ment-managed solid waste;

27 iii. by July first, two thousand fourteen, twenty-one percent of
28 department-managed solid waste;

29 iv. by July first, two thousand sixteen, twenty-four percent of
30 department-managed solid waste;

31 v. by July first, two thousand eighteen, twenty-seven percent of
32 department-managed solid waste;

33 vi. by July first, two thousand nineteen, thirty percent of depart-
34 ment-managed solid waste; and

35 vii. by July first, two thousand twenty, thirty-three percent of
36 department-managed solid waste.

37 b. In addition, the following recycling goals are established for
38 curbside and containerized waste collected by the department:

39 i. By July first, two thousand eleven, sixteen percent of curbside and
40 containerized waste collected by the department;

41 ii. By July first, two thousand thirteen, eighteen percent of curbside
42 and containerized waste collected by the department;

43 iii. By July first, two thousand fourteen, nineteen percent of curb-
44 side and containerized waste collected by the department;

45 iv. By July first, two thousand sixteen, twenty-one percent of curb-
46 side and containerized waste collected by the department;

47 v. By July first, two thousand eighteen, twenty-three percent of curb-
48 side and containerized waste collected by the department;

49 vi. By July first, two thousand nineteen, twenty-four percent of curb-
50 side and containerized waste collected by the department; and

51 vii. By July first, two thousand twenty, twenty-five percent of curb-
52 side and containerized waste collected by the department.

53 2. The commissioner shall adopt and implement rules designating at
54 least six recyclable materials, including plastics to the extent

1 required in subdivision three of this section and yard waste to the
2 extent required in section 16-308 of this chapter and organic waste to
3 the extent required in section 16-308.1 of this chapter, contained in
4 department-managed solid waste and requiring households to source sepa-
5 rate such designated materials.

6 3. a. Prior to commencing delivery of department-managed recyclable
7 materials to the designated recycling processing facility at the South
8 Brooklyn Marine Terminal, the commissioner shall designate as recyclable
9 materials, and require the source separation of, rigid plastic contain-
10 ers.

11 b. If the commissioner, in his or her discretion, determines that the
12 cost to the city of recycling rigid plastic containers required to be
13 designated as recyclable materials pursuant to paragraph a of this
14 subdivision is not reasonable in comparison with the cost of recycling
15 only metal, glass and plastic and have been designated as recyclable
16 materials, the commissioner shall within ten business days notify and
17 provide documentation to the council of the factors relied upon to make
18 such determination and shall not be required to designate any such rigid
19 plastic containers as recyclable materials.

20 c. If the commissioner determines that the cost to the city of recycl-
21 ing rigid plastic containers is not reasonable in comparison with the
22 cost of recycling only metal, glass and plastic that have been desig-
23 nated as recyclable materials, the commissioner shall annually reeval-
24 ate the cost to the city of designating such rigid plastic containers as
25 recyclable materials, and shall annually make a new determination as to
26 whether the cost of designating such containers as recyclable materials
27 is reasonable in comparison with the cost of recycling only metal, glass
28 and plastic that have been designated as recyclable materials and shall
29 report such evaluations to the council. The department shall not
30 promulgate rules designating rigid plastic containers as recyclable
31 materials, and need not conduct outreach or education relating thereto
32 if, pursuant to paragraph b of this subdivision, the commissioner deter-
33 mines that the cost to the city of recycling rigid plastic containers is
34 not reasonable in comparison with the cost of recycling only metal,
35 glass and plastic that have been designated as recyclable materials.

36 d. Immediately following the promulgation of rules designating rigid
37 plastic containers as recyclable materials, the department shall under-
38 take outreach and education, in cooperation with any other agency or
39 entity designated for that purpose by the commissioner, to inform resi-
40 dents of such new designation and to provide instruction on compliance
41 with the requirements of this subdivision and the rules promulgated
42 pursuant thereto.

43 4. The commissioner shall adopt and implement rules establishing
44 procedures requiring the placement of the designated materials at the
45 curbside, in specialized containers, or in any other manner the commis-
46 sioner determines, to facilitate the collection of such materials in a
47 manner that enables them to be recycled. Under such rules, no person
48 shall be liable for incorrectly placing a non-designated rigid plastic
49 container in the recycling stream.

50 5. Where the department provides solid waste collection services to a
51 building containing at least four and no more than eight dwelling units,
52 the commissioner shall adopt and implement rules requiring the owner,
53 net lessee or person in charge of such building to:

54 a. provide for the residents, where practicable, a designated area
55 and, where appropriate, containers in which to store the source sepa-

1 rated or other designated recyclable materials to be collected by the
2 department; and

3 b. inform all residents of the requirements of this chapter and the
4 rules promulgated pursuant thereto by, at a minimum, posting
5 instructions on source separation in or near the designated recycling
6 area and making available to each resident at the inception of a lease,
7 where applicable, a department-issued guide to recycling, which shall be
8 made available to the owner, net lessee or person in charge of such
9 building by the department pursuant to section 16-315 of this chapter in
10 print form or on the department's website, or in an alternative guide
11 containing similar information to the guide required by section 16-315
12 of this chapter.

13 If reasonably accessible space for the storage of source separated or
14 other designated recyclable materials is not available in such building,
15 and such space is available behind the building's property line, such
16 space behind the property line may be designated as the area for the
17 storage of source separated or other designated recyclable materials. If
18 no such space is available, the owner, net lessee or person in charge of
19 such building shall post instructions on recycling and source separation
20 in or near a designated area that is visible to all residents in the
21 building.

22 With respect to solid waste generated by households in the aforesaid
23 buildings, the obligations of an owner, net lessee or person in charge
24 of such building under this chapter shall be limited to those set forth
25 in this subdivision and subdivisions four and seven of this section or
26 rules promulgated pursuant to such subdivisions.

27 6. Where the department provides solid waste collection services to a
28 building containing nine or more dwelling units, the commissioner shall
29 adopt and implement rules requiring the owner, net lessee or person in
30 charge of such building to:

31 a. provide for the residents a designated area and, where appropriate,
32 containers in which to store the source separated or other designated
33 recyclable materials to be collected by the department;

34 b. inform all residents of the requirements of this chapter and the
35 rules promulgated pursuant thereto by, at a minimum, posting
36 instructions on source separation in or near the designated recycling
37 area, and making available to each resident at the inception of a lease,
38 a department-issued guide to recycling, which shall be made available to
39 the owner, net lessee or person in charge of such building by the
40 department pursuant to section 16-315 of this chapter in print form or
41 on the department's website, or in an alternative guide containing simi-
42 lar information to the guide required by section 16-315 of this chapter;
43 and

44 c. remove non-designated materials from the containers of designated
45 source separated recyclable materials before such containers are placed
46 at the curbside for collection and ensure that the designated materials
47 are placed at the curbside in the manner prescribed by the department.

48 With respect to solid waste generated by households in the aforesaid
49 buildings, the obligations of an owner, net lessee or person in charge
50 of such building under this chapter shall be limited to those set forth
51 in this subdivision and subdivisions four and seven of this section or
52 rules promulgated pursuant to such subdivisions.

53 7. The commissioner shall adopt and implement rules for any building
54 containing four or more dwelling units in which the amount of designated
55 materials placed out for collection is significantly less than what can
56 reasonably be expected from such building. These rules shall require

1 residential generators, including tenants, owners, net lessees or
2 persons in charge of such building to use transparent bags or such other
3 means of disposal the commissioner deems appropriate to dispose of solid
4 waste other than the designated recyclable materials. Upon request of
5 the owner, net lessee or person in charge of such building, and if the
6 commissioner determines that such owner, net lessee or person in charge
7 of such building has complied with this subdivision, subdivision four of
8 this section and, as applicable, subdivision five or subdivision six of
9 this section or rules promulgated pursuant to such subdivisions and that
10 the amount of designated materials placed out for collection remains
11 significantly less than what can reasonably be expected from such build-
12 ing, the department may develop a schedule to conduct random inspections
13 to facilitate compliance with the provisions of this chapter by tenants
14 of such building, provided that lawful inspections may occur at reason-
15 able times without notice to ensure compliance by the tenants, owner,
16 net lessee or person in charge of such building.

17 8. a. In calculating the extent to which the department has met the
18 recycling percentage goals set forth in paragraph a of subdivision one
19 of this section, the department shall include in its calculations all
20 curbside and institutional recycling it collects, including materials
21 collected from households, schools, not-for-profit institutions and city
22 agencies, and all recyclable materials collected as part of the public
23 space recycling program pursuant to section 16-310 of this chapter, and
24 may include yard waste collected pursuant to section 16-308 of this
25 chapter and any other material collected for composting pursuant to this
26 chapter, Christmas trees collected pursuant to section 16-309 of this
27 chapter, clothing and textiles donated or collected pursuant to section
28 16-310.1 of this chapter, household hazardous waste diverted pursuant to
29 section 16-310.3 of this chapter, rechargeable batteries collected
30 pursuant to chapter four of title eleven of the code of the preceding
31 municipality, beverage containers returned within the city pursuant to
32 title ten of article twenty-seven of the environmental conservation law,
33 electronic waste collected within the city or otherwise diverted from
34 the city's waste stream, including such waste collected or diverted
35 pursuant to title twenty-six of article twenty-seven of the environ-
36 mental conservation law, and plastic bags collected within the city or
37 otherwise diverted from the city's waste stream, including such plastic
38 bags collected or diverted pursuant to title twenty-seven of article
39 twenty-seven of the environmental conservation law. Only recyclable
40 materials specifically enumerated in this paragraph shall be counted for
41 purposes of calculating the extent to which the department has met the
42 recycling percentage goals set forth in paragraph a of subdivision one
43 of this section.

44 b. In calculating the extent to which the department has met the recy-
45 cling percentage goals set forth in paragraph b of subdivision one of
46 this section, the department shall include in its calculations all curb-
47 side and institutional recycling it collects, including materials
48 collected from households, schools, not-for-profit institutions and city
49 agencies, and all recyclable materials collected as part of the public
50 space recycling program pursuant to section 16-310 of this chapter.

51 c. In calculating the extent to which the department has met the recy-
52 cling percentage goals set forth in paragraphs a and b of subdivision
53 one of this section, the department shall not include recycling of aban-
54 doned vehicles or recycling from lot cleaning operations, asphalt and
55 mill tailings, construction and demolition debris or other commercial
56 recycling programs. The commissioner shall not designate any such mate-

1 rials as recyclable materials under this section for purposes of calcu-
2 lating the extent to which the department has met such recycling
3 percentage goals.

4 d. In calculating the percent of the department-managed solid waste
5 stream recycled in connection with the percentage goals set forth in
6 paragraph a of subdivision one of this section, the department shall
7 ensure that any quantity of material counted as recycled must be fully
8 included in the calculation of the city's total department-managed solid
9 waste stream.

10 e. All data used to make calculations pursuant to paragraphs a and b
11 of this subdivision shall be made available on the department's website
12 in raw form disaggregated by material type and using a non-proprietary
13 format on a monthly basis, or, if such data is not generated by the
14 department, within one month from the date that the department receives
15 reports of such information.

16 9. In the event that the department does not meet any recycling
17 percentage goal set forth in paragraphs a or b of subdivision one of
18 this section by the dates specified therein, the department shall, with-
19 in sixty days of the date for meeting such goal, expand recycling
20 outreach and education and shall take such other appropriate measures
21 including, but not limited to, directing such outreach and education to
22 the neighborhoods and community districts in which recycling diversion
23 rates fall below the median city recycling diversion rate and consulting
24 with the council to explore additional measures to meet the recycling
25 percentage goals set forth in such subdivision. In expanding recycling
26 outreach and education, the department may work with other agencies or
27 entities designated for that purpose by the commissioner.

28 10. In the event that the department is unable to achieve two consec-
29 utive recycling percentage goals set forth in paragraphs a and b of
30 subdivision one of this section by the dates specified therein, in addi-
31 tion to the requirements of subdivision nine of this section, the
32 commissioner shall retain a special advisor, who shall be selected by
33 the mayor and the speaker, provided that the commissioner need not
34 retain such special advisor more than once every three years. Within one
35 hundred twenty days of such retention, such adviser shall submit a
36 report to the mayor and council recommending additional measures that
37 may be taken by the city following such report in order to meet such
38 recycling percentage goals.

39 § 16-305.1 Weekly collection of designated recyclable materials. 1.
40 Weekly collection of designated recyclable materials shall be maintained
41 in all local service delivery districts.

42 2. Effective July first, two thousand nine, and notwithstanding any
43 inconsistent provision of this chapter, the department shall be author-
44 ized, by written order of the commissioner, to implement and maintain
45 alternate week collection of designated recyclable materials in all
46 local service delivery districts, provided that the department may, by
47 written order of the commissioner, provide for more frequent collection
48 of designated recyclable materials in designated local service delivery
49 districts. Any such written order of the commissioner implementing
50 alternate week collection shall expire no later than March thirty-first,
51 two thousand ten.

52 3. For purposes of this section "designated recyclable materials"
53 shall mean solid waste that has been designated by the commissioner as
54 recyclable pursuant to section 16-305, section 16-307, or section
55 16-308.1 of this chapter.

1 4. Nothing in this section shall be construed to require collection of
2 designated recyclable materials in such parts of the city or during such
3 times of the year that such materials are not otherwise collected.

4 § 16-306 Private carter-collected waste. 1. The commissioner shall
5 adopt and implement rules designating recyclable materials that consti-
6 tute in the aggregate at least one-half of all solid waste collected by
7 private carters, and additional materials if the commissioner determines
8 that economic markets exist for them. Pursuant to subdivision two of
9 this section, such rules shall require generators of private carter-col-
10 lected waste to source separate some or all of the designated materials
11 and to arrange for lawful collection for recycling, reuse or sale for
12 reuse by private carters or persons other than private carters of such
13 source separated materials. With regard to designated materials that are
14 not required by such rules to be source separated, generators of private
15 carter-collected waste may source separate these designated materials
16 and, in any event, shall arrange for their lawful collection for recycl-
17 ing, reuse or sale for reuse by private carters or persons other than
18 private carters. If a generator of private carter-collected waste has
19 source separated the designated materials in accordance with the rules
20 and arranged for the lawful collection for recycling, reuse or sale for
21 reuse by private carters or persons other than private carters of such
22 source separated materials and, with regard to designated materials that
23 are not required by such rules to be source separated, arranged for
24 lawful collection for recycling, reuse or sale for reuse by private
25 carters or persons other than private carters, such arrangement shall
26 constitute an affirmative defense to any proceeding brought against the
27 generator pursuant to section 16-324 of this title.

28 2. (a) The rules promulgated pursuant to subdivision one of this
29 section shall require that generators of waste collected by businesses
30 required to be licensed pursuant to section 16-505 of the code of the
31 preceding municipality source separate the designated materials in such
32 manner and to such extent as the commissioner determines to be necessary
33 to minimize contamination and maximize the marketability of such materi-
34 als. However, in promulgating such rules the commissioner shall not
35 require source separation of a material unless the commissioner has
36 determined that an economic market exists for such material. For the
37 purpose of this section, the term "economic market" refers to instances
38 in which the full avoided costs of proper collection, transportation and
39 disposal of source separated materials are equal to or greater than the
40 cost of collection, transportation and sale of said materials less the
41 amount received from the sale of said materials.

42 (b) (i) Any designated carter that collects source separated desig-
43 nated materials in a commercial waste zone pursuant to section 16-1002
44 of the code of the preceding municipality shall provide for the
45 collection of, and ensure the continued separation of, designated mate-
46 rials that have been source separated, provide for the separation of all
47 other designated materials, and provide for recycling of all the desig-
48 nated materials in accordance with the rules of the department and the
49 terms of any agreement entered into pursuant to section 16-1002 of the
50 code of the preceding municipality under which such designated carter is
51 providing such service.

52 (ii) Any person registered by the business integrity commission to
53 remove, collect, or dispose of trade waste generated in the course of
54 operation of such person's business pursuant to subdivision b of section
55 16-505 of the code of the preceding municipality shall provide for the
56 collection of, and ensure the continued separation of, designated mate-

1 rials that have been source separated, provide for the separation of all
2 other designated materials, and provide for recycling of all the desig-
3 nated materials in accordance with the rules promulgated by the business
4 integrity commission pursuant to this section and subject to the penal-
5 ties provided in subdivision a of section 16-515 of the code of the
6 preceding municipality.

7 (c) The commissioner and the chair of the business integrity commis-
8 sion shall have the authority to issue notices of violation for any
9 violation of any rules promulgated pursuant to this section and such
10 notices of violation shall be returnable in a civil action brought in
11 the name of the commissioner or the chair of the business integrity
12 commission before the environmental control board which shall impose a
13 penalty not to exceed ten thousand dollars for each such violation.

14 3. The department shall complete a study of commercial recycling in
15 the city no later than January first, two thousand twelve. Such commer-
16 cial recycling study shall focus on the putrescible portion of the
17 commercial waste stream, and shall include, but need not be limited to,
18 the following: (a) an integration of all data on commercial waste in the
19 city collected and transported through transfer stations and recycling
20 processors; (b) an assessment of current practices, operations and
21 compliance with applicable local laws and rules, consistent with the
22 scope of study set forth in the two thousand six Solid Waste Management
23 Plan; (c) estimates of waste composition and recycling diversion rates
24 from research conducted with respect to other jurisdictions; (d) a
25 computer-based model to measure the amount and composition of waste
26 generated by different commercial sectors; (e) recommendations of meth-
27 ods to encourage waste prevention, reuse, recycling and composting for
28 each of the commercial sectors studied, including any recommended chang-
29 es to applicable law; and (f) an assessment of the efficiency of the
30 transportation of commercial waste within the commercial system by,
31 among other things, mapping and monitoring routes along which commercial
32 waste and recycling trucks travel, including long-haul carriers within
33 and outside the city. Following completion of the commercial recycling
34 study, the commissioner shall determine whether any additional studies
35 are necessary in order to improve commercial recycling practices in the
36 city and shall promptly report such determination to the mayor and the
37 council.

38 4. Notwithstanding any other provision of law, nothing in this section
39 shall be construed to (a) supersede, amend or eliminate any obligation
40 of an awardee or designated carter, as such terms are defined in section
41 16-1000 of the code of the preceding municipality, to meet the require-
42 ments set forth in any applicable agreement entered into pursuant to
43 section 16-1002 of the code of the preceding municipality, or (b) other-
44 wise amend or supersede any term of such agreement.

45 § 16-306.1 Organic waste. 1. When used in this section or section
46 16-324 of this chapter:

47 a. "Arena" means an establishment or facility that hosts live sporting
48 or entertainment events.

49 b. "Capacity" means the combined capacity of facilities that are capa-
50 ble of accepting and processing, consistent with the terms of this
51 section and exceeding a nominal amount, organic waste expected to be
52 generated by and collected from designated covered establishments.

53 c. "Catering establishment" means any room, place or space in the
54 city, which is used, leased or hired out for the business of serving
55 food or beverages for a particular function, occasion or event, to which

1 the public is not invited or admitted and wherein music or entertainment
2 is permitted.

