

# STATE OF NEW YORK

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7949--A

2023-2024 Regular Sessions

## IN ASSEMBLY

August 18, 2023

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Introduced by M. of A. SIMON, KELLES, LEVENBERG -- read once and referred to the Committee on Economic Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

LBD08180-03-3

of the tax law relating to fuel sold to an airline for use in its airplanes

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Stop Climate Polluter Handouts Act".

3 § 2. Subdivisions 17, 18, 21, and 22 of section 352 of the economic  
4 development law, subdivisions 17, 18 and 21 as amended by section 1 of  
5 part K of chapter 59 of the laws of 2017, subdivision 18 as separately  
6 amended by section 1 of part ZZ of chapter 59 of the laws of 2017,  
7 subdivision 22 as amended by chapter 572 of the laws of 2022, are  
8 amended to read as follows:

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

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

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

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

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

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

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

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

1 21. "Research and development expenditures" mean the expenses of the  
2 business enterprise that are qualified research expenses under the  
3 federal research and development credit under section forty-one of the  
4 internal revenue code and are attributable to activities conducted in  
5 the state. If the federal research and development credit has expired,  
6 then the research and development expenditures shall be calculated as if  
7 the federal research and development credit structure and definition in  
8 effect in federal tax year two thousand nine were still in effect.

9 Research and development expenditures does not include any expenses for  
10 tangible personal property that directly produces, transmits, distrib-  
11 utes, transports, or stores fossil fuels or directly utilizes fossil  
12 fuels for the production of on-site energy, including thermal energy,  
13 for any purpose.

14 22. "Scientific research and development" means conducting research  
15 and experimental development in the physical, engineering, and life  
16 sciences, including but not limited to agriculture, animal fiber, elec-  
17 tronics, environmental, biology, botany, biotechnology, computers, chem-  
18 istry, food, fisheries, forests, geology, health, mathematics, medicine,  
19 oceanography, pharmacy, physics, plant fiber, veterinary, and other  
20 allied subjects. For the purposes of this article, scientific research  
21 and development does not include medical or veterinary laboratory test-  
22 ing facilities, or any research that contributes to the production,  
23 transmission, distribution, transportation, storage, sale, purchase, or  
24 delivery of fossil fuels.

25 § 3. Subdivision 7 of section 355 of the economic development law, as  
26 amended by chapter 494 of the laws of 2022, is amended to read as  
27 follows:

28 7. For availability of special excelsior jobs program rates governing  
29 the provision of [~~gas or~~] electric service, see subdivision twelve-d of  
30 section sixty-six of the public service law. Such special excelsior jobs  
31 program rates may remain available to participants as defined in this  
32 article for a period of up to ten years commencing in the first taxable  
33 year that the participant receives a certificate of tax credit, or the  
34 first taxable year listed on its preliminary schedule of benefits,  
35 whichever is later. Notwithstanding any other provision of this section,  
36 such special excelsior job program rates shall remain available to a  
37 Green CHIPS project which enters into a phase two of such project for  
38 the entirety of both of its schedules of benefits. Provided however, if  
39 a participant is removed from the excelsior jobs program pursuant to  
40 this article, the excelsior jobs program rates may be denied.

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

44 12-d. Notwithstanding any other provision of law, upon application of  
45 [~~a gas or~~] an electric corporation, the commission shall authorize such  
46 corporation to charge a special excelsior jobs program rate equal to the  
47 incremental cost of providing electric service to participants in the  
48 excelsior jobs program as defined in article seventeen of the economic  
49 development law.