3 d. "Covered establishment" means:

4 (i) any location at which a food manufacturer has a floor area of at
5 least twenty-five thousand square feet;

6 (ii) any location at which a food wholesaler has a floor area of at
7 least twenty thousand square feet;

8 (iii) any location at which a retail food store has a floor area of at
9 least ten thousand square feet, or any retail food store that is part of
10 a chain of three or more retail food stores that have a combined floor
11 area space of at least ten thousand square feet and that operate under
12 common ownership or control and receive waste collection from the same
13 private carter;

14 (iv) arenas or stadiums having a seating capacity of at least fifteen
15 thousand persons;

16 (v) any food service establishment that is part of a chain of two or
17 more food service establishments that have a combined floor area of at
18 least eight thousand square feet and that: (1) operate under common
19 ownership or control; (2) are individually franchised outlets of a
20 parent business; or (3) do business under the same corporate name,
21 provided that the requirements of subparagraph (i) of paragraph a of
22 subdivision three of this section shall not apply to any such food
23 service establishment when the building or premises in which such food
24 service establishment is located is in compliance with such requirement
25 pursuant to paragraph h of this definition;

26 (vi) any location at which a food service establishment has a floor
27 area of at least seven thousand square feet, provided that the require-
28 ments of subparagraph (i) of paragraph a of subdivision three of this
29 section shall not apply to any such location when the building or prem-
30 ises containing such location is in compliance with such requirement
31 pursuant to paragraph g of this subdivision;

32 (vii) any building or premises where food service establishments
33 having a total combined floor area of at least eight thousand square
34 feet are located and where the owner of the building or premises, or its
35 agent, arranges or contracts with a private carter for the removal of
36 waste from food service establishments having no less than eight thou-
37 sand square feet of such building or premises, provided that any such
38 food service establishments shall comply with the requirements of
39 subparagraphs (ii), (iii) and (iv) of paragraph a of subdivision three
40 of this section, but such requirements shall not apply to the owner or
41 agent of any such building or premises;

42 (viii) any location at which a food preparation establishment has a
43 floor area of at least six thousand square feet;

44 (ix) any catering establishment that is required to provide for the
45 removal of waste pursuant to section 16-116 of the code of the preceding
46 municipality whenever the anticipated attendance for any particular
47 event is greater than one hundred persons;

48 (x) any food service establishments located within and providing food
49 to one or more hotels totaling at least one hundred sleeping rooms; and

50 (xi) sponsors of a temporary public event.

51 e. "Designated area" means within a one hundred mile radius of the
52 city.

53 f. "Food manufacturer" means any establishment that processes or
54 fabricates food products from raw materials for commercial purposes,
55 provided that it shall not include any establishment engaged solely in
56 the warehousing, distribution or retail sale of product.

- 1 g. "Food preparation establishment" means a business that is primarily
2 engaged in providing food or food services for a temporary, fixed time,
3 or based on contractual arrangements for a specified period of time at
4 locations other than such establishment's permanent place of business.
- 5 h. "Food service establishment" means any premises or part of a prem-
6 ises that is required to provide for the removal of waste pursuant to
7 section 16-116 of the code of the preceding municipality where food is
8 provided directly to the consumer, whether such food is provided free of
9 charge or sold, and whether consumption occurs on or off the premises.
10 Food service establishment shall include, but not be limited to, full-
11 service restaurants, fast food restaurants, cafes, delicatessens, coffee
12 shops, and business, institutional or government agency cafeterias, but
13 shall not include retail food stores, convenience stores, pharmacies,
14 and mobile food vending units, as such term is defined in section 89.03
15 of the health code. Food service establishment shall also not include
16 any premises or place of business where the sole or primary source of
17 food is a refreshment counter where the available food is limited to
18 items such as beverages, prepackaged items, and snacks.
- 19 i. "Food wholesaler" means any establishment primarily engaged in the
20 wholesale distribution of groceries and related products including, but
21 not limited to, packaged frozen food, dairy products, poultry products,
22 confectioneries, fish and seafood, meat products, and fresh fruits and
23 vegetables but shall not apply to establishments that handle only pre-
24 packaged, non-perishable foods.
- 25 j. "Hotel" shall have the same meaning as set forth in section 27-2004
26 of the housing maintenance code.
- 27 k. "In vessel composting" means a process in which organic waste is
28 enclosed in a drum, silo, bin, tunnel, reactor, or other container for
29 the purpose of producing compost, maintained under controlled conditions
30 of temperature and moisture and where air-borne emissions are
31 controlled.
- 32 l. "Organic waste" shall have the same meaning as set forth in section
33 16-303 of this title, except that for purposes of this section, organic
34 waste shall not include food that is donated to a third party, food that
35 is sold to farmers for feedstock, and meat by-products that are sold to
36 a rendering company.
- 37 m. "Private carter" means a business licensed by the business integri-
38 ty commission pursuant to title sixteen-A of the code of the preceding
39 municipality.
- 40 n. "Retail food store" means any establishment or section of an estab-
41 lishment where food and food products offered to the consumer are
42 intended for off-premises consumption, but shall exclude convenience
43 stores, pharmacies, greenmarkets or farmers' markets and food service
44 establishments.
- 45 o. "Sponsor of a temporary public event" means the applicant for a
46 street activity permit pursuant to chapter one of title fifty of the
47 rules of the city of New York, or any successor provision, for any
48 activity on a public street, street curb lane, sidewalk or pedestrian
49 island or plaza with an anticipated attendance of greater than five
50 hundred persons per day where the activity will interfere with or
51 obstruct the regular use of the location by pedestrian or vehicular
52 traffic. Such term shall not include activities conducted pursuant to a
53 valid film permit, demonstrations, parades or block parties.
- 54 p. "Stadium" means an establishment or facility that hosts live sport-
55 ing or entertainment events.

1 2. The commissioner shall, on a regular basis and no less than annual-
2 ly, evaluate the capacity of all facilities within the designated area
3 and the cost of processing organic waste by composting, aerobic or anaer-
4 obic digestion, or any other method of processing organic waste that
5 the department approves by rule. If the commissioner determines that
6 there is sufficient capacity and that the cost of processing organic
7 waste consistent with this section is competitive with the cost of
8 disposing of organic waste by landfill or incineration, he or she shall
9 designate by rule all covered establishments or a subset of covered
10 establishments, based on any criteria, among such covered establish-
11 ments, that generate a quantity of organic waste that would not exceed
12 the evaluated capacity. All such designated covered establishments shall
13 comply with the requirements of subdivision three of this section begin-
14 ning no later than six months following such designation. In addition,
15 the commissioner shall include in his or her evaluation the capacity of
16 any facilities outside of the designated area that have arrangements or
17 contracts with transfer stations or private carters to accept and proc-
18 ess organic waste generated by and collected from covered establish-
19 ments.

20 3. a. Each designated covered establishment shall:

21 (i) either (1) ensure collection by a private carter of all organic
22 waste generated by such establishment for purposes of composting, aero-
23 bic or anaerobic digestion, or any other method of processing organic
24 waste that the department approves by rule, (2) transport its own organ-
25 ic waste to a facility that provides for composting, aerobic or anaero-
26 bic digestion, or any other method of processing organic waste that the
27 department approves by rule, provided that the covered establishment
28 first obtains a registration issued by the business integrity commission
29 pursuant to subdivision b of section 16-505 of the code of the preceding
30 municipality, or (3) provide for on-site in vessel composting, aerobic
31 or anaerobic digestion, or any other method of processing organic waste
32 that the department approves by rule for some or all of the organic
33 waste it generates on its premises, provided that it arranges for the
34 collection or transport of the remainder of such organic waste, if any,
35 in accordance with clause one or two of this subparagraph;

36 (ii) post a sign, which shall be in addition to any other sign
37 required to be posted pursuant to this code, that states clearly and
38 legibly the trade or business name, address, and telephone number of,
39 and the day and time of pickup by, the private carter that collects the
40 covered establishment's organic waste, that such covered establishment
41 transports its own organic waste, or that such covered establishment
42 provides for on-site processing for all of the organic waste it gener-
43 ates on its premises, provided that:

44 (1) such sign shall be prominently displayed by affixing it to a
45 window near the principal entrance to the covered establishment so as to
46 be easily visible from outside the building or, if this is not possible,
47 prominently displayed inside the covered establishment near the princi-
48 pal entrance;

49 (2) catering establishments shall not be required to display on such
50 sign the day and time of the pickup by the private carter that collects
51 the establishment's organic waste; and

52 (3) this paragraph shall not apply to sponsors of temporary public
53 events;

54 (iii) provide separate bins for the disposal of organic waste in any
55 area where such organic waste is generated and disposed of; and

1 (iv) post instructions on the proper separation of organic waste where
2 such instructions will be visible to persons who are disposing of organ-
3 ic waste, provided that this subparagraph shall not apply to sponsors of
4 temporary public events.

5 b. Any covered establishment that arranges for the collection by a
6 private carter of its organic waste pursuant to this subdivision shall
7 not commingle such organic waste with other designated and non-designat-
8 ed recyclable material or solid waste, and shall place such organic
9 waste out for collection by a private carter in a container or contain-
10 ers that (i) has a lid and a latch that keeps the lid closed and is
11 resistant to tampering by rodents or other wildlife, (ii) has the capac-
12 ity that meets the disposal needs of the covered establishment and its
13 private carter, (iii) is compatible with the private carter's hauling
14 collection practices, and (iv) is closed and latched at the time it is
15 placed out for collection.

16 4. Any private carter that collects source separated organic waste
17 shall either:

18 a. deliver collected organic waste to a transfer station that has
19 represented that it will deliver such organic waste to a facility for
20 purposes of composting, aerobic or anaerobic digestion, or any other
21 method of processing organic waste that the department approves by rule;
22 or

23 b. deliver such organic waste directly to a facility for purposes of
24 composting, aerobic or anaerobic digestion, or any other method of proc-
25 essing organic waste that the department approves by rule.

26 5. Any transfer station that receives source separated organic waste
27 pursuant to this section shall deliver or have delivered such organic
28 waste directly to a facility that accepts organic waste for purposes of
29 composting, aerobic or anaerobic digestion, or any other method of proc-
30 essing organic waste that the department approves by rule. This subdivi-
31 sion shall not apply to waste that cannot be processed at an organic
32 waste processing facility.

33 6. The provisions of this section relating to private carters shall be
34 enforced by the business integrity commission and the department. The
35 provisions of this section relating to covered establishments shall be
36 enforced by the department, the department of health and mental hygiene,
37 and the department of consumer and worker protection.

38 7. The department, the business integrity commission, the department
39 of health and mental hygiene, and the department of consumer affairs may
40 promulgate any rules necessary to implement this section, including, but
41 not limited to, rules establishing reporting requirements sufficient to
42 demonstrate compliance with this chapter.

43 8. Any person who owns or operates two or fewer food service estab-
44 lishments may request, and the commissioner shall grant, a waiver of the
45 requirements of this section if: a. no single food service establishment
46 has a floor area of at least seven thousand square feet; b. the food
47 service establishment or establishments are individually franchised
48 outlets of a parent business covered by paragraph d of the definition of
49 "covered establishment" set forth in subdivision one of this section;
50 and c. the owner or operator establishes that such food service estab-
51 lishment or establishments do not receive private carting services
52 through a general carting agreement between a parent business and a
53 private carter. Such waiver shall be valid for twelve months and shall
54 be renewable upon application to the commissioner via the department's
55 website.

1 § 16-307 City agency waste. 1. The commissioner shall adopt, amend and
2 implement rules, as necessary, governing the source separation or post-
3 collection separation, collection, processing, marketing, and sale of
4 designated recyclable materials including, but not limited to, desig-
5 nated metal, glass, plastic and paper generated by any agency, as such
6 term is defined in section 1-112 of the code of the preceding municipi-
7 pality.

8 2. Every agency shall, no later than July first, two thousand eleven,
9 prepare and submit to the commissioner for approval, a waste prevention,
10 reuse and recycling plan. Such plan shall provide for the source sepa-
11 ration of designated metal, glass, plastic and paper, and such other
12 designated recyclable materials as the commissioner deems appropriate,
13 in all offices and buildings occupied by agencies that receive
14 collection service from the department and, to the extent practicable,
15 in those that receive private carter collection. Such plans shall
16 provide for the source separation of designated recyclable materials in
17 the lobbies of such offices or buildings that receive department
18 collection, unless the placement of bins for the source separation of
19 designated recyclable materials would be in violation of any other
20 provision of law, and, to the extent practicable, in the lobbies of such
21 offices or buildings that receive private carter collection. Each agency
22 shall designate a lead recycling or sustainability coordinator to over-
23 see implementation of such plans. If an agency has offices in more than
24 one city-owned building, then such agency shall designate one assistant
25 coordinator for each building in which such agency has offices, except
26 the building in which the lead coordinator has his or her office, to
27 assist the agency's lead coordinator.

28 3. On or before July first, two thousand twelve and annually thereaft-
29 er, every lead recycling or sustainability coordinator shall submit a
30 report to the head of his or her respective agency and to the commis-
31 sioner, summarizing actions taken to implement the waste prevention,
32 reuse and recycling plan for the previous twelve-month reporting period,
33 proposed actions to be taken to implement such plan, and updates or
34 changes to any information included in such plan. The department shall
35 consolidate the information contained in all reports prepared pursuant
36 to this subdivision as part of the department's annual zero waste report
37 required pursuant to subdivision b of section 16-316.5 of the code of
38 the preceding municipality.

39 § 16-307.1 School recycling. 1. The chancellor of the department of
40 education shall designate a sustainability director for the department
41 of education, who shall be responsible for (a) setting policies, guide-
42 lines and goals to promote waste prevention, reuse and recycling prac-
43 tices, and (b) coordinating the department of education's waste
44 prevention, reuse and recycling program in all school buildings, charter
45 school locations, office buildings, and any other facilities under the
46 jurisdiction of the department of education that receive department
47 collection service.

48 2. The chancellor of the department of education shall promulgate such
49 rules as may be necessary to require that each school building, charter
50 school location, office building, and any other facility under the
51 jurisdiction of the department of education that receives department
52 collection service, develop a site-specific waste prevention, reuse and
53 recycling plan. Each such plan shall be implemented by January first,
54 two thousand eleven. Such plan shall include, at a minimum, a require-
55 ment that each classroom maintain a separate receptacle, container or
56 bin for the collection of designated recyclable paper, and that such

1 receptacle, container or bin be appropriately labeled or decorated with
2 recycling information. Such plan shall also provide that separate recep-
3 tacles, containers or bins for the collection of designated metal, glass
4 and plastic be appropriately labeled or decorated with recycling infor-
5 mation and be placed as close as practicable to school entrances, unless
6 the placement of such bins would be in violation of any other provision
7 of law, and in locations within schools where food and beverages are
8 routinely consumed.

9 3. The principal of each school under the jurisdiction of the depart-
10 ment of education shall designate a sustainability coordinator for his
11 or her school who shall be responsible for implementing his or her
12 school's waste prevention, reuse and recycling plan. The principal or
13 the sustainability coordinator shall complete, and submit to the depart-
14 ment of education sustainability director and to the chancellor, an
15 annual survey regarding such school's compliance with its waste
16 prevention, reuse and recycling plan.

17 4. The chancellor shall submit a report to the commissioner by January
18 first of each year regarding compliance with the requirements of this
19 section for the preceding July first through June thirtieth. The depart-
20 ment shall include the chancellor's report as part of the department's
21 annual zero waste report required pursuant to subdivision b of section
22 16-316.5 of the code of the preceding municipality.

23 5. The department shall distribute a model school waste prevention,
24 reuse and recycling plan to all primary and secondary schools not under
25 the jurisdiction of the department of education that receive department
26 collection service. All such primary and secondary schools shall desig-
27 nate a sustainability coordinator for each such school, and develop a
28 site-specific waste prevention, reuse and recycling plan. Each such plan
29 shall be implemented by January first, two thousand eleven. Such plan
30 shall include, at a minimum, a requirement that each room used primarily
31 as a classroom for students between kindergarten and the twelfth grade
32 maintain a separate receptacle, container or bin for the collection of
33 designated recyclable paper, and that such receptacle, container or bin
34 be appropriately labeled or decorated with recycling information. Such
35 plan shall also provide that separate receptacles, containers or bins
36 for the collection of designated metal, glass and plastic be appropri-
37 ately labeled or decorated with recycling information and be placed as
38 close as practicable to school entrances, unless the placement of such
39 bins would be in violation of any other provision of law. Such bins
40 shall also be placed in centralized locations within such schools where
41 food and beverages are routinely consumed, other than classrooms, such
42 as cafeterias and lunchrooms, or, if such school lacks a cafeteria or
43 lunchroom, in a location readily accessible to all students in such
44 school.

45 § 16-307.2 City agency food waste prevention plans. 1. Definitions.
46 As used in this section, the following terms have the following mean-
47 ings:

48 a. Covered agency. The term "covered agency" means an agency that has
49 entered into at least one food purchase contract within the previous
50 twelve months.

51 b. Food purchase contract. The term "food purchase contract" means:
52 (i) a contract entered into by an agency in excess of the small purchase
53 limits established by the procurement policy board, the principal
54 purpose of which is to provide food, provided that such contract author-
55 izes purchases only by the agency that entered into such contract, or

1 (ii) a purchase order for food the value of which exceeds one hundred
2 thousand dollars, made by an agency against an existing contract.

3 c. Surplus food. The term "surplus food" means any food obtained
4 through a food purchase contract that is not used for the purpose for
5 which it was purchased and that would otherwise be discarded.

6 2. Agency food waste prevention plan. Every covered agency shall, no
7 later than October first, two thousand twenty-one, prepare and submit to
8 the commissioner for approval, a food waste prevention plan. Any agency
9 that becomes a covered agency after October first, two thousand twenty-
10 one shall prepare and submit to the commissioner for approval, a food
11 waste prevention plan within ninety days of becoming a covered agency.
12 The commissioner shall submit each approved agency food waste prevention
13 plan to the speaker of the council not later than seven days after such
14 approval. Such plan shall conform to all applicable provisions of law
15 and, at a minimum:

16 a. Establish guidelines for how to identify surplus food that may be
17 safely donated;

18 b. Identify methods to reduce the amount of surplus food, including
19 the utilization of the food donation web portal described in section
20 16-497 of the code of the preceding municipality, when appropriate;

21 c. Set forth procedures for the safe, efficient donation of surplus
22 food; and

23 d. Include any other provisions necessary to facilitate the reduction
24 of surplus food and the donation of surplus food.

25 3. Food waste prevention coordinator. Upon approval of an agency's
26 food waste prevention plan by the commissioner, each covered agency
27 shall designate a coordinator to oversee implementation of the plan
28 required by subdivision two of this section.

29 4. Report. a. On or before January first, two thousand twenty-two, and
30 annually thereafter for the previous twelve-month reporting period, each
31 covered agency shall submit a report to the commissioner. Such report
32 shall include, at a minimum:

33 i. A summary of the actions taken to implement the agency's food waste
34 prevention plan;

35 ii. Any proposed additional actions to be taken to implement such
36 plan; and

37 iii. Any updates or changes to any information included in such plan.

38 b. The department shall consolidate the information contained in all
39 reports prepared pursuant to this subdivision and include such informa-
40 tion as part of the department's annual zero waste report required
41 pursuant to subdivision b of section 16-316.5 of the code of the preced-
42 ing municipality.

43 § 16-307.3 School food waste. 1. Definitions. As used in this section,
44 the following terms have the following meanings:

45 a. Chancellor. The term "chancellor" means the chancellor of the city
46 school district of the city of New York.

47 b. Food purchase contract. The term "food purchase contract" means any
48 purchase order or contract entered into by the department of education,
49 the principal purpose of which is to provide food, and the value of
50 which exceeds one hundred thousand dollars.

51 c. School. The term "school" means a school of the city school
52 district of the city of New York.

53 d. Surplus food. The term "surplus food" means any food obtained
54 through a food purchase contract that is not used for the purpose for
55 which it was purchased and that would otherwise be discarded.