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

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

- 55 (a) retail and wholesale businesses;  
56 (b) restaurants;

- 1 (c) real estate brokers;  
2 (d) law firms;  
3 (e) medical or dental practices;  
4 (f) real estate management companies;  
5 (g) hospitality;  
6 (h) finance and financial services;  
7 (i) businesses providing personal services;  
8 (j) businesses providing business administrative or support services,  
9 unless such business has received permission from the commissioner to  
10 apply to participate in the START-UP NY program upon demonstration that  
11 the business would create no fewer than one hundred net new jobs in the  
12 tax-free NY area;  
13 (k) accounting firms;  
14 (l) businesses providing utilities; [~~and~~]  
15 (m) businesses engaged in the generation or distribution of electric-  
16 ity, the distribution of natural gas, or the production of steam associ-  
17 ated with the generation of electricity; and  
18 (n) businesses engaged in the production, transmission, distribution,  
19 transportation, or storage of fossil fuels as defined in section 1-103  
20 of the energy law.

21 § 6. Subparagraph (i) of paragraph (b) of subdivision 1 of section  
22 210-B of the tax law, as amended by section 2 of part P of chapter 59 of  
23 the laws of 2017, is amended to read as follows:

24 (i) A credit shall be allowed under this subdivision with respect to  
25 tangible personal property and other tangible property, including build-  
26 ings and structural components of buildings, which are: depreciable  
27 pursuant to section one hundred sixty-seven of the internal revenue  
28 code, have a useful life of four years or more, are acquired by purchase  
29 as defined in section one hundred seventy-nine (d) of the internal  
30 revenue code, have a situs in this state and are (A) principally used by  
31 the taxpayer in the production of goods by manufacturing, processing,  
32 assembling, refining, mining, extracting, farming, agriculture, horti-  
33 culture, floriculture, viticulture or commercial fishing, (B) industrial  
34 waste treatment facilities or air pollution control facilities, used in  
35 the taxpayer's trade or business, (C) research and development property,  
36 or (D) principally used in the ordinary course of the taxpayer's trade  
37 or business as a broker or dealer in connection with the purchase or  
38 sale (which shall include but not be limited to the issuance, entering  
39 into, assumption, offset, assignment, termination, or transfer) of  
40 stocks, bonds or other securities as defined in section four hundred  
41 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as  
42 defined in section four hundred seventy-five (e) of the Internal Revenue  
43 Code, (E) principally used in the ordinary course of the taxpayer's  
44 trade or business of providing investment advisory services for a regu-  
45 lated investment company as defined in section eight hundred fifty-one  
46 of the Internal Revenue Code, or lending, loan arrangement or loan orig-  
47 ination services to customers in connection with the purchase or sale  
48 (which shall include but not be limited to the issuance, entering into,  
49 assumption, offset, assignment, termination, or transfer) of securities  
50 as defined in section four hundred seventy-five (c)(2) of the Internal  
51 Revenue Code, (F) principally used in the ordinary course of the taxpay-  
52 er's business as an exchange registered as a national securities  
53 exchange within the meaning of sections 3(a)(1) and 6(a) of the Securi-  
54 ties Exchange Act of 1934 or a board of trade as defined in subparagraph  
55 one of paragraph (a) of section fourteen hundred ten of the not-for-pro-  
56 fit corporation law or as an entity that is wholly owned by one or more

1 such national securities exchanges or boards of trade and that provides  
2 automation or technical services thereto, or (G) principally used as a  
3 qualified film production facility including qualified film production  
4 facilities having a situs in an empire zone designated as such pursuant  
5 to article eighteen-B of the general municipal law, where the taxpayer  
6 is providing three or more services to any qualified film production  
7 company using the facility, including such services as a studio lighting  
8 grid, lighting and grip equipment, multi-line phone service, broadband  
9 information technology access, industrial scale electrical capacity,  
10 food services, security services, and heating, ventilation and air  
11 conditioning. For purposes of clauses (D), (E) and (F) of this subpara-  
12 graph, property purchased by a taxpayer affiliated with a regulated  
13 broker, dealer, registered investment advisor, national securities  
14 exchange or board of trade, is allowed a credit under this subdivision  
15 if the property is used by its affiliated regulated broker, dealer,  
16 registered investment advisor, national securities exchange or board of  
17 trade in accordance with this subdivision. For purposes of determining  
18 if the property is principally used in qualifying uses, the uses by the  
19 taxpayer described in clauses (D) and (E) of this subparagraph may be  
20 aggregated. In addition, the uses by the taxpayer, its affiliated regu-  
21 lated broker, dealer and registered investment advisor under either or  
22 both of those clauses may be aggregated. Provided, however, a taxpayer  
23 shall not be allowed the credit provided by clauses (D), (E) and (F) of  
24 this subparagraph unless the property is first placed in service before  
25 October first, two thousand fifteen and (i) eighty percent or more of  
26 the employees performing the administrative and support functions  
27 resulting from or related to the qualifying uses of such equipment are  
28 located in this state or (ii) the average number of employees that  
29 perform the administrative and support functions resulting from or  
30 related to the qualifying uses of such equipment and are located in this  
31 state during the taxable year for which the credit is claimed is equal  
32 to or greater than ninety-five percent of the average number of employ-  
33 ees that perform these functions and are located in this state during  
34 the thirty-six months immediately preceding the year for which the cred-  
35 it is claimed, or (iii) the number of employees located in this state  
36 during the taxable year for which the credit is claimed is equal to or  
37 greater than ninety percent of the number of employees located in this  
38 state on December thirty-first, nineteen hundred ninety-eight or, if the  
39 taxpayer was not a calendar year taxpayer in nineteen hundred ninety-  
40 eight, the last day of its first taxable year ending after December  
41 thirty-first, nineteen hundred ninety-eight. If the taxpayer becomes  
42 subject to tax in this state after the taxable year beginning in nine-  
43 teen hundred ninety-eight, then the taxpayer is not required to satisfy  
44 the employment test provided in the preceding sentence of this subpara-  
45 graph for its first taxable year. For purposes of clause (iii) of this  
46 subparagraph the employment test will be based on the number of employ-  
47 ees located in this state on the last day of the first taxable year the  
48 taxpayer is subject to tax in this state. If the uses of the property  
49 must be aggregated to determine whether the property is principally used  
50 in qualifying uses, then either each affiliate using the property must  
51 satisfy this employment test or this employment test must be satisfied  
52 through the aggregation of the employees of the taxpayer, its affiliated  
53 regulated broker, dealer, and registered investment advisor using the  
54 property. For purposes of clause (A) of this subparagraph, tangible  
55 personal property and other tangible property shall not include property  
56 principally used by the taxpayer in the production or distribution of

1 electricity, natural gas after extraction from wells, steam, or water  
2 delivered through pipes and mains. For purposes of this subdivision,  
3 tangible personal property and other tangible property does not include  
4 property that directly produces, transmits, distributes, transports, or  
5 stores fossil fuels as defined in section 1-103 of the energy law, or  
6 directly utilizes fossil fuels for the production of on-site energy,  
7 including thermal energy, for any purpose.

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

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

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

26 § 9. Subdivisions (a) and (d) of section 301-b of the tax law, subdivi-  
27 sion (a) as added by chapter 190 of the laws of 1990, paragraph 5 of  
28 subdivision (a) as amended by section 3 of part E of chapter 59 of the  
29 laws of 2012, paragraphs 6, 7 and 8 of subdivision (a) as added by  
30 section 4 of part W-1 of chapter 109 of the laws of 2006, and subdivi-  
31 sion (d) as amended by section 21 of part K of chapter 61 of the laws of  
32 2011, are amended to read as follows:

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

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

55 (3) Aviation gasoline, meeting the specifications set forth in Ameri-  
56 can Standard Testing Material Specification D910 or Military Specifica-



1 tion MIL-G-5572, which is imported or caused to be imported into this  
2 state by a petroleum business which is registered under article twelve-A  
3 of this chapter as a distributor of motor fuel or produced, refined,  
4 manufactured or compounded in this state by such a petroleum business.