1 2. Food waste prevention plan. No later than October first, two thou-
2 sand twenty-one, the chancellor shall prepare and submit to the commis-
3 sioner a food waste prevention plan. Preparation of such food waste
4 prevention plan shall provide school sustainability coordinators desig-
5 nated pursuant to subdivision three of section 16-307.1 of this chapter
6 an opportunity to offer ideas concerning food waste prevention. Such
7 plan shall conform to all applicable provisions of law and include, but
8 need not be limited to, the following information:

9 a. Guidelines for how to identify surplus food that may be safely
10 donated;

11 b. Any methods the chancellor has identified to reduce the amount of
12 surplus food in schools;

13 c. Any procedures the chancellor has identified that would allow the
14 department of education or a school to donate surplus food safely and
15 efficiently; and

16 d. Any barriers the chancellor has identified that would prevent the
17 safe and efficient donation of surplus food.

18 3. Review by commissioner. The commissioner shall review the plan
19 required pursuant to subdivision two of this section within ninety days
20 of its submission and shall submit recommendations on the plan to the
21 chancellor. The commissioner shall simultaneously submit a copy of the
22 chancellor's plan and the commissioner's recommendations to the speaker
23 of the council.

24 4. Report. On or before February first, two thousand twenty-two, the
25 chancellor shall submit a report to the commissioner. Such report shall
26 include, at a minimum:

27 a. A summary of actions taken to implement the food waste prevention
28 plan;

29 b. A summary of actions that the chancellor proposes be taken to
30 implement such plan; and

31 c. Any updates or changes to any information included in such plan.

32 § 16-308 Organic waste. 1. The commissioner shall provide for the
33 source separation, collection and composting of yard waste, unless the
34 generator otherwise provides for recycling or storage for composting or
35 mulching. In addition, the commissioner shall provide for the collection
36 and composting of yard waste generated and source separated at residen-
37 tial properties owned or operated by the New York city housing authori-
38 ty. There shall be operated by or on behalf of the department one or
39 more yard waste composting facilities through which the department shall
40 compost yard waste collected by or delivered to the department pursuant
41 to this section. In order to comply with this provision, the department
42 may utilize the services of privately-owned or operated facilities. The
43 department shall also work in consultation with the composting facility
44 siting task force established by the two thousand six solid waste
45 management plan to identify additional locations to site yard waste
46 composting facilities with the goal of establishing at least one such
47 composting facility in each borough where the department conducts yard
48 waste composting collection.

49 2. Any city agency, or person under contract with a city agency, that
50 generates a substantial amount of yard waste shall, in coordination with
51 the department, provide for the source separation, collection and
52 composting of such yard waste. Unless otherwise provided by law, the
53 department shall accept for composting any city agency yard waste source
54 separated for department collection pursuant to this subdivision.

55 3. No landfill, waste transfer station, intermodal facility, incinera-
56 tor or resource recovery facility owned, operated or used by the depart-

1 ment shall accept truck loads of department-managed waste primarily
2 composed of yard waste for final disposal, except that composted yard
3 waste may be used as part of the final vegetative cover for a department
4 landfill.

5 4. All city agencies responsible for the maintenance of public lands
6 shall to the maximum extent practicable and feasible give preference to
7 the use of compost materials derived from the city's yard waste in all
8 land maintenance activities.

9 5. Generators of yard waste, except those identified in subdivision
10 seven of this section, shall separate, tie, bundle, or place into bags
11 or receptacles, in accordance with rules promulgated by the commission-
12 er, any yard waste set out for collection by the department pursuant to
13 subdivision two of this section. The commissioner shall notify all resi-
14 dents in districts that receive yard waste collection by the department
15 of such pre-collection procedures, and undertake any other action neces-
16 sary to effectuate the purposes of this subdivision.

17 6. No person engaged in a business that generates yard waste shall
18 leave such yard waste for collection by the department, or disperse such
19 yard waste in or about the curb or street. Any person engaged in a busi-
20 ness that generates yard waste shall be required to collect and dispose
21 of such yard waste at a permitted composting facility; provided, howev-
22 er, that if the department, by written order of the commissioner, deter-
23 mines that there is insufficient capacity at permitted composting facil-
24 ities within the city, then such yard waste may be disposed of at any
25 appropriately permitted solid waste management facility.

26 7. Each permitted composting facility within the city, including those
27 operated by city agencies, shall annually report to the commissioner the
28 amount of yard waste and any other organic waste collected and disposed
29 of by weight at such composting facility. All such reports shall be
30 submitted prior to February first of each calendar year and shall
31 contain the amount collected and disposed of for the previous calendar
32 year. The department shall consolidate the information contained in all
33 reports prepared pursuant to this subdivision and include such informa-
34 tion as part of the department's annual zero waste report required
35 pursuant to subdivision b of section 16-316.5 of the code of the preced-
36 ing municipality.

37 8. No person residing in a district where the department provides
38 residential yard waste composting collection pursuant to subdivision two
39 of this section shall dispose of grass clippings as regular waste for
40 collection by the department during the period of time when the depart-
41 ment conducts such composting collection. The department shall conduct
42 outreach and education to inform residents within such districts of the
43 dates when it will conduct yard waste composting collection. No person
44 residing in a district where the department provides residential yard
45 waste composting collection shall be held liable for a violation of this
46 subdivision during the first year the department provides such residen-
47 tial yard waste composting collection.

48 § 16-308.1 Curbside organics collection. 1. Organics collection
49 program. The department shall establish a mandatory citywide curbside
50 organics collection program for the diversion of organic waste in
51 accordance with this section. Such program shall be implemented by no
52 later than:

53 a. October second, two thousand twenty-three, for residential proper-
54 ties in no less than thirty sanitation districts, as determined by the
55 commissioner by rule.

1 b. October seventh, two thousand twenty-four, for residential proper-
2 ties in all remaining sanitation districts.

3 2. Implementation plan. No later than July first, two thousand twen-
4 ty-three, the department shall develop, submit to the mayor and speaker
5 of the council, and post on the department's website a curbside organics
6 collection implementation plan. Such plan shall include information
7 related to, at minimum:

8 a. How the department will implement such program;

9 b. The education and outreach program required pursuant to subdivision
10 five of this section; and

11 c. How the department will distribute necessary materials, including
12 rodent-proof organics collection bins, at no cost to residential build-
13 ing owners, and a timeline for such distribution.

14 3. End use of collected organic waste. In the next solid waste manage-
15 ment plan prepared pursuant to section 27-0107 of the environmental
16 conservation law and presented to the council pursuant to section 16-140
17 of the code of the preceding municipality following the effective date
18 of this section, the department shall include a plan to maximize the
19 usable composting of organic waste collected pursuant to this section.
20 Such plan for the usable composting of organic waste shall describe the
21 amount of organic waste collected and sent to composting facilities to
22 be processed into usable compost pursuant to this section.

23 4. Reporting. The department shall report by weight the total amount
24 of organic waste diverted pursuant to this section during the previous
25 year, disaggregated by sanitation district. Such report shall be
26 included as part of the department's annual zero waste report required
27 pursuant to section 16-316.5 of the code of the preceding municipality.

28 5. Education and outreach. The department shall develop an outreach
29 and education program to educate residents, building owners, and staff
30 of residential buildings on the curbside organics collection program
31 established pursuant to this section. Materials used for such outreach
32 and education program shall be available in all designated citywide
33 languages, as defined in section 23-1101 of the code of the preceding
34 municipality, and any additional languages as determined by the depart-
35 ment in consultation with local community organizations. No later than
36 two months prior to the implementation of the curbside organics
37 collection program for residential properties in a sanitation district
38 pursuant to subdivision one of this section, the department shall
39 distribute such materials to residents, building owners, and community
40 based organizations in such district. Such materials shall also be made
41 available on the department's website. Such materials shall include:

42 a. A detailed explanation of organic waste and the benefits of curb-
43 side organics collection;

44 b. Information on how the curbside organics collection program will be
45 implemented and instructions for how to properly source separate organic
46 waste; and

47 c. Any other information as determined by the commissioner.

48 6. Rules. The commissioner shall adopt and implement rules as neces-
49 sary to effectuate this section. Such rules may include, but need not be
50 limited to, the designation of organic waste as a recyclable material
51 pursuant to subdivision two of section 16-305 of this chapter, proce-
52 dures requiring the placement of organic waste at the curbside, in
53 specialized containers or in another manner determined by the commis-
54 sioner pursuant to subdivision four of such section, and the implementa-
55 tion and enforcement of this section and such rules in buildings

1 containing four or more dwelling units pursuant to subdivisions five,
2 six and seven of section 16-305 of this chapter.

3 7. Penalty. A residential building owner who violates this section
4 shall be liable for a civil penalty as set forth in section 16-324 of
5 this title, except that prior to April first, two thousand twenty-five,
6 a residential building owner who violates this section shall be issued a
7 written warning that a violation has been observed, provided that noth-
8 ing in this subdivision shall preclude the department from enforcing any
9 rules relating to yard waste separation promulgated pursuant to section
10 16-308 of this chapter.

11 § 16-308.2 Organic waste drop off sites. 1. Definitions. As used in
12 this section, the following terms have the following meanings:

13 a. Community partner. The term "community partner" means a not-for-
14 profit organization, community garden or other similar organization that
15 operates or makes available to the public an organic waste drop off
16 site.

17 b. Community scale composting facility. The term "community scale
18 composting facility" means a physical location operated by a not-for-
19 profit organization that engages in composting, through a registration
20 or agreement with the department, but that is not of sufficient size so
21 as to be required to obtain a permit for the operation of such facility
22 from the New York state department of environmental conservation.

23 c. Organic waste drop off site. The term "organic waste drop off site"
24 means a physical location for the collection of organic waste from
25 members of the public.

26 2. Except as provided in subdivision three of this section, no later
27 than April first, two thousand twenty-four, the department, in consulta-
28 tion with community partners, shall ensure that no less than thirty
29 organic waste drop off sites are established and operational throughout
30 the city, provided that no less than three such sites are established in
31 each borough. Each such site shall have a minimum of twenty hours avail-
32 able per week for individuals to drop off organic waste, except that
33 organic waste drop off sites operated by community partners shall be
34 open for a minimum of five hours per week, and each such organic waste
35 drop off site shall be located in a geographic area that is easily
36 accessible, including for persons with disabilities, and in close prox-
37 imity to public transportation, provided, however, an organic waste drop
38 off site operated by a community partner may be operated on a seasonal
39 basis.

40 3. For the purposes of subdivision two of this section, an organic
41 waste drop off site may be a community scale composting facility or a
42 drop off site operated by the department, including co-location with a
43 recycling center, as required pursuant to section 16-310.3 of this chap-
44 ter.

45 4. No later than January first, two thousand twenty-six, the depart-
46 ment shall review the requirements of subdivision two of this section
47 and submit to the mayor and the speaker of the council a recommendation
48 as to whether such drop off sites should be continued.

49 5. Site information. The department shall post on its website informa-
50 tion about each organic waste drop off site established pursuant to this
51 section. Such information shall include each such site's address,
52 contact information, hours of operation and services provided. Where
53 applicable, such information shall also be clearly posted in a publicly
54 visible location at the entrance to each such site.

55 6. Education and outreach. The department, in consultation with any
56 agency or office designated by the mayor, shall develop an education and

1 outreach program to inform residents about the organic waste drop off
2 sites and community scale composting facilities established pursuant to
3 this section. Such education and outreach shall include the information
4 set forth in subdivision five of this section. Any educational or
5 outreach materials developed pursuant to this section, as well as any
6 other educational materials on recycling that the commissioner deems
7 relevant, shall be available in all designated citywide languages, as
8 defined in section 23-1101 of the code of the preceding municipality,
9 and supplied to each organic waste drop off site. The department shall
10 also perform outreach to community partners and other not-for-profit
11 organizations to provide them with information on how the public can
12 engage in opportunities to work with the department to open and operate
13 organic waste drop off sites and community scale composting facilities.

14 7. Reporting. The department shall report annually on the operation of
15 organic waste drop off sites. Such report shall be included as part of
16 the department's annual zero waste report required pursuant to section
17 16-316.5 of the code of the preceding municipality. Such report shall
18 include, at a minimum, the following information, disaggregated by
19 organic waste drop off site where feasible:

20 a. The total amount of material collected at such site;

21 b. The number of individuals who used such site during the reporting
22 period;

23 c. The number of full-time and part-time staff members working at such
24 site, if any; and

25 d. Where the organic waste collected at such site was processed
26 following collection.

27 § 16-309 Christmas trees. The commissioner shall establish and imple-
28 ment a curbside collection system for Christmas trees during a minimum
29 of two weeks in January of each year and provide for the composting or
30 recycling of the Christmas trees the department collects or receives for
31 disposal.

32 § 16-310 Public space recycling. 1. The department shall expand its
33 public space recycling program by increasing the number of public space
34 recycling receptacles for the collection of recyclable materials includ-
35 ing, but not limited to, metal, glass, plastic and paper designated as
36 recyclable materials by the commissioner, to a cumulative total of at
37 least five hundred public space recycling receptacles, and to a cumula-
38 tive total of at least one thousand public space recycling receptacles,
39 at public locations in the city, which shall be in or near public parks,
40 transit hubs, or commercial locations with high-pedestrian traffic. As
41 part of such expansion, the department shall place public space recycl-
42 ing receptacles in all business improvement districts that provide
43 public litter basket maintenance. Whenever practicable, public space
44 recycling receptacles placed pursuant to this section shall be placed
45 adjacent to public litter baskets.

46 2. Notwithstanding the provisions of subdivision one of this section,
47 the department shall not be required to expand the public space recycl-
48 ing program beyond existing or newly-established collection routes that
49 can be efficiently serviced by the department. The commissioner shall
50 have the authority to remove any public space recycling receptacle
51 placed pursuant to this section, provided that the department replaces
52 any such public space recycling receptacle, within thirty days of
53 removal, with additional public space recycling receptacles at the same
54 or in a different location on a one-to-one basis.

55 3. No person responsible for removing or transporting recyclable mate-
56 rials placed in public space recycling receptacles shall commingle such

1 recyclable materials with non-recyclable materials or otherwise improv-
2 erly dispose of such recyclable materials.

3 4. The department shall report the total number of public space recy-
4 cling receptacles added during the relevant reporting year, and the
5 locations in which they were placed. Such report shall be included as
6 part of the department's annual zero waste report required pursuant to
7 subdivision b of section 16-316.5 of the code of the preceding municipi-
8 pality.

9 5. The department may enter into sponsorship or partnership agreements
10 with entities such as for-profit and not-for-profit corporations and
11 district management associations established in accordance with section
12 25-414 of the code of the preceding municipality to further the goals of
13 this chapter.

14 § 16-310.1 Textile reuse and recycling program. 1. On or before Janu-
15 ary first, two thousand eleven, the department shall establish a city-
16 wide textile reuse and recycling program that shall, at a minimum,
17 provide for the recovery of textiles by placing department-approved
18 publicly accessible textile drop-off bins at appropriate locations on
19 city property or property maintained by the city and organizing public
20 textile reuse and recycling sites throughout the city that provide
21 convenient drop-off locations for all city residents. In addition, the
22 commissioner shall explore opportunities to work cooperatively with
23 private entities, including, but not limited to, not-for-profit corpo-
24 rations and religious institutions, to promote expanded siting of
25 publicly accessible textile drop-off bins on private property throughout
26 the city. The department shall consider using department personnel or
27 facilities in order to implement the provisions of this section.

28 2. No publicly accessible textile drop-off bin placed pursuant to this
29 section shall be placed on city property or property maintained by the
30 city, or on a public sidewalk or roadway, unless otherwise authorized by
31 the city. No publicly accessible textile drop-off bin shall be placed on
32 private property without the written permission of the property owner or
33 the property owner's authorized agent. The owner or other person respon-
34 sible for each such bin shall report at least every three months to the
35 department the amount of textiles collected in such bin by weight. Each
36 publicly accessible textile drop-off bin shall prominently display on
37 the front and on at least one other side of the bin, the name, address
38 and telephone number of the owner or other person responsible for the
39 bin. This information shall be printed in characters that are plainly
40 visible. In no event shall a post office box be considered an acceptable
41 address for purposes of this subdivision.

42 3. The department shall report by weight the amount of textiles
43 collected in publicly accessible textile drop-off bins located on city
44 property or property maintained by the city, through public textile
45 reuse and recycling sites pursuant to subdivision one of this section
46 and in publicly accessible textile drop-off bins maintained on private
47 property. Such report shall be included as part of the department's
48 annual zero waste report required pursuant to subdivision b of section
49 16-316.5 of the code of the preceding municipality.

50 § 16-310.2 Paint stewardship program. 1. The commissioner shall estab-
51 lish a voluntary paint stewardship program under which manufacturers of
52 architectural paint, in cooperation with distributors of architectural
53 paint and retail establishments that sell, or offer for sale, architec-
54 tural paint in the city, may establish a collection or other reclamation
55 system to collect architectural paint from consumers for reuse, recycl-
56 ing or environmentally sound disposal.

1 2. The commissioner shall provide assistance or guidance to partic-
2 ipating architectural paint manufacturers, distributors and retail
3 establishments in developing and implementing strategies to reduce the
4 quantity of architectural paint in the waste stream, promote the reuse
5 of architectural paint that would otherwise be discarded and disseminate
6 information regarding options to recycle architectural paint including,
7 but not limited to, posting information regarding the voluntary paint
8 stewardship program on the department's website.

9 § 16-310.3 Community recycling. 1. Community recycling centers. No
10 later than December thirty-first, two thousand twenty-four, the depart-
11 ment shall ensure that at least two community recycling centers are
12 established and operational in each borough. Each such center shall be
13 available for drop offs at least twenty-four hours per week, including
14 weekends. Such centers shall be located in geographic areas that are
15 easily accessible, including for persons with disabilities, and shall be
16 in close proximity to public transportation and public housing develop-
17 ments, where practicable. Any organic waste drop off site provided for
18 by local law may be co-located within such a center.

19 2. Community recycling events. No later than September thirtieth, two
20 thousand twenty-three, and annually thereafter, the department shall
21 host no less than one community recycling event in each community
22 district. Each such event shall be located in a geographic area that is
23 easily accessible, including for persons with disabilities, and in close
24 proximity to public transportation and public housing developments,
25 where practicable. Such events may be co-located with other sanitation
26 services. Community recycling events required by this subdivision shall
27 be in addition to any recycling event operated by an entity or organiza-
28 tion other than the department, provided that any recycling event oper-
29 ated pursuant to a contract with the department shall be considered to
30 be hosted by the department for purposes of this section.

31 3. Materials collected. Each community recycling center and community
32 recycling event shall accept, to the extent practicable, inorganic mate-
33 rial that is not collected through regular curbside collection but that
34 can be recycled or reused. One community recycling center per borough
35 shall also accept hazardous material, as practicable and as defined by
36 the department, that should not be disposed of as curbside waste.

37 4. Community recycling center and event information. The department
38 shall make available on the department's website, and distribute to each
39 local community board, the following information about the community
40 recycling centers and community recycling events required by this
41 section:

- 42 a. Location, including street address and borough;
- 43 b. Contact information;
- 44 c. Hours of operation; and
- 45 d. Services provided.

46 5. Education and outreach. The department, in consultation with any
47 agency identified by the mayor, shall develop an outreach and education
48 program to inform residents about community recycling centers and commu-
49 nity recycling events, including their locations, contact information,
50 hours of operation, and the services they provide.

51 6. Reporting. The department shall report annually on the operation
52 community recycling centers and community recycling events required
53 pursuant to this section. Such report shall be included as part of the
54 department's annual waste diversion report required pursuant to section
55 16-316.5 of the code of the preceding municipality. Such report shall
56 include, but need not be limited to, the following information, disag-

1 gregated by community recycling center and community recycling event,
2 where feasible:

3 a. The number of individuals utilizing such centers and events;

4 b. The material collected at each such center and event, disaggregated
5 by material type;

6 c. The number of full-time and part-time staff persons working at each
7 such center and event;

8 d. Where each type of material collected is sent; and

9 e. A description of the education programs offered to the public.