5 ~~[(4) Residual petroleum product sold by a petroleum business regis-~~  
6 ~~tered under this article as a residual petroleum product business if~~  
7 ~~such product is sold by such petroleum business to a consumer for use~~  
8 ~~exclusively as bunker fuel for vessels or if such product is used by~~  
9 ~~such petroleum business exclusively as bunker fuel in its own vessels.~~

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

11 ~~(6)]~~ (2) E85 imported or caused to be imported into this state or  
12 produced, refined, manufactured or compounded in this state by a petro-  
13 leum business registered under article twelve-A of this chapter, as a  
14 distributor of motor fuel, and then sold by such petroleum business and  
15 delivered to a filling station and placed in a storage tank of such  
16 filling station for such E85 to be dispensed directly into a motor vehi-  
17 cle for use in the operation of such vehicle.

18 ~~[(7)]~~ (i) Partial B20 exemption. B20 imported or caused to be imported  
19 into this state or produced, refined, manufactured or compounded in this  
20 state by a petroleum business registered under article twelve-A of this  
21 chapter, as a distributor of diesel motor fuel, and then sold by such  
22 petroleum business.

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

27 ~~[(8)]~~ (3) CNG or hydrogen.

28 (d) Sales to consumers for heating purposes. ~~[(1)]~~ Total residential  
29 heating exemption. Non-highway diesel motor fuel sold by a petroleum  
30 business registered under article twelve-A of this chapter as a distrib-  
31 utor of diesel motor fuel or residual petroleum product sold by a petro-  
32 leum business registered under this article as a residual petroleum  
33 product business to the consumer exclusively for residential heating  
34 purposes only if such non-highway diesel motor fuel is delivered into a  
35 storage tank which is not equipped with a hose or other apparatus by  
36 which such fuel can be dispensed into the fuel tank of a motor vehicle  
37 and such storage tank is attached to the heating unit burning such fuel.

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

1 § 10. The subdivision heading and paragraph 1 of subdivision (c) of  
2 section 301-b of the tax law, as added by chapter 190 of the laws of  
3 1990, are amended to read as follows:

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

12 § 11. The opening paragraph and subdivisions (a) and (b) of section  
13 301-c of the tax law, the opening paragraph as amended by section 2 of  
14 part T of chapter 59 of the laws of 2022, subdivision (a) as amended by  
15 section 23 of part K of chapter 61 of the laws of 2011, and subdivision  
16 (b) as amended by chapter 330 of the laws of 1991, are amended to read  
17 as follows:

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

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

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



~~absorption by it of the entire amount of the tax imposed pursuant to this article.~~

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

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

§ 11-a. The opening paragraph of section 301-c of the tax law, as amended by section 3 of part T of chapter 59 of the laws of 2022, is amended to read as follows:

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

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

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

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

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

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

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

1 included in each component of the taxes imposed by such section three  
2 hundred one-a and the aviation gasoline component of the tax imposed by  
3 such section three hundred one-e of this article.

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

7 ~~(3)]~~ Provided, further, "railroad diesel," as such term is defined in  
8 subdivision (1) of section three hundred of this article, shall be  
9 exempt from the measure of the tax imposed under this section.

10 ~~[(4)]~~ (3) Provided, further, a separate per gallon rate shall apply  
11 with respect to highway diesel motor fuel. Such rate shall be determined  
12 by taking the adjusted rate per gallon of tax imposed under paragraph  
13 one of this subdivision as adjusted in accordance with paragraph ~~[five]~~  
14 four of this subdivision and subtracting therefrom one and three-quar-  
15 ters cents. Commencing January first, two thousand twelve, and each  
16 January thereafter, the per gallon rate applicable to highway diesel  
17 motor fuel shall be the adjusted rate under paragraph one of this subdi-  
18 vision as adjusted in accordance with paragraph ~~[five]~~ four of this  
19 subdivision which commences on such date minus one and three-quarters  
20 cents. The resulting rate under this paragraph shall be expressed in  
21 hundredths of a cent.