10 § 16-311. Recycling outreach and education. 1. The department shall
11 provide instruction and materials for residential building owners, net
12 lessees or persons in charge of such buildings, and their employees and
13 residents, in order to improve compliance with the provisions of this
14 chapter.

15 2. The commissioner shall establish a recycling education program that
16 shall include recycling instructional workshops, training curricula and
17 other relevant materials for residential building owners, net lessees or
18 persons in charge of such buildings, and their employees and residents,
19 including an internet-based recycling tutorial. Such program shall also
20 provide instructional workshops, training curricula, and other relevant
21 material to employees of city agencies, including a leaf and yard waste
22 training program for employees of any such agencies that generate
23 significant leaf and yard waste. The commissioner may utilize a private
24 entity or not-for-profit corporation to assist with the establishment or
25 performance of such program.

26 § 16-312 Processing recyclable materials. The commissioner shall
27 establish procedures and standards for processing recyclable materials
28 designated pursuant to section 16-305 of this chapter in city owned or
29 operated recycling centers, city owned or operated transfer stations or
30 any city owned or operated facility that renders recyclable materials
31 suitable for reuse or marketing and sale. The commissioner shall annu-
32 ally review such procedures and standards and make any changes necessary
33 to conform to the requirements of the marketplace.

34 § 16-313 Marketing recyclable materials. The department shall estab-
35 lish procedures, standards and strategies to market the recyclable mate-
36 rials designated pursuant to section 16-305 of this chapter, including
37 but not limited to maintaining a list of prospective buyers, establish-
38 ing contact with prospective buyers, entering into contracts with
39 buyers, and reviewing and making any necessary changes in collecting or
40 processing the materials to improve their marketability.

41 § 16-314 Recycling program revisions. The commissioner shall annually
42 review the recycling program and all rules promulgated thereunder, and
43 shall make the necessary revisions to improve the efficiency of collect-
44 ing, processing, marketing and selling the materials recycled pursuant
45 to this title. These revisions may include designating additional
46 recyclable materials. The commissioner shall not delete designated mate-
47 rials without designating additional materials so that the total quanti-
48 ty, by weight, of all designated recyclable materials collected, proc-
49 essed, marketed and sold does not decrease.

50 Where the commissioner determines that it is appropriate to delete a
51 designated material, the department shall provide notice of such
52 deletion to the mayor and the council, including the reason for such
53 deletion, and shall provide any relevant data supporting such decision.

54 § 16-315 Notice, education and research programs. 1. In addition to
55 the notice requirements of this code, within thirty days of the effec-
56 tive date of any rules promulgated pursuant to this title, and as

1 frequently thereafter as the commissioner deems necessary, the depart-
2 ment shall notify all persons occupying residential, commercial and
3 industrial premises affected by the rules, of the requirements of the
4 rules, by posting notices containing recycling information in public
5 places where such notices are customarily placed and, in the commission-
6 er's discretion, employing any other means of notification deemed neces-
7 sary and appropriate.

8 2. The commissioner shall compile relevant recycling, reuse and
9 composting information, including material available on the department's
10 website, to create and make available a guide to the city's residential
11 recycling program. Such guide shall, at a minimum, summarize and explain
12 the laws and rules governing curbside recycling, list the collection
13 locations and collection dates for non-curbside collected recyclable
14 materials such as household hazardous waste and textiles, and provide
15 detailed information and instructions on how to recycle any materials
16 not collected by the department for which non-city or non-department
17 recycling programs exist. Such guide shall be made available to resi-
18 dential building owners, or the net lessees or persons in charge of such
19 buildings, community boards, not-for-profit organizations, public
20 schools, and other relevant agencies and entities, and shall also be
21 made available on the department website. The commissioner shall update
22 the recycling guide biennially, or as necessary, based on changes to
23 recycling laws, rules or other relevant information to be included ther-
24 ein.

25 3. The department shall develop and implement an educational program,
26 in conjunction with the department of education, private schools, labor
27 organizations, businesses, neighborhood organizations, and other inter-
28 ested and affected parties, and using flyers, print and electronic
29 advertising, public events, promotional activities, public service
30 announcements, and such other techniques as the commissioner determines
31 to be useful, to assure the greatest possible level of compliance with
32 the provisions of this title. The educational program shall encourage
33 waste reduction, the reuse of materials, the purchase of recyclable
34 products, and participation in city and private recycling activities.

35 4. The department shall perform such research and development activ-
36 ities, in cooperation with other city agencies, and public and private
37 institutions, as the commissioner determines to be helpful in implement-
38 ing the city's recycling program. Such research shall include, but not
39 be limited to, investigation into the use of cooperative marketing
40 programs, material recovery facilities, recycling as an economic devel-
41 opment tool, export promotion, tax credits and exemptions for market
42 promotion.

43 Chapter 5

44 RECYCLING ADVISORY BOARDS

45 § 16-317 Citizens' solid waste advisory boards; membership. Within six
46 months of the effective date of this title, the city shall establish a
47 citizens' solid waste advisory board (the "citizens' board"), consisting
48 of no fewer than twenty members who for the first term shall be
49 comprised of the members of the city's citizens' advisory committee on
50 resource recovery and other persons appointed jointly by the mayor and
51 the council members. For each subsequent term, all members shall be
52 appointed jointly by the mayor and the council members. The membership
53 of the citizens' board shall represent community boards, recycling
54 industries, carting industries, environmental organizations, government

1 agencies, labor organizations, business organizations, property owners,
2 tenant organizations and members of the general public. Members shall
3 serve for a term of one year without compensation and shall designate
4 one member to serve as chairperson and one as vice-chairperson.

5 § 16-318 Functions of the citizens' board. 1. The department shall
6 submit to the mayor the portion of the biennial report addressing the
7 city's recycling program that is prepared pursuant to the city's two
8 thousand six solid waste management plan, simultaneous with the
9 submission of such report to the mayor and the council. The mayor shall
10 distribute copies of the plans to each member of the citizens' board.
11 Within ninety days thereafter, the citizens' board shall review the
12 plans, conduct a public hearing on the plans and make written recommen-
13 dations to the mayor, the department and the council with respect to the
14 recycling program. The citizens' board shall also annually advise the
15 mayor and the department with respect to the development, promotion and
16 operation of the recycling program and pursuant to this function shall
17 formulate and recommend:

18 (a) annual recycling goals equal to or greater than those set forth in
19 section 16-305 of this title and the methods proposed to achieve such
20 goals;

21 (b) means to encourage community participation in the recycling
22 program; and

23 (c) means to promote the recycling program and educate the public with
24 regard to the program.

25 2. The citizens' board shall assume all the responsibilities and func-
26 tions of the city's citizens' advisory committee on resource recovery.

27 § 16-319 Citywide recycling advisory board; membership. There shall be
28 a citywide recycling advisory board (the "citywide board") consisting of
29 at least one representative from each citizen's board, five members
30 appointed by the council, and five members appointed by the mayor. The
31 membership of the citywide board shall represent community boards, recy-
32 cling industries, carting industries, environmental organizations,
33 government agencies, labor organizations, business organizations, real
34 property owners, tenant organizations and members of the general public.
35 Members shall serve for a term of one year without compensation and
36 shall designate one member to serve as chairperson and one as vice-
37 chairperson.

38 § 16-320 Functions of the citywide board. The citywide board shall
39 meet at least four times a year to discuss citywide recycling issues,
40 including but not limited to budgetary issues. The citywide board shall
41 annually review the department's recycling program and make recommenda-
42 tions to the mayor and the council concerning improvements to and chang-
43 es in the program.

44 § 16-321 Disclosure requirements. 1. Whenever a person, other than a
45 public servant, appointed to any advisory board created pursuant to this
46 chapter, engages in any business dealings with the department, or
47 engages in business dealings with any other agency that relate to proc-
48 essing or disposal of solid waste or of waste described in paragraph (c)
49 of subdivision fifteen of section 16-303 of this title or to recycling,
50 or has an interest in a firm that is engaged in such business dealings
51 with the department or with such other agency, such person shall, prior
52 to appointment, disclose the nature of such business dealings to the
53 commissioner and to the body or officer appointing such person, and,
54 after appointment, disclose the nature of such business dealings to the
55 commissioner and to all other members of such board; provided that such
56 person need not disclose the amount of such business dealings.

1 2. When used in this section:

2 (a) "Advisory committee" means a committee, council, board or similar
3 entity that is constituted to provide advice or recommendations to the
4 city and which has no authority to take a final action on behalf of the
5 city, to take any action that would have the effect of conditioning,
6 limiting or requiring any final action by any other agency, or to take
7 any action that is authorized by law.

8 (b) "Agency" means a city, county, borough or other office, position,
9 administration, department, division, bureau, board, commission, author-
10 ity, corporation, advisory committee or other agency of government, the
11 expenses of which are paid in whole or in part from the city treasury,
12 and shall include but not be limited to, the council, the offices of
13 each elected official, the department of education, community school
14 boards, community boards, the financial services corporation, the health
15 and hospitals corporation and the public development corporation, but
16 shall not include any court or any corporation or institution maintain-
17 ing or operating a public library, museum, botanical garden, arboretum,
18 tomb, memorial building, aquarium, zoological garden or similar facili-
19 ty.

20 (c) "Blind trust" means a trust in which a candidate for any advisory
21 board created pursuant to this chapter or a member of such board, or the
22 spouse or unemancipated child of such candidate or member, has a benefi-
23 cial interest, the holdings and sources of income of which such candi-
24 date or member and such spouse and unemancipated child have no know-
25 ledge, and the trustee of which shall have independent authority and
26 discretion.

27 (d) "Business dealings" means any transaction involving the sale,
28 purchase, rental, disposition or exchange of any goods, services or
29 property, and any performance of or litigation with respect to any of
30 the foregoing, but shall not include any transaction involving the resi-
31 dence of any candidate for any advisory board created pursuant to this
32 chapter or of any member of such board, or any ministerial matter.

33 (e) "City" means the city of Staten Island and includes an agency of
34 the city.

35 (f) "Elected official" means a person holding office as mayor, comp-
36 troller, public advocate, borough president or member of the council.

37 (g) "Firm" means a sole proprietorship, joint venture, partnership,
38 corporation or any other form of enterprise, but shall not include a
39 public benefit corporation or local development corporation.

40 (h) "Interest" means an ownership interest in a firm or a position
41 with a firm.

42 (i) "Ministerial matter" means an administrative act that is carried
43 out in a prescribed manner and which does not involve substantial
44 personal discretion.

45 (j) "Ownership interest" means an interest in a firm that is held by a
46 candidate for any advisory board created pursuant to this chapter, or by
47 a member of such board, or by the spouse, domestic partner, or unemanci-
48 pated child of such candidate or member, which exceeds five percent of
49 the firm or an investment of twenty-five thousand dollars in cash or
50 other form of commitment, whichever is less, or five percent or twenty-
51 five thousand dollars of the firm's indebtedness, whichever is less, and
52 any lesser interest in a firm when such candidate or member, or such
53 spouse, domestic partner, or unemancipated child, exercises managerial
54 control or responsibility regarding any such firm, but shall not include
55 interests held in any pension plan, deferred compensation plan or mutual
56 fund, the investments of which are not controlled by such candidate or

1 member, or by such spouse, domestic partner, or unemancipated child, or
2 in any blind trust that holds or acquires an ownership interest.

3 (k) "Position" means a position in a firm, such as an officer, direc-
4 tor, trustee, employee or any management position, or as an attorney,
5 agent, broker or consultant to the firm, which does not constitute an
6 ownership interest in the firm.

7 (l) "Public servant" means all officials, officers and employees of
8 the city, including members of community boards and members of advisory
9 committees, except unpaid members of advisory committees shall not be
10 public servants.

11 (m) "Spouse" means a husband or wife of a candidate for any advisory
12 board created pursuant to this chapter or of a member of such board who
13 is not legally separated from such candidate or member.

14 (n) "Unemancipated child" means any son, daughter, step-son or step-
15 daughter who is under the age of eighteen, unmarried and living in the
16 household of a candidate for any advisory board created pursuant to this
17 chapter or of the member of such board.

18 Chapter 7

19 REGULATIONS SUBMITTED TO COUNCIL AND ENFORCEMENT

20 § 16-323 Rules submitted to council. Rules adopted by the commission-
21 er pursuant to this chapter shall become effective only after filing and
22 publication as prescribed by chapter forty-five of the charter of the
23 preceding municipality. In addition, notwithstanding the provisions of
24 chapter forty-five of such charter, prior to adoption by the commission-
25 er of a final rule pursuant to subdivision e of section one thousand
26 forty-three of such charter, and after consideration of relevant
27 comments presented pursuant to subdivision d of such section, the
28 commissioner shall submit to the council the text of the final rule
29 proposed to be published in the city record. The council shall have
30 thirty days from the date of such submission to comment upon such text.
31 The final rule may include revisions in response to comments from the
32 council and shall not be published in the city record before the thir-
33 ty-first day after such submission, unless the speaker of the council
34 authorizes earlier publication.

35 § 16-324 Enforcement. 1. Subject to the provisions of subdivision two
36 of this section, any person who violates this chapter, except section
37 16-306.1 of this title, subdivision seven of section 16-308 of this
38 title, section 16-310.1 of this title or section 16-329 of the code of
39 the preceding municipality, or any rule promulgated pursuant thereto,
40 shall be liable for a civil penalty recoverable in a civil action
41 brought in the name of the commissioner or in a proceeding returnable
42 before the environmental control board, as follows:

43 a. For residential buildings containing fewer than nine dwelling
44 units, the civil penalty shall be in an amount of twenty-five dollars
45 for the first violation, fifty dollars for the second violation commit-
46 ted on a different day within a period of twelve months, and one hundred
47 dollars for the third and each subsequent violation committed on a
48 different day within a period of twelve months, provided that the court
49 before which such civil action is brought or such board may waive the
50 penalty for the first violation upon a showing of good cause.

51 b. For residential buildings containing nine or more dwelling units
52 and commercial, manufacturing or industrial buildings, the civil penalty
53 shall be in an amount of one hundred dollars for the first violation,
54 two hundred dollars for the second violation committed on a different

1 day within a period of twelve months, and four hundred dollars for the
2 third and each subsequent violation committed on a different day within
3 a period of twelve months, provided that the court before which such
4 civil action is brought or such board may waive the penalty for the
5 first violation upon a showing of good cause. The owner, net lessee or
6 person in charge of any residential building of nine or more dwelling
7 units or a commercial, manufacturing or industrial building with respect
8 to which four or more violations were committed on different days within
9 a period of six months shall be classified as a persistent violator.

10 c. For persistent violators only, each container or bag containing
11 solid waste that has not been source separated or placed out for
12 collection in accordance with the rules promulgated by the commissioner
13 pursuant to this chapter shall constitute a separate violation, provided
14 that no more than twenty separate violations are issued on a per bag or
15 per container basis during any twenty-four hour period. Before issuing
16 any such notices of violation to a persistent violator on a per bag or
17 per container basis, the commissioner shall give such violator a reason-
18 able opportunity to correct the condition constituting the violation.

19 d. There shall be a rebuttable presumption that the number of dwelling
20 units designated on a notice of violation issued pursuant to this
21 section reflects the number of dwelling units in the residential build-
22 ing for which the notice of violation was issued. Where such presumption
23 is rebutted, the number of dwelling units on such notice of violation
24 shall be deemed modified accordingly, and in no event shall such notice
25 of violation be dismissed solely on the ground that the number of dwell-
26 ing units on the original notice of violation was incorrectly stated.

27 e. The commissioner or the commissioner's designee shall establish a
28 recycling training program for owners or employees of residential build-
29 ings of nine or more dwelling units for which at least three notices of
30 violation for failing to properly source separate designated recyclable
31 material have been issued within a twelve-month period and which the
32 commissioner determines to be in need of recycling training. Such
33 training program shall require the building owner, or an employee who is
34 primarily responsible for waste disposal or janitorial services for any
35 such building, to attend a training program established by the commis-
36 sioner or the commissioner's designee designed to improve recycling
37 practices at such building and a fee may be imposed on any owner or
38 employee who participates in such training program. Such training
39 program may be held in any location designated by the commissioner or
40 the commissioner's designee, including, in order to facilitate tenant
41 participation, at such building.

42 2. Any person who violates subdivision seven of section 16-308 of this
43 title or any rules promulgated pursuant thereto shall be liable for a
44 civil penalty in the amount of two hundred fifty dollars for the first
45 violation, five hundred dollars for the second violation committed with-
46 in a twelve-month period, and one thousand dollars for the third and
47 each subsequent violation committed within a twelve-month period.

48 3. Any owner or other person responsible for a publicly accessible
49 textile drop-off bin who violates subdivision two of section 16-310.1 of
50 this title shall be liable as follows:

51 a. In the event that a publicly accessible textile drop-off bin is
52 impermissibly placed on city property, or property maintained by the
53 city, or on any public sidewalk or roadway, the owner of the publicly
54 accessible textile drop-off bin, if the address of such owner is ascer-
55 tainable, shall be notified by the department by certified mail, return
56 receipt requested, that such publicly accessible textile drop-off bin

1 must be removed within thirty days from the mailing of such notice. A
2 copy of such notice, regardless of whether the address of such owner or
3 other responsible person is ascertainable, shall also be affixed to the
4 publicly accessible textile drop-off bin. This notice shall state that
5 if the address of the owner or other responsible person is not ascer-
6 tainable and notice is not mailed by the department, such publicly
7 accessible textile drop-off bin shall be removed within thirty days from
8 the affixing of such notice. This notice shall also state that the fail-
9 ure to remove the publicly accessible textile drop-off bin within the
10 designated time period will result in the removal and disposal of the
11 publicly accessible textile drop-off bin by the department. This notice
12 shall also state that if the owner or other responsible person objects
13 to removal on the grounds that the publicly accessible textile drop-off
14 bin is not on city property, or property maintained by the city, or on
15 any public sidewalk or roadway, such owner or other responsible person
16 may send written objection to the department at the address indicated on
17 the notice within twenty days from the mailing of such notice or, if the
18 address of such owner or other responsible person is not ascertainable
19 and notice is not mailed by the department, within twenty days from the
20 affixing of such notice, with proof that the publicly accessible textile
21 drop-off bin is not on city property, or property maintained by the
22 city, or on any public sidewalk or roadway. Proof that the publicly
23 accessible textile drop-off bin is not on city property, or property
24 maintained by the city, or on any public sidewalk or roadway shall
25 include, but not be limited to, a survey of the property prepared by a
26 licensed surveyor that is certified by the record owner of such proper-
27 ty.

28 b. Any owner or other person responsible for an impermissibly placed
29 publicly accessible textile drop-off bin that fails to respond within
30 twenty days of receipt of such notice under paragraph a of this subdivi-
31 sion or otherwise fails to establish that the publicly accessible
32 textile drop-off bin is not on city property, or property maintained by
33 the city, or on any public sidewalk or roadway pursuant to paragraph a
34 of this subdivision, shall be liable for a civil penalty in the amount
35 of one hundred dollars, recoverable in a proceeding returnable before
36 the environmental control board.

37 4. Any notice of violation or notice of hearing for a violation issued
38 to the owner, net lessee or person in charge of a premises or to a food
39 service establishment, mobile food commissary, store, or manufacturer,
40 as those terms are defined in section 16-329 of the code of the preced-
41 ing municipality, at which or by whom a violation of this chapter or any
42 rule promulgated pursuant thereto is alleged to have occurred or to have
43 been committed shall be served by delivering a copy of the notice there-
44 of at the address maintained in the records of the department of housing
45 preservation and development, the department of finance, or the depart-
46 ment of health and mental hygiene. The notice of violation or notice of
47 hearing may be served by regular mail or in accordance with section one
48 thousand forty-nine-a of the charter of the preceding municipality or,
49 if such notice is served by an agency other than the department, in
50 accordance with the rules of such agency.