22 ~~[(5)]~~ (4) Except as herein provided, the tax imposed under this  
23 section shall be calculated in the same respective manner as the taxes  
24 imposed by section three hundred one-a and section three hundred one-e  
25 of this article. Except ~~[for section three hundred one-d and except~~  
26 otherwise provided in this section, all the provisions of this article  
27 applicable to the taxes imposed by sections three hundred one-a and  
28 three hundred one-e of this article, shall apply with respect to the  
29 supplemental tax imposed by this section to the same extent as if it  
30 were respectively imposed by such sections.

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

34 (A) A credit shall be allowed under this subsection with respect to  
35 tangible personal property and other tangible property, including build-  
36 ings and structural components of buildings, which are: depreciable  
37 pursuant to section one hundred sixty-seven of the internal revenue  
38 code, have a useful life of four years or more, are acquired by purchase  
39 as defined in section one hundred seventy-nine (d) of the internal  
40 revenue code, have a situs in this state and are (i) principally used by  
41 the taxpayer in the production of goods by manufacturing, processing,  
42 assembling, refining, mining, extracting, farming, agriculture, horti-  
43 culture, floriculture, viticulture or commercial fishing, (ii) indus-  
44 trial waste treatment facilities or air pollution control facilities,  
45 used in the taxpayer's trade or business, (iii) research and development  
46 property, (iv) principally used in the ordinary course of the taxpayer's  
47 trade or business as a broker or dealer in connection with the purchase  
48 or sale (which shall include but not be limited to the issuance, enter-  
49 ing into, assumption, offset, assignment, termination, or transfer) of  
50 stocks, bonds or other securities as defined in section four hundred  
51 seventy-five (c)(2) of the Internal Revenue Code, or of commodities as  
52 defined in section 475(e) of the Internal Revenue Code, (v) principally  
53 used in the ordinary course of the taxpayer's trade or business of  
54 providing investment advisory services for a regulated investment compa-  
55 ny as defined in section eight hundred fifty-one of the Internal Revenue  
56 Code, or lending, loan arrangement or loan origination services to

1 customers in connection with the purchase or sale (which shall include  
2 but not be limited to the issuance, entering into, assumption, offset,  
3 assignment, termination, or transfer) of securities as defined in  
4 section four hundred seventy-five (c)(2) of the Internal Revenue Code,  
5 or (vi) principally used as a qualified film production facility includ-  
6 ing qualified film production facilities having a situs in an empire  
7 zone designated as such pursuant to article eighteen-B of the general  
8 municipal law, where the taxpayer is providing three or more services to  
9 any qualified film production company using the facility, including such  
10 services as a studio lighting grid, lighting and grip equipment, multi-  
11 line phone service, broadband information technology access, industrial  
12 scale electrical capacity, food services, security services, and heat-  
13 ing, ventilation and air conditioning. For purposes of clauses (iv) and  
14 (v) of this subparagraph, property purchased by a taxpayer affiliated  
15 with a regulated broker, dealer, or registered investment adviser is  
16 allowed a credit under this subsection if the property is used by its  
17 affiliated regulated broker, dealer or registered investment adviser in  
18 accordance with this subsection. For purposes of determining if the  
19 property is principally used in qualifying uses, the uses by the taxpay-  
20 er described in clauses (iv) and (v) of this subparagraph may be aggre-  
21 gated. In addition, the uses by the taxpayer, its affiliated regulated  
22 broker, dealer and registered investment adviser under either or both of  
23 those clauses may be aggregated. Provided, however, a taxpayer shall not  
24 be allowed the credit provided by clauses (iv) and (v) of this subpara-  
25 graph unless (I) eighty percent or more of the employees performing the  
26 administrative and support functions resulting from or related to the  
27 qualifying uses of such equipment are located in this state, or (II) the  
28 average number of employees that perform the administrative and support  
29 functions resulting from or related to the qualifying uses of such  
30 equipment and are located in this state during the taxable year for  
31 which the credit is claimed is equal to or greater than ninety-five  
32 percent of the average number of employees that perform these functions  
33 and are located in this state during the thirty-six months immediately  
34 preceding the year for which the credit is claimed, or (III) the number  
35 of employees located in this state during the taxable year for which the  
36 credit is claimed is equal to or greater than ninety percent of the  
37 number of employees located in this state on December thirty-first,  
38 nineteen hundred ninety-eight or, if the taxpayer was not a calendar  
39 year taxpayer in nineteen hundred ninety-eight, the last day of its  
40 first taxable year ending after December thirty-first, nineteen hundred  
41 ninety-eight. If the taxpayer becomes subject to tax in this state after  
42 the taxable year beginning in nineteen hundred ninety-eight, then the  
43 taxpayer is not required to satisfy the employment test provided in the  
44 preceding sentence of this subparagraph for its first taxable year. For  
45 the purposes of clause (III) of this subparagraph the employment test  
46 will be based on the number of employees located in this state on the  
47 last day of the first taxable year the taxpayer is subject to tax in  
48 this state. If the uses of the property must be aggregated to determine  
49 whether the property is principally used in qualifying uses, then either  
50 each affiliate using the property must satisfy this employment test or  
51 this employment test must be satisfied through the aggregation of the  
52 employees of the taxpayer, its affiliated regulated broker, dealer, and  
53 registered investment adviser using the property. For purposes of clause  
54 (i) of this subparagraph, tangible personal property and other tangible  
55 property shall not include property principally used by the taxpayer in  
56 the production or distribution of electricity, natural gas after

1 extraction from wells, steam, or water delivered through pipes and  
2 mains. For purposes of this subsection, tangible personal property and  
3 other tangible property does not include property that directly produc-  
4 es, transmits, distributes, transports, or stores fossil fuels as  
5 defined in section 1-103 of the energy law, or directly utilizes fossil  
6 fuels for the production of on-site energy, including thermal energy,  
7 for any purpose.

8 § 18. Paragraph 3 of subdivision (b) of section 21 of the tax law, as  
9 amended by chapter 420 of the laws of 2006, clause (i) of subparagraph  
10 (B) as amended by section 22 of part BB of chapter 56 of the laws of  
11 2015, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

54 § 20. Subparagraphs (ix) and (x) of paragraph 3 and paragraph 5 of  
55 subdivision (c) of section 1105 of the tax law, subparagraph (ix) of  
56 paragraph 3 as added by chapter 395 of the laws of 1998, subparagraph

1 (x) of paragraph 3 as added by section 1 of part FF of chapter 407 of  
 2 the laws of 1999, and paragraph 5 as amended by chapter 321 of the laws  
 3 of 2005, are amended to read as follows:

4 (ix) [~~such services rendered with respect to tangible property used or~~  
~~consumed directly and predominantly in the production for sale of gas or~~  
 5 ~~oil by manufacturing, processing, generating, assembling, refining,~~  
 6 ~~mining, or extracting.~~  
 7

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

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

30 § 21. Subparagraph (xi) of paragraph 3 of subdivision (c) of section  
 31 1105 of the tax law is REPEALED.

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

34 § 23. Paragraph (ii) of subdivision (b) of section 1115 of the tax  
 35 law, as amended by section 30 of part Y of chapter 63 of the laws of  
 36 2000, is amended to read as follows:

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

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

51 (1) [~~Fuel, gas, electricity~~] Electricity, refrigeration and steam, and  
 52 [~~gas,~~] electric, refrigeration and steam service of whatever nature for  
 53 use or consumption directly and exclusively in the production of tangi-  
 54 ble personal property, [~~gas,~~] electricity, refrigeration or steam, for  
 55 sale, by manufacturing, processing, assembling, generating, refining,  
 56 mining or extracting shall be exempt from the taxes imposed under subdi-

1 visions (a) and (b) of section eleven hundred five and the compensating  
2 use tax imposed under section eleven hundred ten of this article.