51 5. a. Any covered establishment that violates section 16-306.1 of this
52 title or rules of the department, the department of health and mental
53 hygiene, or the department of consumer and worker protection promulgated
54 pursuant thereto shall be liable for a civil penalty recoverable in a
55 civil action brought in the name of the commissioner or the commissioner
56 of health and mental hygiene, or the commissioner of consumer and worker

1 protection, or in a proceeding returnable before any tribunal estab-
2 lished within the office of administrative trials and hearings in the
3 amount of two hundred fifty dollars for the first violation, five
4 hundred dollars for the second violation committed on a different day
5 within a period of twelve months, and one thousand dollars for the third
6 and each subsequent violation committed on different days within a peri-
7 od of twelve months, except that the department, the department of
8 health and mental hygiene, and the department of consumer and worker
9 protection shall not issue a notice of violation, but shall issue a
10 warning, for any violation by a designated covered establishment that
11 occurs during the first twelve months after the commissioner designates
12 such covered establishment pursuant to subdivision two of section
13 16-306.1 of this title.

14 b. Any transfer station that violates section 16-306.1 of this title
15 or rules of the department promulgated pursuant thereto shall be liable
16 for a civil penalty recoverable in a civil action brought in the name of
17 the commissioner or in a proceeding returnable before the environmental
18 control board in the amount of two hundred fifty dollars for the first
19 violation, five hundred dollars for the second violation committed on a
20 different day within a period of twelve months, and one thousand dollars
21 for the third and each subsequent violation committed on different days
22 within a period of twelve months, except that the department shall not
23 issue a notice of violation, but shall issue a warning, for any
24 violation by a designated covered establishment that occurs during the
25 first twelve months after the commissioner designates such covered
26 establishment pursuant to subdivision two of section 16-306.1 of this
27 title.

28 c. Any private carter that violates section 16-306.1 of this title or
29 rules of the business integrity commission promulgated pursuant thereto
30 shall be liable for a civil penalty recoverable in a civil action
31 brought in the name of the chair of the business integrity commission,
32 or in a proceeding brought by the chair of the business integrity
33 commission held in accordance with title sixteen-A of the code of the
34 preceding municipality, except that the chair of the business integrity
35 commission shall not issue a notice of violation, but shall issue a
36 warning, for any violation by a designated covered establishment that
37 occurs during the first twelve months after the commissioner designates
38 such covered establishment pursuant to subdivision two of section
39 16-306.1 of this title.

40 6. Any person who violates section 16-329 of the code of the preceding
41 municipality or any rule promulgated pursuant thereto shall be liable
42 for a civil penalty recoverable in a civil action brought in the name of
43 the commissioner, the commissioner of health and mental hygiene or the
44 commissioner of consumer and worker protection, or in a proceeding
45 before the environmental control board, or any tribunal established
46 within the office of administrative trials and hearings in the amount of
47 one hundred fifty dollars for the first violation, two hundred fifty
48 dollars for the second violation committed on a different day within a
49 period of twelve months, and five hundred dollars for the third and each
50 subsequent violation committed on different days within a period of
51 twelve months.

52 Title 17 - Health

53 § 17-101 Definitions. As used in this title:

54 1. "Board" shall mean the board of health.

1 2. "Commissioner" means the commissioner of the department of health.

2 3. "Department" means the department of health.

3 4. "Health code" means the health code of the city of Staten Island.

4 § 17-102 Department; commissioner. 1. There shall be a department of
5 health, the head of which shall be the commissioner of health.

6 2. The commissioner, with concurrence of the board of health, may
7 adopt a seal for use in the authentication of the orders, proceedings
8 and commissions of the department.

9 3. The commissioner shall be appointed by the mayor and shall be a
10 doctor of medicine and a holder of a degree of master of public health
11 or a degree of master of business administration with concentration in
12 the health field or a degree of master of public administration with
13 concentration in the health field or the equivalent of any one of the
14 specified foregoing degrees received from a college or university and
15 have had at least five years' experience either in public health or
16 administration or in college or university public health teaching or
17 both.

18 § 17-103 Board of health. 1. There shall be in the department a board
19 of health, the chair of which shall be the commissioner. In addition to
20 the chairperson the board shall also consist of four members, two of
21 whom shall be doctors of medicine who shall each have had not less than
22 ten years' experience in any or all of the following: clinical medicine,
23 public health administration or college or university public health
24 teaching. The other two members need not be physicians.

25 2. The four members other than the chairperson shall serve without
26 compensation and shall be appointed by the mayor, each for a term of
27 eight years. In the case of a vacancy, the mayor shall appoint a member
28 to serve for the unexpired term.

29 3. The commissioner shall designate employees of the department as
30 necessary to service the board including an employee designated by the
31 commissioner to serve as the secretary of the board.

32 4. A member of the board of health, other than the chair, may be
33 removed by the mayor on proof of official misconduct or of negligence in
34 official duties or of conduct in any manner connected with his or her
35 official duties, or of mental or physical inability to perform his or
36 her duties. Prior to removal of a board member for any of the reasons
37 stated above, the member shall be given a copy of the charges against
38 him or her and shall be entitled to a hearing before the mayor and to
39 assistance of counsel at such hearing.

40 § 17-104 Powers and duties of commissioner. 1. The commissioner
41 shall:

42 (a) have all the powers and duties vested in him or her or in the
43 department by this title, except for those vested by law in the board of
44 health or the chief medical examiner.

45 (b) prepare and submit to appropriate governmental authorities short
46 term, intermediate and long range plans and programs designed to meet
47 the needs of the city including the needs for construction and operation
48 of medical and health care facilities, except that the commissioner may
49 not construct or operate a new medical facility until the health systems
50 agency having jurisdiction over that institution has received a copy of
51 the application filed with the commissioner, in the case of private
52 institutions, or all information in form and detail as the health
53 systems agency shall require, in the case of institutions of the city of
54 Staten Island, and it shall have given the commissioner a written deci-
55 sion of approval or disapproval; and

1 (c) not be considered bound by the decision given as described above,
2 but he or she shall not approve any construction, addition or modifica-
3 tion contrary to the health systems agency without first holding a
4 public hearing.

5 2. In reaching decisions pursuant to this section, the commissioner
6 and the health systems agency shall consider:

7 (a) the public need for the existence of the new institution or the
8 construction, addition or modification of an existing institution at the
9 time and place and under the circumstances proposed;

10 (b) the character, competence and standing in the community of the
11 owners and licensees, in the case of private institutions;

12 (c) the financial resources of the institution and its sources of
13 future revenue;

14 (d) the fitness and adequacy of the premises, and equipment, person-
15 nel and standards of care to be used in the operation of the proposed
16 institution; and

17 (e) such other matters as each of them considers pertinent.

18 3. The commissioner may compel the attendance of witnesses in any
19 matter or proceeding before the commissioner.

20 4. The commissioner may assess any penalty prescribed for a violation
21 of or a failure to comply with any provision of this title or any other
22 lawful notice, order or regulation pursuant thereto, which penalty may
23 be assessed, although not to exceed one thousand dollars, after a hear-
24 ing or an opportunity to be heard.

25 § 17-105 Functions, powers and duties of the department. Except as
26 otherwise provided by law, the department shall have jurisdiction to
27 regulate all matters affecting health in the city and to perform all
28 those functions and operations performed by the city that relate to the
29 health of the people of the city including, but not limited to, the
30 following:

31 1. enforce all provisions of law applicable in the area under the
32 jurisdiction of the department for the preservation of human life; the
33 care, promotion and protection of health and to the necessary health
34 supervision of the purity and wholesomeness of the water supply. The
35 department shall also maintain and operate office health centers, health
36 stations or other facilities which may be required for the preservation
37 of health and the care of the sick;

38 2. exercise its functions, powers and duties in the area extending
39 over the city, the waters adjacent thereto, within the jurisdiction of
40 the city and within the quarantine limits established by law;

41 3. receive and expend funds made available for public health
42 purposes;

43 4. supervise and control the registration of births, fetal deaths and
44 deaths;

45 5. engage in and promote health research for the purpose of improving
46 the quality of medical and health care. In conducting such research the
47 department may conduct medical audits, receive reports on forms
48 prescribed by the department and any information received by the depart-
49 ment with regard to such research shall be kept strictly confidential,
50 used solely for medical or scientific research purposes or for the
51 improvement of the quality of medical care;

52 6. supervise the reporting and control of communicable and chronic
53 diseases and conditions hazardous to life and health; and exercise
54 control over and supervise the abatement of nuisances affecting the
55 public health;

1 7. produce, standardize and distribute certain diagnostic, preventa-
2 tive and therapeutic products and conduct laboratory examinations for
3 the diagnosis, prevention and control of disease;

4 8. promote or provide education in the prevention and control of
5 disease;

6 9. promote or provide diagnostic and therapeutic services for mater-
7 nity and child health, family planning, communicable disease, medical
8 rehabilitation, narcotics addiction and other diseases and conditions
9 affecting public health;

10 10. promote and provide medical and health services for school chil-
11 dren and the ambulant sick and needy persons of the city;

12 11. promote and provide medical and health services for the incarcer-
13 ated individuals of prisons maintained and operated by the city;

14 12. maintain and operate public health centers and clinics as shall
15 be established in the department;

16 13. prior to the sale, closing, abandonment or transfer of a city
17 hospital, hold a public hearing regarding such proposal; and publish
18 notice of such hearing in such daily newspaper published in the city as
19 selected by the commissioner, such publication to take place not less
20 than ten days nor more than thirty days prior to the date fixed for the
21 hearing;

22 14. analyze and monitor hospitals, clinics, nursing homes and homes
23 for the aged, and analyze, evaluate, supervise and regulate clinical
24 laboratories, blood banks and related facilities providing medical
25 services;

26 15. supervise and regulate the public health aspects of water supply,
27 sewage disposal and water pollution;

28 16. supervise and regulate the public health aspects of the
29 production, processing and distribution of milk, cream and milk
30 products;

31 17. supervise and regulate the public health aspects of the food and
32 drug supply of the city and other businesses or activities affecting
33 public health in the city;

34 18. supervise and regulate the public health aspects of ionizing
35 radiation, handling and disposal of radioactive wastes and the activ-
36 ities within the city affecting radioactive materials, excluding special
37 nuclear materials in quantities sufficient to form a critical mass; and

38 19. supervise and regulate the removal, transportation and disposal of
39 human remains.

40 § 17-106 Chief medical examiner. 1. There shall be in the department
41 an independent office of chief medical examiner, the head of which shall
42 be the chief medical examiner.

43 2. The chief medical examiner shall be appointed by the mayor from the
44 classified civil service and shall be a doctor of medicine and a skilled
45 pathologist and microscopist. The mayor may remove the chief medical
46 examiner upon filing in the office of the personnel director and serving
47 upon the examiner his or her reasons therefor and allowing the officer
48 an opportunity of making a public explanation.

49 3. The commissioner, with respect to the office of chief medical exam-
50 iner, shall exercise certain powers and duties pursuant to this section,
51 but he or she shall not interfere with performance by the chief medical
52 examiner or his or her office.

53 4. The chief medical examiner may appoint and remove such deputy chief
54 medical examiners, assistant medical examiners, junior medical examin-
55 ers, medical investigators, scientific experts and other officers or
56 employees as may be provided for in the budget.

1 All assistant, associate, deputy and junior medical examiners shall
2 possess the same basic qualifications as the chief medical examiner. The
3 medical investigators shall be physicians duly licensed to practice
4 medicine in the state of New York.

5 5. The office of chief medical examiner shall be kept open every day
6 in the year, including Sundays and all legal holidays, and a clerk shall
7 be in attendance at all times during the day and night.

8 6. The chief and all deputy chief, associate, assistant and junior
9 medical examiners and all investigators may administer oaths, take affi-
10 davits, proofs and examinations.

11 7. The chief medical examiner shall have such powers and duties as may
12 be provided by law with respect to bodies of persons dying from criminal
13 violence, casualty, suicide, suddenly when in apparent good health, when
14 unattended by a physician, in a correctional facility or in any suspi-
15 cious or unusual manner or where an application is made for a permit for
16 cremation of the body.

17 8. The chief medical examiner shall keep full and complete records. He
18 or she shall promptly deliver, to the district attorney, copies of all
19 records relating to every death in which, in the opinion of the chief
20 medical examiner, there is any indication of criminality. Such records
21 shall not be open to public inspection.

22 § 17-107 Health code. 1. The health code which is in force in the
23 preceding municipality on the date and time which this title takes
24 effect and all existing provisions of the health code, including penal-
25 ties affixed for violations, shall continue to be binding and in full
26 force, except as amended from time to time.

27 2. The board of health may add to, alter, amend or replace any part of
28 the health code, and may provide for the enforcement of the health code
29 or any orders made by the commissioner. The board of health shall
30 prescribe in the health code all matters and subjects to which the power
31 and authority of the department extends.

32 3. Any violation of the health code shall be treated and punished as a
33 misdemeanor.

34 § 17-108 Temporary hospitals during epidemic. The board of health,
35 during prevalence of an epidemic or in the presence of great and immi-
36 nent peril to the public health, may take possession of any buildings in
37 the city for temporary hospitals and shall pay a just compensation for
38 any private property so taken. Such temporary hospitals shall be under
39 the control of the commissioner.

40 § 17-109 Permits. The board of health may grant, suspend or revoke
41 permits for businesses and other matters in respect to any subject dealt
42 with in the health code or regulated by the department and the board may
43 prescribe reasonable fees for the issuance of said permits.

44 § 17-110 Declaration of imminent peril. In the presence of great and
45 imminent peril to public health, the board of health shall take such
46 measures and order the department of health to do such acts beyond those
47 duly provided for, in the interests of preservation of the public
48 health. No expenditure shall be incurred in the exercise of such
49 extraordinary power, unless provision is made therefor in the budget or
50 unless such expenditures are financed pursuant to section 107.00 or
51 section 29.00 of the local finance law. Such peril shall exist when and
52 for such period of time as the board of health and the mayor declare.

53 § 17-111 Right of entry. The commissioner and his or her officers may,
54 pursuant to a search warrant when required by law, enter, examine and
55 inspect all vessels, premises, grounds, structures, buildings and under-

1 ground passages for compliance with the provisions of law enforced by
2 the department.
3 § 17-112 Acceptance of private funds. No grants, gifts, devises,
4 legacies or bequests made to the city shall be accepted except with the
5 approval of the commissioner.

6 Title 18 - Parks

7 § 18-101 Definitions. As used in this title:

8 1. "Commissioner" shall mean the commissioner of the department of
9 parks, recreation and cultural affairs.

10 2. "Department" shall mean the department of parks, recreation and
11 cultural affairs.

12 § 18-102 Commissioner. The head of the department of parks, recre-
13 ation and cultural affairs shall be the commissioner.

14 § 18-103 Powers and duties of commissioner. Except with respect to the
15 functions of the board of education, the commissioner shall have the
16 power and it shall be his or her duty:

17 1. With respect to parks:

18 (a) to manage and care for all parks, squares and public places, the
19 sidewalks immediately adjoining the same and all playgrounds, playground
20 fixtures and other recreation properties, except those within the juris-
21 diction of the board of education;

22 (b) to prepare for the establishment and improvement of a park system
23 for the city with regard to proper connections with the systems of
24 federal, state and county parks and recreation areas in the city and
25 counties adjacent to the city; and

26 (c) to maintain the beauty and utility of all parks, squares, public
27 places, playgrounds and other recreational properties.

28 2. With respect to recreation:

29 (a) to plan, acquire, construct, improve and merge facilities for the
30 recreation of the public;

31 (b) to plan, develop, conduct and supervise recreation programs for
32 the public;

33 (c) to review and coordinate recreation activities and programs and
34 facilities conducted by agencies of the city and the budget estimates
35 submitted by such other agencies for such activities and make such
36 recommendations to the mayor; and

37 (d) to undertake, subject to the approval of the mayor, and to enter
38 into arrangements with other agencies of the city, state or federal
39 government and to recommend to the mayor such arrangements with private,
40 voluntary or commercial agencies, subject to the law, for the perform-
41 ance of any recreation functions conferred upon the department.

42 3. With respect to cultural affairs:

43 (a) to plan, acquire, design, construct, improve and manage facilities
44 for the conduct of cultural activities by the city and, to the extent
45 possible, to use the resources of other agencies to perform design and
46 planning functions subject to the approval of such agencies;

47 (b) to plan, develop, conduct and supervise such cultural activities;
48 and

49 (c) to foster coordination among city, state and federal agencies,
50 other organizations and institutions with respect to cultural activities
51 in the city.

52 § 18-201 Art commission. There shall be an art commission. All members
53 of the commission shall serve without compensation. The mayor shall
54 appoint and fill vacancies. The chairperson shall be the commissioner of

1 parks, recreation and youth services. The commissioner shall accede to
2 the rights, powers and duties within the city of Staten Island of the
3 preceding arts commission of the city of New York.

4 Title 19 - Transportation

5 § 19-102 Commissioner. There shall be a department of transportation
6 the head of which shall be the commissioner of transportation.

7 § 19-103 Powers and duties of commissioner. The commissioner shall
8 have control over and be responsible for all the functions and oper-
9 ations of the city relating to transportation including, without limita-
10 tion, parking and traffic operations, highway operations, ferries and
11 related facilities and mass transportation facilities.

12 § 19-104 Parking and traffic operations. 1. The commissioner shall
13 make rules and regulations for the conduct of vehicular and pedestrian
14 traffic in the streets, squares, avenues, highways and parkways of the
15 city. Violation of such rules shall be a traffic infraction triable by a
16 judge in criminal court and also may be adjudicated pursuant to this
17 title or pursuant to articles two-A and two-B of the vehicle and traffic
18 law.

19 2. In an emergency, the police commissioner may suspend for a period
20 of forty-eight hours the provision of any rule or procedure and shall
21 immediately notify the commissioner of such suspension.

22 3. In order to expedite the movement of traffic or to safeguard pedes-
23 trians or property, a police officer may order a person to disregard any
24 traffic signal or any regulation.

25 4. The commissioner shall establish, determine, control, install and
26 maintain the type, design, size and location of any and all signs,
27 signals and other devices indicating street names and other public plac-
28 es, and for guiding, directing or otherwise regulating vehicular and
29 pedestrian traffic.

30 5. The commissioner shall make recommendations to the mayor as to the
31 design and location of lighting devices, poles and fixtures, including
32 intensity of illumination of streets and highways.

33 6. The commissioner shall prepare and submit to the mayor a proposed,
34 comprehensive city traffic plan and the commissioner shall collect and
35 compile traffic data, prepare engineering studies and surveys in regard
36 to vehicular and pedestrian traffic and submit detailed reports to the
37 mayor regarding such data. The commissioner shall also have authority
38 to: (a) submit to the mayor from time to time recommendations and
39 proposals for consideration by the mayor and other city agencies in
40 regard to methods of ameliorating adverse traffic conditions which
41 cannot be remedied by traffic regulations; (b) amend existing regu-
42 lations and rules of any city agency which may affect traffic conditions
43 in the city; (c) propose legislation which may be necessary to imple-
44 ment such proposals; and (d) recommend improvements of existing
45 streets, locations of new streets, highways, parking garages, public
46 parking areas, offstreet loading facilities and other related matters.

47 7. The commissioner shall coordinate efforts of and consider reports
48 of public and private agencies and civic groups with regard to their
49 suggestions on traffic control in the city. The commissioner shall
50 prepare analyses of traffic accidents with a view to determining their
51 causes and means for prevention and shall carry on educational activ-
52 ities for the purpose of promoting traffic safety in the city.

53 8. The commissioner shall establish parking meter zones for on-street
54 and off-street parking; determine type, size and location of parking

1 meters; and fix the fees for parking in public parking areas, except
2 that parking meter zones for both on-street and off-street parking shall
3 not apply to vehicles operated by disabled persons displaying special
4 vehicle identification cards issued by the commissioner.

5 9. The commissioner shall collect fees, fines and penalties for
6 violation of parking rules and shall keep all monies in a special fund
7 to be known as the "traffic improvement fund". The revenues in this
8 special fund shall be used, upon authorization by the council for
9 payment of all costs of purchase, rental, engineering, installation,
10 operation, maintenance and repair of parking meters, the collection of
11 coins, the enforcement of rules pertaining to parking, the collection of
12 fines and penalties for rules violations or the payment of interest on,
13 amortization of, or payment of any indebtedness contracted by the city
14 in connection with the installation and operation of parking meters. Any
15 revenues remaining after such payments are made shall be used for capi-
16 tal and other expenditures to ameliorate traffic conditions of the city.

17 10. The commissioner, in conjunction with the commissioner of finance,
18 may enter into agreements with not more than two financing agencies to
19 provide for the acceptance by the city of credit cards as an alternate
20 means of payment of fines or fees incurred due to violation of any law,
21 rule or regulation with regard to parking of a vehicle.

22 11. The commissioner shall have the power, concurrently with the
23 police department, to enforce laws, rules and regulations with regard to
24 all movement and conduct of vehicular and pedestrian traffic. The
25 commissioner may employ, hire and retain officers or employees for the
26 purpose of enforcing laws, rules and regulations with regard to regulat-
27 ing and controlling vehicular parking and movement of pedestrian and
28 vehicular traffic. Such officers or agents are authorized to issue and
29 serve tickets, summonses and complaints for traffic infractions.

30 12. The commissioner shall issue, upon application, a special vehicle
31 identification permit to a Staten Island resident certified by the
32 department of health as suffering from a permanent disability seriously
33 impairing mobility, non-residents similarly certified may obtain vehicle
34 identification for purposes of transportation to a school or place of
35 employment in city. All applicants for such permit must possess an oper-
36 ator's or chauffeur's license with any restrictions indicating special
37 restrictions, devices or equipment required for operation of the vehi-
38 cle.

39 § 19-105 Highway operations. The commissioner shall have charge and
40 control of the following functions relating to the construction, mainte-
41 nance and repair of public roads, streets, highways, parkways, bridges
42 and tunnels: (i) regulating, grading, curbing, flagging and guttering of
43 streets, including marginal streets, and the laying of crosswalks; (ii)
44 designing, constructing, resurfacing and repairing all public roads,
45 streets, highways and parkways; (iii) the relaying of all pavement
46 removed for any cause; (iv) the filling of sunken lots, fencing vacant
47 lots, digging down of lots and the licensing of vaults under sidewalks;
48 (v) regulation of the use and transmission of gas, electricity, pneumat-
49 ic power and steam for all purposes in, upon, across, over and under all
50 streets, roads, avenues, parks and all public places; regulation of the
51 construction of electric mains, conduits, conductors and subways in any
52 streets, roads, avenues, parks or public places and the issuance of
53 permits to builders and others to use or open a street; and to open the
54 same for the purpose of carrying on the business of transmitting,
55 conducting, using and selling gas, electricity or steam or for the
56 service of pneumatic tubes, provided, however, this section is not to be

1 seen as to grant permission to open or use the streets except by persons
2 or corporations otherwise duly authorized to carry on such business
3 specified above; (vi) construction, alteration and maintenance of all
4 bridges and tunnels. The commissioner shall issue a report to mayor,
5 city council and city residents about the condition of the bridges and
6 tunnels operated and maintained by the department with such report due
7 on March first, as of December thirty-first of preceding calendar year.
8 The report shall include a description of all capital and revenue budget
9 funds appropriated for rehabilitation and maintenance of bridges and
10 tunnels as well as the program developed by the commissioner for the
11 maintenance of all bridges and tunnels in the city of Staten Island;
12 (vii) removal of encroachments on public roads, streets, highways and
13 parkways, with the exception of weed removal, grass cutting and clipping
14 and other horticultural operations which are to be executed by the parks
15 department, and de-icing and snow removal operations are to be carried
16 out by the department of sanitation; (viii) clearing, grubbing, grading,
17 filling or excavating of vacant lots and other land areas; (ix) instal-
18 lation of metal chain link fences or barriers on overpasses, footbridg-
19 es, bridges or walkways; and (x) designing, constructing and maintaining
20 a lighting system for streets, highways, parks and public places in the
21 city.

22 § 19-106 Ferries and related facilities. The commissioner shall main-
23 tain and operate the ferries of the city. The commissioner shall be
24 responsible for designing, constructing, maintaining or controlling all
25 ferry boats, ferry houses, ferry terminals and equipment; all wharf
26 property and roads or streets adjacent to such wharves, ferry houses or
27 terminals, including parking sites and related facilities. The commis-
28 sioner shall have charge and control of all marine operations within the
29 city and the power to regulate public and private ferry operations orig-
30 inating or terminating in the city. The commissioner shall establish
31 tours of ferry facilities and their related operations as well as tours
32 of the New York harbor at fees to be established by the commissioner and
33 may publicize and advertise the same. The commissioner shall construct,
34 operate and maintain marinas and public boat launching ramps and related
35 ferry facilities and collect fees for the use of such facilities. Fees
36 collected are to be deposited in a special fund for continued mainte-
37 nance, operation or reconstruction of public marine facilities.

38 § 19-107 Mass transportation facilities. The commissioner shall
39 prepare or review plans and recommendations for the nature,
40 construction, location, operation and financing of roads, highways,
41 bridges, tunnels, railroads or other facilities for mass transportation
42 for use, in whole or in part, within the city, whether or not the funds
43 provided for such facilities are derived from the city treasury. The
44 commissioner shall develop and coordinate planning and programming for
45 all forms of mass transportation within Staten Island, whether or not
46 transportation is within the sole operating jurisdiction of Staten
47 Island. The commissioner shall make recommendations to the mayor, the
48 Metropolitan Transportation Authority or any of its subsidiaries, the
49 Port Authority of New York and New Jersey and other city, state and
50 federal agencies concerning the mass transit needs of the city of Staten
51 Island.

52 § 19-108 Duties and obligations of a property owner with regard to
53 sidewalks, fencing or filling of vacant lots or cutting down raised
54 lots. The owner of any property, at his or her own cost shall:

- 1 1. Install, reconstruct, repave and repair the sidewalk in front of or
2 abutting such property, to include intersection quadrant in the case of
3 corner property; and
- 4 2. Fence any vacant lot comprising all or part of his or her property
5 and fill any sunken lots on such property or cut down any raised lot or
6 lots comprising all or part of the property whenever the transportation
7 department shall so order. In the event a property owner fails to comply
8 with such order or the provisions of this section, the transportation
9 department may have the work performed at the expense of the owner.
- 10 § 19-109 Right of entry. The commissioner may enter public or private
11 property for the purpose of making surveys, borings or other investi-
12 gations necessary for the performance of department duties. Refusal to
13 permit such entry shall be triable by the judge in a criminal court of
14 Staten Island.

15 Title 20 - Consumer Affairs

- 16 § 20-102 Definitions. Wherever used in this title:
- 17 1. "Commissioner" shall mean the commissioner of consumer and worker
18 protection.
- 19 2. "Department" shall mean the department of consumer and worker
20 protection.
- 21 3. "License" shall mean an authorization by the department of consumer
22 and worker protection to carry on various activities within its juris-
23 diction, which may take the form of a license, permit, registration,
24 certification or such other form as is designated under law, regulation
25 or rule.
- 26 4. "Organization" shall mean a business entity, including but not
27 limited to a corporation, trust, estate, partnership, cooperative, asso-
28 ciation, firm, club or society.
- 29 5. "Person" shall mean a natural person or an organization.
- 30 6. "Trade name" shall mean that name under which an organization or
31 person solicits, engages in, conducts or transacts a business or activ-
32 ity.
- 33 § 20-103 Powers of the commissioner. 1. The commissioner shall plan,
34 make recommendations, conduct research and develop programs for consumer
35 and worker education and protection, facilitate the exchange of informa-
36 tion in consultation with agencies, federal and state officials, commer-
37 cial interests, private groups and coordinate the consumer and worker
38 protection activities of other city agencies.
- 39 2. The commissioner shall enforce all laws in relations to weights and
40 measures.
- 41 3. The commissioner shall have control of granting, issuing, trans-
42 ferring, renewing, revoking, suspending and cancelling of all licenses
43 and permits, except in the cases with respect to which any of said
44 powers are conferred on other persons or agency by laws, and shall
45 collect all fees for licenses.
- 46 All licenses or permits in effect on the date of establishment shall
47 be continued until their date of expiration or sixty days, whichever
48 shall be longer. Any license or permit expiring within a thirty-day
49 period prior to the date of establishment shall be continued for a peri-
50 od of sixty days.
- 51 A licensee or permittee must notify and register with the department
52 if the license or permit is to extend beyond sixty days of the date of
53 establishment.

1 4. The commissioner shall enforce all laws relating to advertising and
2 offering for sale and the sale of all commodities, goods, wares and
3 services; in addition he or she shall receive complaints and initiate
4 his or her own investigations and take appropriate action, including
5 referral to a federal or state agency.

6 5. The commissioner shall be authorized to hold public and private
7 hearings, administer oaths, take testimony, serve subpoenas, receive
8 evidence, and to receive, administer, pay over and distribute monies
9 collected in and as a result of actions brought for violations of laws
10 relating to deceptive or unconscionable trade practices.

11 Title 21 - Human Services

12 § 21-102 Commissioner. There shall be a department of human services
13 the head of which shall be the commissioner of human services.

14 § 21-103 Powers and duties. The commissioner shall have the powers
15 and perform the duties of a commissioner of human services under the
16 social services law, provided that no form of outdoor relief shall be
17 dispensed by the city except under the provisions of a state or local
18 law which shall specifically provide the method, manner and conditions
19 of dispensing the same.

20 § 21-104 Public institutions under the commissioner. The commissioner
21 shall control, maintain and operate such institutions as are now or may
22 be put under his or her control.

23 § 21-202 Division for the aging. There shall be within the department
24 a division for the aging.

25 § 21-203 Power and duties. It shall be the power and duty of the divi-
26 sion for the aging:

27 1. to stimulate community interest in the problems of the aging;

28 2. to promote public awareness of resources available for the aging,
29 and to refer the public to appropriate departments and agencies of the
30 city, state and federal governments for advice, assistance and available
31 services in connection with particular problems;

32 3. to cooperate with and assist local neighborhoods in the develop-
33 ment of programs and the establishment of local offices;

34 4. to disburse available city, state and federal funds to programs
35 throughout the city and, when practical, coordinate such funds with
36 available funding from the private sector;

37 5. to promulgate rules and regulations for the operation of facili-
38 ties, services and programs under its jurisdiction; and

39 6. to maintain, operate and control such programs and facilities, as
40 may be necessary or required for the proper administration of the divi-
41 sion.

42 § 21-301. Division for youth services. 1. There shall be within the
43 department a division for youth services.

44 2. With respect to youth services the commissioner shall have all the
45 powers and duties of a youth bureau as such bureau is described in arti-
46 cle nineteen-A of the executive law and shall in addition have the
47 following powers and duties:

48 (a) to disburse available city, state and federal, and private-sector,
49 when applicable, funds to programs for youth throughout the city;

50 (b) to maintain, operate and control such youth programs and facili-
51 ties as necessary; and

52 (c) to promulgate rules and regulations for the operation of facili-
53 ties, services and programs within the department's jurisdiction.

1 § 21-402 Division of homeless services. There shall be within the
2 department a division of homeless services.

3 § 21-403 Powers and duties; director. 1. The head of the division of
4 homeless services shall be the director. The director shall have the
5 powers and perform the duties of a commissioner of human services under
6 the social services law for the purpose of fulfilling his or her respon-
7 sibilities.

8 2. The director, in the performance of his or her functions, shall:

9 (a) be responsible for transitional housing and services provided by
10 the city for eligible homeless families and individuals. The director
11 shall encourage the participation of and receive proposals from the
12 public and private sectors for the development of transitional housing
13 and services for homeless families and individuals. In performing such
14 duties, the director may develop and issue requests for such proposals
15 and evaluate responses thereto, negotiate, award, and administer
16 contracts, loans or other agreements, and obtain all necessary
17 approvals. For-profit and not-for-profit entities shall be eligible to
18 submit proposals, bid on contracts and other agreements, and apply for
19 grants and loans;

20 (b) plan and implement a redesign and restructuring of the system for
21 the provision of transitional housing and services for homeless families
22 and individuals;

23 (c) in consultation with other appropriate governmental agencies, plan
24 housing for homeless families and individuals;

25 (d) develop programs designed to improve access of homeless families
26 and individuals to existing housing;

27 (e) maintain, repair and rehabilitate transitional housing owned,
28 operated or managed by the division;

29 (f) establish performance criteria, goals and objectives with respect
30 to contract providers and monitor and evaluate such performance; and

31 (g) in consultation with other appropriate governmental agencies,
32 develop and operate outreach programs to identify and assist families
33 and individuals who are homeless and living in public spaces and partic-
34 ipate in the development of prevention programs to assist families and
35 individuals who are in imminent danger of becoming homeless.

36 3. In addition, the director is authorized, in consultation with
37 appropriate agencies, to provide any other services he or she deems
38 necessary to implement and effectuate the provisions of this title.

39 Title 22 - Economic Development

40 § 22-102 Commissioner. The head of the department shall be the commis-
41 sioner of economic development.

42 § 22-103 Powers and duties of the commissioner. The commissioner shall
43 have charge and control of and be responsible for all functions and
44 operations of the city relating to business and economic development,
45 the enhancement of economic development and financial opportunity for
46 minority and women owned business enterprises and ensuring equal employ-
47 ment opportunity by city contractors.

48 1. Such powers and functions shall include, without limitation, the
49 following:

50 (a) to establish business, industrial and commercial policies,
51 programs and projects which affect the business, industrial, commercial
52 or economic well-being, development, growth and expansion of the econom-
53 ic life of the city;

1 (b) to serve as liaison for the city with local development corpo-
2 rations, other not-for-profit corporations and all other entities
3 involved in economic development within the city;

4 (c) to study, organize, promote, coordinate and carry out within or
5 without the city, activities, projects and programs designed to encour-
6 age, stimulate and foster the well-being, development, growth and expan-
7 sion of business, industry and commerce in the city, and to enhance and
8 protect the economic life of the city;

9 (d) to assist, encourage and promote broadened employee ownership,
10 particularly through the use of employee stock ownership plans and
11 producer cooperatives, by conducting research, outreach and public
12 information programs regarding such ownership; by providing technical
13 assistance to employee groups exploring employee buyouts, and by ensur-
14 ing that firms applying for financial assistance from any entity
15 involved with economic development in the city shall be correctly
16 advised as to the potential advantages of forming an employee stock
17 ownership plan;

18 (e) to serve as a clearinghouse in connection with efforts to devise
19 solutions for problems affecting business, industry or commerce in the
20 city;

21 (f) to promote and encourage the location and development of markets
22 for city products;

23 (g) to promote and encourage the location and development of new busi-
24 ness and industry in the city, as well as the maintenance and expansion
25 of existing business and industry in the city;

26 (h) to promote, coordinate and implement activities, projects and
27 programs designed to attract foreign direct investment and promote over-
28 seas sales by firms in the city, and to otherwise encourage and stimu-
29 late the development of international business, commerce and trade in
30 the city;

31 (i) to administer and promote development of foreign trade zones with-
32 in the city;

33 (j) to study conditions affecting business, industry and commerce in
34 the city, and collect, disseminate and make studies with regard to the
35 information collected;

36 (k) to maintain a business information service in order to assist
37 business and industry in the city and to encourage businesses outside
38 the city to patronize the industrial establishments of the city;

39 (l) to make recommendations to the mayor concerning steps deemed
40 advisable for the promotion and advancement of business prosperity in
41 the city;

42 (m) to publicize the economic advantages and other factors which make
43 the city a desirable location for businesses;

44 (n) to collect, compile and distribute information dealing with the
45 facilities, advantages and attractions of the city and historic and
46 scenic points and places of interest therein;

47 (o) to plan and conduct informational programs and publicity designed
48 to attract tourists, vacationers, visitors and other interested persons
49 to the city and its attractions;

50 (p) to encourage and cooperate with public and private agencies,
51 organizations and groups to publicize the business and commercial advan-
52 tages of the city;

53 (q) to cooperate with and assist any corporation, organization or
54 agency, public or private, the objectives of which include the advance-
55 ment of business, industry prosperity, expansion of existing business,

1 the creation of new job opportunities and provide support for any such
2 efforts or purposes; and

3 (r) to issue permits for the taking of motion pictures, and for the
4 taking of photographs and for the use or operation of television cameras
5 or other transmitting television equipment in, on or about city proper-
6 ty, streets, parks, piers, wharves, docks, bridges or tunnels.

7 2. The commissioner shall have the power and duty to exercise the
8 functions of the city relating to the development, redevelopment,
9 construction, operation, maintenance, management and regulation of
10 public markets, wharf property, waterfront property and airports within
11 the city, including, without limitation, the following:

12 (a) to have charge and control of the public markets of the city, to
13 fix fees for services, licenses and privileges in connection therewith,
14 to rent space and enter into leases therefor, and to regulate all facil-
15 ities in use as public markets for the public health, safety and
16 welfare;

17 (b) to have charge and control of wharf property and waterfront prop-
18 erty owned by the city and of the building, repairing, altering, main-
19 taining, strengthening, protecting, cleaning, dredging and deepening of
20 such property; provided that the commissioner may designate parcels of
21 waterfront property to be managed pursuant to this paragraph and leased
22 pursuant to paragraph (g) of this subdivision, by the commissioner of
23 general services and contracting, provided, any such designation to be
24 made in writing and with approval of the mayor;

25 (c) to have power to enforce with respect to public markets, water-
26 front property and any structures thereon under its jurisdiction, the
27 labor law and other such laws, rules or regulations as may govern any
28 such activities undertaken, as described in paragraph (b) of this subdivi-
29 sion, and to establish and amend fees to be charged for the issuance
30 of such permits or certificates of completion;

31 (d) to have power to regulate waterfront property and any structures
32 on any waterfront property used in conjunction with commerce or naviga-
33 tion;

34 (e) to have power to regulate the use of marginal streets so that they
35 may be used to best advantage in connection with waterfront property and
36 to regulate by license or otherwise the transfer of goods and merchan-
37 dise upon, over or under such streets;

38 (f) to lease, subject to council approval, any wharf property belong-
39 ing to the city for purposes of commerce or in furtherance of naviga-
40 tion;

41 (g) to grant temporary permits, terminable at will, for a period not
42 exceeding three years for purposes of commerce or navigation and not
43 exceeding one year for other purposes;

44 (h) to set aside by order any wharf property owned by the city, which
45 has not been leased, for general wharfage purposes or for a special kind
46 of commerce and to revoke or modify such order at any time;

47 (i) to regulate the charges for wharfage, crantage and dockage of all
48 vessels or floating structures using any wharf property, such rates to
49 be fixed by rules of the commissioner;

50 (j) to sell, subject to the approval of the council, buildings, struc-
51 tures and other improvements on market property to a person leasing such
52 property;

53 (k) to manage and promote the economic development of all airports,
54 airplane landing sites, seaplane bases and heliports owned by the city
55 and to lease such property, provided that no such lease may be author-
56 ized by the commissioner until a public hearing has been held and after

1 publication of notice in a newspaper of general circulation in the city
2 at least thirty days prior to such hearing;

3 (l) to have charge and control of the regulation for the health and
4 safety of the general public at all airports, airplane landing sites,
5 seaplane bases, heliports, marginal streets and parking facilities owned
6 by the city;

7 (m) to establish, amend and enforce rules for the proper care and use
8 of all public markets, wharf property, airports, heliports, airplane
9 landing sites or seaplane bases; the violation or failure to comply with
10 any such enforcement order shall be triable in criminal court and
11 punishable by not more than thirty days' imprisonment or a fine of not
12 less than one hundred dollars nor more than five thousand dollars, or
13 both;

14 (n) to have the exclusive power to regulate all privately owned
15 airports, airplane landing sites, seaplane bases and heliports, the
16 operations out of and into such bases, as well as the control of ground
17 effect craft;

18 (o) to promote and encourage the expansion and development of the city
19 as a center for intrastate, interstate and international freight trans-
20 portation; and

21 (p) to administer and enforce the provisions of the joining resolution
22 of the city in respect to any and all structures on waterfront property
23 used in connection with the furtherance of waterfront commerce on navi-
24 gation.

25 3. With respect to energy matters, the commissioner shall have the
26 power and duty:

27 (a) to plan, formulate, coordinate and advance energy policy for the
28 city;

29 (b) to analyze the energy and fuel needs of the city with respect to
30 all types of energy, to prepare intermediate and long-range plans, goals
31 and programs designed to meet such needs and to establish priorities
32 among them;

33 (c) to develop, implement and manage energy-related programs for
34 economic development and other purposes, including the administration of
35 the public utility service and to exercise all of the functions, powers
36 and duties of such public utility service; and

37 (d) to perform such other responsibilities with respect to energy
38 matters, including responsibilities delegated elsewhere by the city
39 charter, as the mayor shall direct.

40 § 22-104 Waterfront plans. 1. No marginal street bulkhead line, pier-
41 head line or other similar line demarcating the extent of waterfront
42 development may be delineated, established or changed by the commission-
43 er except in accordance with the provisions of the city charter. The
44 commissioner may apply to the department of city planning to incorporate
45 such existing plans for the waterfront into the city map pursuant to the
46 procedure for review and approval of a change to the city map.

47 2. The commissioner may widen, open, construct, abandon or close any
48 marginal street or avenue included in such waterfront plans and shall
49 maintain the widened portion of such street and the widened portion of
50 such street shall not be a public street. Before acting under this
51 subdivision, the commissioner shall make a report to the department of
52 city planning including a map showing the proposed changes, but if the
53 department or, upon appeal of the action of the department, the appeals
54 board does not approve such proposal then it must be approved by the
55 council or the commissioner shall not proceed.

1 § 22-201 Division of economic and financial opportunity. 1. There
2 shall be a division of economic and financial opportunity within the
3 department.

4 2. The purpose of the division shall be to enhance the ability of
5 minority and women owned business enterprises to compete for city
6 contracts, to enhance city agencies' awareness of such enterprises and
7 to ensure their participation in the city procurement process.

8 3. In addition to the other purposes of this section, the division of
9 economic and financial opportunity shall also administer any programs
10 for small or locally-owned business enterprise programs as may be estab-
11 lished by law.

12 § 22-301 Division of labor services. 1. There shall be a division of
13 labor services within the department and the commissioner shall adminis-
14 ter the provisions of this section and enforce a citywide program to
15 ensure that city contractors and subcontractors take appropriate action
16 to ensure that women and minority group members are afforded equal
17 employment opportunities, and that all persons are protected from
18 discrimination prohibited under the provisions of federal, state and
19 local laws regarding recruitment, employment, job assignment, promotion,
20 upgrading, transfer, layoff, termination or rates of compensation.

21 2. The commissioner shall also monitor compliance by contractors with
22 state and federal prevailing wage requirements.

23 § 22-401 The city of Staten Island public utility service. The commis-
24 sioner or his or her designee shall serve as the director of the public
25 utility service established by provisions of the code of the preceding
26 municipality.

27 § 22-402 Authorization for public utility service. Pursuant to article
28 fourteen-A of the general municipal law, the city hereby establishes a
29 public utility service, as such term is defined in section three hundred
30 sixty of such article, which is authorized to establish, construct,
31 lease, purchase, own, acquire, use or operate facilities within or with-
32 out the territorial limits of the city, for the purpose of furnishing to
33 itself or for compensation to its inhabitants any service similar to
34 that furnished by any public utility company specified in article four
35 of the public service law. For such purpose the city may purchase elec-
36 trical and other forms of energy from the state, or from any state agen-
37 cy, or other municipal corporation, or from any private or public corpo-
38 ration, and may sell or distribute such power to itself and to
39 residential, commercial, industrial and other customers. The city shall
40 possess any and all powers granted to a public utility service pursuant
41 to article fourteen-A of the general municipal law and any other appli-
42 cable provision of law.

43 § 22-403 Acquisition of energy and facilities. The city shall
44 contract for or otherwise purchase or acquire hydroelectric or other
45 forms of energy as shall be available from the power authority of the
46 state of New York, the state, any state agency, any other municipal
47 corporation, or any private or public corporation, and shall arrange to
48 use, lease or acquire the transmission, substation and distribution
49 facilities necessary to furnish such power to the city and, for compen-
50 sation, to residential, commercial, industrial and other customers;
51 provided, however, that the city will not acquire or build any electric
52 or gas transmission or distribution facilities which are parallel to, or
53 duplicative of electric or gas transmission or distribution facilities
54 of any utility companies within the city, nor take any action to impair
55 any agreements, franchises, rights or obligations of any utility company
56 within the city including, to provide safe, adequate and efficient

1 service to conduct its business in the city and to protect its assets
2 unless so authorized by further local law and public referendum.

3 § 22-404 Distribution and sale of energy. The city shall arrange with
4 any utility companies for the distribution of energy through the use,
5 lease, or acquisition of transmission, substation and distribution
6 facilities within the service areas of such companies and for such
7 companies to act on behalf of the city for collection of charges for
8 such energy within such service areas, or for the sale of energy to such
9 companies for resale to customers within the service areas of such
10 companies.

11 § 22-405 Rates. The fixing of rates for furnishing hydroelectric and
12 other forms of energy to residential, commercial, industrial and other
13 customers shall include consideration of (1) the actual cost to the city
14 for the purchase, distribution and delivery of such energy to such
15 customers, (2) the actual expenses necessary for administration of the
16 public utility service, including expenses for research and development,
17 and (3) any other costs or charges allowed under law, including but not
18 limited to, losses of tax revenues resulting from the operation of the
19 public utility service. Such rates shall be computed to provide revenue
20 in an amount not less than that necessary to recover fully such costs
21 and expenses. Such rates shall be subject to approval of the city coun-
22 cil.

23 § 22-406 Municipal energy fund. Revenues received from the operation
24 of the public utility service shall be paid into a fund to be known as
25 the municipal energy fund. The revenues paid into such fund shall not
26 be revenues of the city, and payments from such fund shall be made with-
27 out appropriation and shall not be included in the expense budget of the
28 city. Nothing in this section shall prohibit the city from appropriating
29 expense or capital funds in connection with the public utility service,
30 nor shall payments from the municipal energy fund to the general fund be
31 prohibited.

32 § 22-501 Bureau of ports and trade. There shall be a bureau of ports
33 and trade within the department of economic development.

34 § 22-502 Definitions. As used in this title:

35 1. "Director" shall mean the director of the bureau of ports and
36 trade.

37 2. "Bureau" shall mean the bureau of ports and trade.

38 § 22-503 Director. The head of the bureau shall be the director of
39 ports and trade.

40 § 22-504 Powers and duties of the director. The director shall have
41 the power and duty to:

42 1. exercise the powers of a commissioner of public markets and a city
43 department of public markets under the agriculture and markets law;

44 2. have charge and control of the wharf property and waterfront prop-
45 erty owned by the city to the extent permitted by state law;

46 3. have power to regulate waterfront property and the structures on
47 the property such as wharves, piers, docks and bulkheads;

48 4. (a) have power to enforce, on waterfront property, the labor law
49 and other such laws, rules and regulations as may govern dredging, fill-
50 ing, removal, safety, maintenance, sanitary conditions, use and occupan-
51 cy of such structures on waterfront property; (b) issue permits or
52 certificates of completion in reference thereto; and (c) establish or
53 amend fees to be charged for the issuance of such permits with such fees
54 to be established by rules of the director;

1 5. have power to regulate the use of marginal streets in connection
2 with wharf property and to regulate by license any transfer of goods or
3 merchandise on, over or under such marginal streets;

4 6. enforce provisions of the zoning resolutions of the city in respect
5 to structures used in conjunction with waterfront commerce or naviga-
6 tion;

7 7. lease, subject to approval of or authorization by the city council,
8 any wharf property belonging to the city for purposes of waterfront
9 commerce or in furtherance of navigation; leases shall be for such terms
10 and contain such conditions as provided by law and leases may be sold at
11 public auction;

12 8. grant temporary permits to use and occupy any wharf property
13 belonging to the city, such permits not to exceed one year and to termi-
14 nate at will;

15 9. set aside by order any wharf property belonging to the city, which
16 has not yet been leased, for any special kind of commerce, any class of
17 vessel or for general wharfage purposes;

18 10. regulate charges for wharfage, crantage and dockage of all vessels
19 or floating structures using any wharf property;

20 11. establish, amend and enforce all necessary rules for proper care
21 of all public markets, wharf property, waterfront property, airports,
22 airplane landing sites, seaplane bases and heliports owned by the city;

23 12. sell, subject to approval of or authorization by the city council,
24 buildings, structures and other improvements on market property or wharf
25 property;

26 13. manage and promote the economic development of all airports,
27 airplane landing sites, seaplane bases and heliports owned by the city;

28 14. have charge and control of the regulation for the health and safe-
29 ty of the general public at all airports, airplane landing sites, seap-
30 lane bases, heliports, marginal streets and parking facilities appurten-
31 ant thereto owned by city;

32 15. have power to regulate all privately owned airports, airplane
33 landing sites and seaplane bases;

34 16. promote, coordinate and implement projects, activities and
35 programs designed to attract foreign investment and overseas sales and
36 to otherwise encourage the development, growth and expansion of interna-
37 tional business, commerce and trade in the city; and

38 17. administer and promote development of foreign trade zones in the
39 city.

40 § 22-505 Waterfront plans. All plans for the waterfront of the city
41 are continued in effect and may be changed by the director pursuant to
42 the procedure provided in this section.

43 The procedure for review and approval of any change to the plans for
44 the water front shall be the same as in the case of a change to the city
45 map and the director may apply to the department of city planning to
46 incorporate plans for the waterfront pursuant to the procedure for
47 review and approval of a change to the city map.

48 The director may widen, open, construct, abandon or close any marginal
49 street or avenue included in any plans for changes and the director
50 shall also maintain such widened portion of such streets. The director
51 may proceed with any proposed changes only if the department of city
52 planning approves the change; however, if the department of city plan-
53 ning does not approve, the director may not proceed unless the city
54 council authorizes, by a two-thirds vote, the director to proceed.

55 The department of city planning shall act on such proposed changes
56 within six weeks from the time of filing with the department of city

1 planning and if it does not act within the six weeks, the director may
2 proceed with the changes.

3 Title 23 - Reserved
4 Title 24 - Environmental Protection

5 § 24-101 Definitions. As used in this title:

6 1. "Commissioner" shall mean the commissioner of the department of
7 environmental protection.

8 2. "Department" shall mean the department of environmental protection.

9 § 24-102 Commissioner. 1. The head of the department of environmental
10 protection shall be the commissioner of environmental protection.

11 2. The commissioner shall have the control of and be responsible for
12 all those functions and operations of the city relating to (a) provision
13 of adequate water supply; (b) disposal of sewage; (c) prevention of air,
14 water and noise pollution; (d) response to emergencies caused by
15 releases or threatened releases of hazardous substances; and (e)
16 collection and management of information concerning the amount, location
17 and nature of hazardous substances.

18 § 24-103 Powers and duties of commissioner. The powers and duties of
19 the commissioner shall include, without limitation, the following:

20 1. Water resources control. (a) The commissioner shall have charge and
21 control, including the power to examine, of (i) all structures and prop-
22 erty connected with the supply and distribution of water for public use,
23 including all fire hydrants and water meters; (ii) furnishing the water
24 supply and maintaining its quality, including ample reserve contingen-
25 cies for future demand; and (iii) making and enforcing rules and regu-
26 lations governing and restricting use of water supply.

27 (b) The commissioner may examine any sources of water supply of
28 private companies supplying any portion of the city and may exercise
29 superintendence, regulation and control in respect thereof.

30 (c) The commissioner shall regulate and control emissions into water
31 of harmful or objectionable substances, contaminants or pollutants and
32 shall enforce all laws and regulations with respect to such emissions.

33 (d) The commissioner may make investigations and studies as necessary
34 for purpose of enforcement, control or elimination of pollution of the
35 waters and, for such purpose, may compel witnesses and take their testi-
36 mony under oath.

37 2. Sewage control. The commissioner shall have charge and control over
38 location, construction, alteration, repair, maintenance and operation of
39 all public and private sewers, intercepting sewers, disposal plants and
40 drainage systems.

41 The commissioner may adopt regulations with regard to the discharge
42 of sewage, refuse, factory waste and trade waste into the public sewers
43 for such discharge. The commissioner may also restrict, regulate or
44 prohibit the use of public sewers for such discharge and may prescribe
45 civil penalties for the violation thereof.

46 3. Air resources control. The commissioner shall regulate and control
47 the emission into the open air of harmful or objectionable substances,
48 including but not limited to, smoke, soot, dust, fumes, ash, gas vapors
49 and any products of combustion resulting from any fuel burning equip-
50 ment.

51 The commissioner shall enforce all laws, rules and regulations with
52 respect to such emissions. The commissioner shall make investigations
53 and studies as necessary for controlling and eliminating air pollution
54 and may compel witnesses and take their testimony under oath.

1 4. Noise pollution control. The commissioner shall enforce all laws,
2 rules and regulations to eliminate noise pollution. The commissioner
3 shall make investigations, compel witnesses and take their testimony
4 under oath for such purposes.

5 The commissioner shall also undertake studies to determine permissible
6 sound levels and shall correct problems related to noise control.

7 5. Environmental consequences. The commissioner may review and comment
8 upon the environmental consequences of any activity that may have an
9 impact on the physical aspects of the environment and may be responsible
10 for investigating, evaluating and reporting such activities related to
11 fuel supply and demand, alternative sources of energy and resource
12 recovery.

13 6. Energy. The commissioner shall have the power and duty of formulat-
14 ing an energy policy for the city.

15 The commissioner shall analyze the needs of the city with regard to
16 all kinds of energy and fuel needs. The commissioner shall prepare
17 intermediate and long range plans, goals and programs to meet such
18 needs. The commissioner shall also study, organize, promote and carry
19 out activities and programs designed to encourage fuel and energy
20 conservation.

21 7. Emergency response. The commissioner shall (a) respond to emergen-
22 cies caused by releases of hazardous substances into the environment;
23 (b) take measures to protect the public health or welfare; and (c)
24 recover costs of such response measures from the responsible persons.

25 8. Community right-to-know. The commissioner shall (a) have the power
26 to collect, compile and manage information concerning the nature of
27 hazardous substances present in the city, and (b) make such information
28 available to the public and to city personnel responsible for responding
29 to hazardous substance emergencies.

30 § 24-104 Environmental control board. 1. There shall be within the
31 department an environmental control board, the chairperson of which
32 shall be the commissioner, consisting of the commissioners of such
33 departments as the mayor and council shall determine.

34 2. The environmental control board may adopt and amend regulations not
35 inconsistent with any provision of law with regard to (a) regulating
36 emissions or pollutants into the air or waters from any land or water
37 sources, and (b) regulating or prohibiting the installation or
38 construction of any equipment giving forth such emissions or pollutants.

39 3. The board, concurrent with the jurisdiction of the criminal courts
40 of the city, shall enforce the provisions of the city charter, this code
41 and the code of the preceding municipality which relate to (a) cleanli-
42 ness of the streets; (b) disposal of wastes; (c) provision of adequate,
43 pure supply of water; (d) prevention of air, water and noise pollution;
44 (e) regulation of street peddling; (f) prevention of fire and danger to
45 life as designated by the fire commissioner; (g) construction and
46 inspection of structures of the city for sanitary conditions, safety,
47 occupancy and as designated by the buildings and real property commis-
48 sioner; (h) response to emergencies caused by release of hazardous
49 substances; and (i) reporting of all information with regard to amount,
50 labeling and location of all hazardous substances.

51 4. The board shall have concurrent jurisdiction with the board of
52 health to enforce provisions of the health code which the board of
53 health shall designate.

54 § 24-105 Proceedings for violations. The environmental control board
55 shall conduct proceedings for the adjudication of violations of the
56 laws, rules and regulations enforced by the board.

1 The form and wording of notices of violation shall be prescribed by
2 the board. Notices shall contain information advising the persons
3 charged with the manner and the time in which such person has to admit
4 or deny the charges. The notice shall also contain a warning that fail-
5 ure to plead in the time stated may result in a default decision entered
6 against such person, or failure to plead may be deemed an admission of
7 liability and shall be grounds for imposing a maximum penalty.

8 A judgment entered by the board pursuant to this section shall remain
9 in full force and effect for eight years.

10 The board may not enter any final decision or order pursuant to this
11 section unless the notice of violation shall have been served in the
12 manner as is prescribed for service of process by the civil practice law
13 and rules, with certain exceptions.

14 Title 25 - Reserved

15 Title 26 - Housing, Buildings, Construction and Maintenance

16 § 26-101 Definitions. As used in this title:

17 1. "Commissioner" shall mean the commissioner of the department of
18 buildings and real property.

19 2. "Department" shall mean the department of buildings and real prop-
20 erty.

21 3. "Class" refers to the classification of buildings in the building
22 code or other applicable laws and shall also refer to the terms "class"
23 or "kinds" as used in the multiple dwelling law.

24 4. "Division" shall mean the division of housing preservation and
25 development.

26 § 26-102 Commissioner. The head of the department shall be the commis-
27 sioner of buildings and real property.

28 § 26-103 Department functions. The department shall enforce, with
29 respect to buildings and structures, the building code, zoning resol-
30 utions, multiple dwelling law, labor law and other regulations that may
31 govern the construction, alteration, maintenance, use, occupancy, safe-
32 ty, sanitary conditions or inspection of buildings or structures in the
33 city.

34 The department shall perform the functions of the city of Staten
35 Island relating to:

36 1. necessary legal action regarding designation of unsafe buildings or
37 structures and the removal or remedy thereof by demolition or sealing;

38 2. the shoring of unsafe buildings or structures;

39 3. testing and approval of all power-operated cranes, derricks or
40 other hoisting equipment used to raise and lower articles on the outside
41 of buildings, not to include cranes and derricks used in industrial
42 plants or yards;

43 4. location, construction, alteration and removal of signs, either
44 illuminated or non-illuminated, attached to the exterior of any build-
45 ings;

46 5. all surface and sub-surface construction within the curblin,
47 driveways and entrances thereto and the issuance of permits in reference
48 thereto;

49 6. regulation, testing and inspection of gas and electricity used for
50 light, heat or power purposes and all electric, gas and steam meters,
51 electric wires and lights furnished for the city; and

52 7. regulation, inspection and testing of wiring and appliances for
53 light, heat and power in or on any building or structure in the city,
54 except that the jurisdiction of the department shall not extend to

1 waterfront property; which property and structures shall be under the
2 jurisdiction of the department of ports and trade.

3 § 26-104 Powers and duties. 1. There shall be a main office of the
4 department.

5 2. Persons appointed as inspectors to perform functions of the depart-
6 ment shall have such qualifications as prescribed by the commissioner;
7 however, such qualifications shall include:

8 (a) a minimum of five years experience working at a construction
9 trade;

10 (b) a license as a professional engineer or architect issued pursuant
11 to the education law;

12 (c) a minimum of three years experience working at a construction
13 trade and a minimum of two years formal training in a construction
14 program in a college, technical college or trade school; or

15 (d) a minimum of two years experience working at a construction trade
16 or a minimum two years formal education in a construction program in a
17 college, trade or technical school and a minimum of three years partic-
18 ipation in an apprentice inspection program approved by the commissioner
19 and personnel director.

20 3. The commissioner shall have the following powers and duties, with
21 respect to buildings and structures:

22 (a) to examine, approve or disapprove construction or alteration plans
23 for any building or structure and to direct the inspection of such
24 building or structure;

25 (b) to require that the construction or alteration of any building,
26 including the installation or alteration of any service equipment there-
27 in, shall be in accordance with the provisions of laws and regulations
28 applicable thereto; and

29 (c) to issue certificates of occupancy for any building or structure
30 in the city, provided that:

31 (i) no building or structure may be occupied or used until a certif-
32 icate of occupancy has been issued;

33 (ii) if a building or structure for which a certificate of occupancy
34 has not previously been required or issued shall be altered in such a
35 way as to now require a certificate, the building may not be used for
36 any purpose until such certificate is issued;

37 (iii) no buildings altered or converted from one class to another
38 shall be occupied until a certificate has been issued; and, in cases
39 where the alteration did not necessitate the total vacating of the
40 building, the certificate must be issued within thirty days of the
41 completion of such work or the occupancy of the building may not contin-
42 ue;

43 (iv) the certificate of occupancy of a building or structure shall
44 certify that such structure conforms to requirements of all laws, rules
45 and regulations applicable thereto. Every certificate of occupancy
46 shall be binding and remain binding and conclusive upon all agencies and
47 officers of the city, unless vacated or modified by a court of competent
48 jurisdiction or a board of appeals, and upon the department of labor of
49 the state of New York;

50 (v) the commissioner may issue a temporary certificate of occupancy
51 for any part of a building, provided that such temporary use or occupan-
52 cy does not jeopardize life or property;

53 (vi) the commissioner may, in specific cases, permit experimental or
54 demonstration construction to obtain knowledge and information; the
55 commissioner may also submit reports on results thereof to the depart-
56 ment of buildings and real property; and

1 (vii) the commissioner shall have the power and duty to conduct
2 inquiries to assist him or her in his or her department duties where
3 public safety is involved and he or she shall have subpoena power to
4 compel witnesses, administer oaths, and compel production of books,
5 papers and documents.

6 All certificates of occupancy in effect on the date of establishment
7 are continued.

8 § 26-105 Appeals. Appeals may be taken from the decisions of the
9 commissioner to a three person board of appeals to be appointed by the
10 mayor; one of whom shall be an architect and one of whom shall be a
11 professional engineer.

12 § 26-106 Inspection. The commissioner, or any officer of the depart-
13 ment authorized in writing by the commissioner, may enter and inspect
14 any building, structure, enclosure, premises or any part thereof or
15 anything attached thereto.

16 Any refusal to permit such entry or inspection shall be a misdemeanor
17 triable in criminal court and punishable, upon conviction, of not more
18 than thirty days imprisonment, a fine of not more than one hundred
19 dollars, or both.

20 § 26-107 Public buildings and facilities. The department shall:

21 1. have charge and control over the plans and specifications for and
22 the construction of all buildings and facilities paid for in whole or in
23 part from the city treasury;

24 2. manage, alter, rejoin, operate, maintain and clean buildings,
25 facilities and offices leased or occupied for public use by more than
26 one city agency whose management, alteration, repair, operation, mainte-
27 nance or cleaning is paid for in whole or in part from the city treas-
28 ury, and as directed by the mayor, to perform services in space occupied
29 for public use by a single city agency;

30 3. except for the provisions of title five of the code of the preced-
31 ing municipality, employ, when in the commissioner's opinion such
32 services are necessary or desirable, qualified consultants in private
33 practice to aid the commissioner in carrying out his or her duties and
34 responsibilities with respect to public buildings or facilities; such
35 consulting or advisory services shall be performed under the supervision
36 of the commissioner;

37 4. consult with the agencies for whose use the buildings or structures
38 are intended in preparing and considering plans and specifications and
39 in carrying out such plans and specifications, and to consider any
40 recommendations made by such agency.

41 Notwithstanding the provisions of this section, the exercise of the
42 powers and duties set forth herein shall be subject to the jurisdiction
43 of any city agency performing urban renewal and public and publicly-aid-
44 ed housing functions to the extent, and in such areas, as directed by
45 the mayor;

46 5. exercise and perform such other powers and duties as may be
47 prescribed by law or delegated to him or her in relation to laboratory
48 testing of commodities and construction materials.

49 § 26-108 Real property. The department, with respect to real property,
50 shall have power to:

51 1. purchase, lease, condemn or otherwise acquire real property for the
52 city, subject to the joint approval or authorization of the mayor and
53 the council, and to sell, lease, exchange or otherwise dispose of real
54 property of the city, subject to the joint approval or authorization of
55 the mayor and the council;

1 2. assign and reallocate to city agencies space and real property
2 owned or leased by the city, to establish comprehensive and continuing
3 programs and standards for utilization of space owned or leased by the
4 city and to conduct surveys of space utilization;

5 3. manage all real property of the city not used for public purposes,
6 including real property required for a public purpose and not being
7 currently utilized for such purpose, except wharf property; provided,
8 that the commissioner shall be responsible for the management, leasing
9 or permitting of any parcels of wharf property and water front property
10 as provided in any designation made by the commissioner of economic
11 development;

12 4. exercise and perform such other powers and duties as may be
13 prescribed by law or delegated to the commissioner in relation to the
14 acquisition, disposition, management, site selection, assignment, demo-
15 lition or other treatment of real property of the city;

16 5. employ, where desirable, managing agents to manage city properties
17 and collect rents and pay bills; and

18 6. keep, maintain and annually update a master list of leases wherein
19 the city or its agencies is a tenant.

20 § 26-109 Building code. The building code which is in force in the
21 preceding municipality on the date and time when this title takes effect
22 and all existing provisions of the building code, including penalties
23 affixed for violations, shall continue to be binding and in full force,
24 except as amended from time to time by the city of Staten Island.

25 A copy of such code shall be on file in the office of the city clerk.

26 § 26-201 Division of housing preservation and development. There shall
27 be a division of housing preservation and development within the depart-
28 ment.

29 § 26-202 Powers and duties of the division. The division is vested
30 with:

31 1. all functions of the city relating to the rehabilitation, mainte-
32 nance, alteration and improvement of residential buildings and privately
33 owned housing, pursuant to various articles of the private housing
34 finance law; acting as liaison with the New York city rehabilitation
35 mortgage insurance corporation; the execution of emergency repairs to
36 and the sealing, removal and demolition of buildings, structures and
37 private housing and the enforcement of the applicable provisions of the
38 multiple dwelling law or others laws relating to the maintenance, use,
39 occupancy, safety or sanitary condition of any building which is occu-
40 pied, or intended to be occupied, as a home, residence or dwelling
41 place;

42 2. functions and duties with respect to the relocation of tenants of
43 real property and the selection of tenants for publicly owned or public-
44 ly aided housing;

45 3. all functions and duties of the city as related to slum clearance,
46 slum prevention and urban renewal, neighborhood conservation, rehabili-
47 tation and prevention of blighted, deteriorated or unsanitary areas, and
48 public housing, including regulation of rents in housing built with
49 state or local financing; and

50 4. functions, rights and powers granted to or delegated to the housing
51 and redevelopment board, the housing and development administration and
52 the New York city housing authority.

53 § 26-203 Housing preservation and development; commissioner. With
54 respect to matters of housing preservation and development. The commis-
55 sioner shall:

- 1 1. have the power to establish and administer programs designed to
- 2 encourage the rehabilitation and preservation of existing housing;
- 3 2. administer laws authorizing tax exemption or tax abatement and
- 4 process applications for such abatements and exemptions pursuant to
- 5 provisions of this code;
- 6 3. manage and superintend all real property acquired by the city for
- 7 housing and urban renewal purposes;
- 8 4. represent the city in carrying out the provisions of the private
- 9 housing finance law and act as the "supervising agency" pursuant to the
- 10 private housing finance law;
- 11 5. represent the city in carrying out the provisions of the general
- 12 municipal law, including acquiring, leasing or disposing of real proper-
- 13 ty;
- 14 6. undertake projects and exercise rights, powers, and privileges of
- 15 the applicable public housing law;
- 16 7. impose and collect charges and fees for financing, regulation,
- 17 supervision and audit of municipality-aided projects and loan programs
- 18 administered by the commissioner, with such moneys to be set aside in an
- 19 account for administrative expenses for the department;
- 20 8. acquire real property on behalf of other city agencies;
- 21 9. sell, lease, exchange or dispose of residential real property of
- 22 the city, provided that no such sale shall be authorized without the
- 23 mayor's and council's approval and until a public hearing has been held
- 24 and public notice given;
- 25 10. manage and superintend all residential real property of the city
- 26 not used for public purposes. The provisions of this subdivision are not
- 27 applicable to wharf property, real property under jurisdiction of the
- 28 Metropolitan Transportation Authority or the jurisdiction of the New
- 29 York city housing authority or the jurisdiction of the Triborough Bridge
- 30 and Tunnel Authority;
- 31 11. manage, demolish, seal or otherwise treat residential real proper-
- 32 ty as necessary; and
- 33 12. employ professional community and other personnel to manage resi-
- 34 dential real property.
- 35 § 26-204 Inspection. 1. Inspections. A housing maintenance inspector
- 36 shall have such qualifications as prescribed by the department of
- 37 personnel after consultation with the commissioner.
- 38 2. Entry. The commissioner or any inspector may enter and inspect any
- 39 building, structure, enclosure, premises, or any part thereof and
- 40 refusal to permit such inspection shall be a misdemeanor triable in
- 41 criminal court, punishable by not more than thirty days imprisonment or
- 42 a fine of not more than one hundred dollars or both.
- 43 § 26-205 Acquisitions of real property. No purchase, lease, condemna-
- 44 tion or acquisition of real property shall be authorized until (i) a
- 45 public hearing has been held, and (ii) the department shall have
- 46 received the joint approval or authorization of the mayor and the coun-
- 47 cil.
- 48 In the case of acquisition by purchase or condemnation, a hearing as
- 49 described above shall not be required if a public hearing is already
- 50 being held with respect to such purchase pursuant to any other require-
- 51 ment of law.

52 Title 27 - Health and Mental Hygiene

53 § 27-101 Definitions. As used in this title:

- 1 1. "Commissioner" shall mean the commissioner of the department of
2 health and mental hygiene.
- 3 2. "Department" shall mean the department of health and mental
4 hygiene.
- 5 § 27-102 Powers and duties of commissioner. The commissioner shall
6 have the powers and duties of the department which shall include but
7 shall not be limited to:
 - 8 1. Determining the needs of the mentally disabled in the city, which
9 determination shall include the review and evaluation of all mental
10 hygiene services and facilities within the commissioner's jurisdiction;
 - 11 2. Engaging in short-range, intermediate-range and long-range mental
12 hygiene planning;
 - 13 3. Developing and submitting to the mayor and council a program for
14 the delivery of services for the developmentally disabled, including
15 construction and operation of facilities;
 - 16 4. Arranging with the approval of the mayor, for the rendition of
17 services and operation of facilities by other agencies of the city;
 - 18 5. Within the amounts appropriated therefor, entering into contracts
19 for the rendition or operation of services and facilities on a per capi-
20 ta basis or otherwise;
 - 21 6. Within the amounts appropriated therefor, executing such programs
22 and maintaining such facilities as may be authorized under such appro-
23 priations;
 - 24 7. Using the services and facilities of public or private voluntary
25 institutions whenever practical, and encouraging all providers of
26 services to cooperate with or participate in the program, whether by
27 contract or otherwise;
 - 28 8. Implementing and administering an inclusive citywide planning proc-
29 ess for the delivery of services for the developmentally disabled;
30 consistent with applicable law, standards and procedures for community
31 participation at the local community level;
 - 32 9. Encouraging the development and expansion of programs for the
33 prevention, diagnosis, care, treatment, social and vocational rehabili-
34 tation, special education and training of the developmentally disabled
35 and for public education or developmental disability;
 - 36 10. Establishing coordination and cooperation among all providers of
37 services, coordinating the department's program with the program of the
38 state department of mental hygiene so that there is a continuity of care
39 among all providers of services; and seeking to cooperate by mutual
40 agreement with the state department of mental hygiene and their repre-
41 sentatives in preadmission screening and in post-hospital care of
42 persons suffering from developmental disability;
 - 43 11. Making policy and planning for, monitoring, evaluating and exer-
44 cising general supervision over all services and facilities for the
45 developmentally disabled within the commissioner's jurisdiction; and
46 exercising general supervisory authority through the promulgation of
47 appropriate standards consistent with accepted professional practices
48 for care and treatment of patients;
 - 49 12. To the extent necessary, when not inconsistent with any other law,
50 arranging for the visitation, inspection and investigation of all
51 providers of services, by the department or otherwise;
 - 52 13. Conducting such inquiries as may be useful, including investi-
53 gations into individual patient care, in performing the functions of the
54 department and for such purpose the commissioner shall have subpoena
55 power to compel the attendance of witnesses, to administer oaths and to
56 compel the production of books, papers and documents and consistent with

1 the provisions of the mental hygiene law, having access to otherwise
2 confidential patient records, provided such information is requested
3 pursuant to the functions, powers and duties conferred upon the commis-
4 sioner by law;

5 14. Submitting all materials required by the mental hygiene law for
6 purposes of state reimbursement;

7 15. Serving as a member of such state or federally authorized commit-
8 tees as may be appropriate to the discharge of the commissioner's func-
9 tions;

10 16. Performing such other acts as may be necessary and proper to carry
11 out the provisions of this title and the purposes of the mental hygiene
12 law;

13 17. Develop, promote, provide, coordinate and evaluate addiction
14 programs for the prevention of addiction, treatment and rehabilitation
15 for persons addicted to narcotics and other dangerous drugs, including,
16 but not limited to, the following functions:

17 (a) participate in cooperative efforts of federal, state, regional and
18 city agencies and programs dealing with the problems of addiction to
19 narcotics and other dangerous drugs;

20 (b) evaluate present and proposed research designs, demonstration
21 projects, treatment and service programs and other requests related to
22 such prevention and care, before public funds are made available there-
23 for;

24 (c) promote or provide research and demonstration projects designed to
25 obtain information relating to the prevention of addiction and the
26 related treatment provided to drug addicts by public or voluntary
27 private agencies supported by city funds;

28 (d) promote or provide an educational and prevention program to
29 acquaint the public with the problems of addiction;

30 (e) promote or provide treatment agents for persons addicted to
31 narcotics, including, but not limited to, drug free programs, chemother-
32 apeutic programs and a school based drug prevention program;

33 (f) annually report to the city council, by March first as of the
34 preceding December thirty-first, on all treatment agents promoted or
35 provided during the year and proposed to be provided or promoted during
36 the current year, with particular attention given to the balance between
37 the treatment agents and their relative effectiveness; and

38 (g) promote or provide training programs for persons in public or
39 voluntary private agencies and institutions engaged in the prevention,
40 treatment and rehabilitation of persons addicted to narcotics.

41 § 27-103 Functions of the department. Except as otherwise provided by
42 this title and law, the department shall perform all those functions and
43 operations that relate to health and mental hygiene related needs of the
44 people of the city.

45 § 27-104 Construction clause. The provisions of this title shall be
46 carried out subject to and in conjunction with the provisions of the
47 mental hygiene law.

48 § 15-001. The sum of six million dollars (\$6,000,000), or so much
49 thereof as may be necessary, is hereby appropriated as an advance out of
50 any moneys in the general fund to the credit of the local assistance
51 account not otherwise appropriated and shall be made immediately avail-
52 able, for the expenses of the city of Staten Island, in carrying out the
53 provisions of this act relating to the transition government and estab-
54 lishment of such city. Notwithstanding any provision of law such moneys
55 shall be payable on the audit and warrant of the comptroller on vouchers
56 certified or approved in the manner prescribed by law. Such advance

1 shall be repaid from funds which shall be withheld by the state comp-
2 troller in equal payments over a period of five years out of the first
3 moneys available for the next succeeding payments of state aid appor-
4 tioned to the city of Staten Island as per capita aid for the support of
5 local government pursuant to section 54 of the state finance law.

6 § 15-002. The sum of one million dollars (\$1,000,000), or so much
7 thereof as may be necessary, is hereby appropriated as an advance out of
8 any moneys in the general fund to the credit of the local assistance
9 account not otherwise appropriated and shall be made immediately avail-
10 able, for the expenses of the city school district of the city of Staten
11 Island, in carrying out the provisions of this act relating to the
12 establishment of the city school district of such city. Notwithstanding
13 any provision of law such moneys shall be payable on the audit and
14 warrant of the comptroller on vouchers certified or approved in the
15 manner prescribed by law. Such advance shall be repaid from funds which
16 shall be withheld by the state comptroller in equal payments over a
17 period of five years out of the first moneys available for the next
18 succeeding payments of education aid apportioned to the city of Staten
19 Island as aid for the support of education.

20 § 16-001. Severability. The provisions of this act shall be severable,
21 and if the application of any clause, sentence, paragraph, subdivision,
22 section or part of this act to any person or circumstance shall be
23 adjudged by any court of competent jurisdiction to be invalid, such
24 judgment shall not necessarily affect, impair or invalidate the applica-
25 tion of any such clause, sentence, paragraph, subdivision, section, part
26 of this act or remainder thereof, as the case may be, to any other
27 person or circumstance, but shall be confined in its operation to the
28 clause, sentence, paragraph, subdivision, section or part thereof
29 directly involved in the controversy in which such judgment shall have
30 been rendered.

31 § 17-001. This act shall take effect immediately; provided, however,
32 that:

33 (a) the provisions of sections 7-009, 7-010, 13-001, 15-001 and 15-002
34 of this act shall take effect on the first of January next succeeding
35 the date on which it shall have become a law;

36 (b) the provisions of sections 7-001 through 7-008, 8-001 through
37 8-024, 9-001 through 9-012, 9-050 through 9-053, 10-001 through 10-008,
38 11-001, 12-001 through 12-020 and 14-001 of this act shall take effect
39 on the first of July in the second year next succeeding the date on
40 which it shall have become a law;

41 (b-1) the amendments made to subdivisions 8 and 14 of section 2554 of
42 the education law by sections 4-007 and 4-008 of this act, respectively,
43 shall take effect upon the revival of such subdivisions as provided in
44 section 34 of chapter 91 of the laws of 2002, as amended;

45 (c) provided that the amendments to paragraphs (a), (b), (c), (d),
46 (e), and (f) of subdivision 2 of section 209 of the social services law
47 made by section 8-021 of this act shall take effect on the same date and
48 same manner as section 2 of part Z of chapter 56 of the laws of 2023,
49 takes effect;

50 (d) the amendments to the second undesignated paragraph of subdivision
51 4 of section 246 of the executive law made by section 8-004 of this act
52 shall be subject to the expiration and reversion of such paragraph
53 pursuant to subdivision (aa) of section 427 of chapter 55 of the laws of
54 1992, as amended, when upon such date the provisions of section 8-004-a
55 of this act shall take effect; and

1 (e) provided that the amendments made to sections 257-c, 262, 266 and
2 267 of the executive law made by sections 8-007, 8-008, 8-009 and 8-010
3 of this act shall not affect the expiration or repeal of such sections
4 and shall be deemed expired and repealed therewith.