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

6 (j) The exemptions provided in this section shall not apply to the tax  
7 required to be prepaid pursuant to the provisions of section eleven  
8 hundred two of this article nor to the taxes imposed by sections eleven  
9 hundred five and eleven hundred ten of this article with respect to  
10 receipts from sales and uses of motor fuel or diesel motor fuel, [~~except  
11 that the exemptions provided in paragraphs nine and forty two of subdi-  
12 vision (a) of this section shall apply to the tax required to be prepaid  
13 pursuant to the provisions of section eleven hundred two of this article  
14 and to the taxes imposed by sections eleven hundred five and eleven  
15 hundred ten of this article with respect to sales and uses of kero-jet  
16 fuel,~~] CNG, hydrogen and E85, provided, however, the exemption allowed  
17 for E85 shall be subject to the additional requirements provided in  
18 section eleven hundred two of this article with respect to E85. The  
19 exemption provided in subdivision (c) of this section shall apply to  
20 sales and uses of non-highway diesel motor fuel but only if all of such  
21 fuel is consumed other than on the public highways of this state. The  
22 exemption provided in subdivision (c) of this section shall apply to  
23 sales and uses of non-highway diesel motor fuel for use or consumption  
24 either in the production for sale of tangible personal property by farm-  
25 ing or in a commercial horse boarding operation, or in both but only if  
26 all of such fuel is consumed other than on the public highways of this  
27 state (except for the use of the public highways to reach adjacent farm-  
28 lands or adjacent lands used in a commercial horse boarding operation,  
29 or both).

30 § 25-a. Subdivision (j) of section 1115 of the tax law, as amended by  
31 section 41-a of part K of chapter 61 of the laws of 2011, is amended to  
32 read as follows:

33 (j) The exemptions provided in this section shall not apply to the tax  
34 required to be prepaid pursuant to the provisions of section eleven  
35 hundred two of this article nor to the taxes imposed by sections eleven  
36 hundred five and eleven hundred ten of this article with respect to  
37 receipts from sales and uses of motor fuel or diesel motor fuel [~~, except  
38 that the exemption provided in paragraph nine of subdivision (a) of this  
39 section shall apply to the tax required to be prepaid pursuant to the  
40 provisions of section eleven hundred two of this article and to the  
41 taxes imposed by sections eleven hundred five and eleven hundred ten of  
42 this article with respect to sales and uses of kero-jet fuel~~]. The  
43 exemption provided in subdivision (c) of this section shall apply to  
44 sales and uses of non-highway diesel motor fuel but only if all of such  
45 fuel is consumed other than on the public highways of this state. The  
46 exemption provided in subdivision (c) of this section shall apply to  
47 sales and uses of non-highway diesel motor fuel for use or consumption  
48 either in the production for sale of tangible personal property by farm-  
49 ing or in a commercial horse boarding operation, or in both but only if  
50 all of such fuel is consumed other than on the public highways of this  
51 state (except for the use of the public highways to reach adjacent farm-  
52 lands or adjacent lands used in a commercial horse boarding operation,  
53 or both).

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



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

4 (w) Receipts from the sale of [~~gas or~~] electricity or [~~gas or~~] elec-  
5 tric service of whatever nature and consideration given or contracted to  
6 be given for, or for the use of, [~~gas or~~] electricity or [~~gas or~~] elec-  
7 tric service of whatever nature purchased for use or consumption direct-  
8 ly and exclusively to provide [~~gas or~~] electric service of whatever  
9 nature consisting of operating [~~a gas pipeline or gas distribution line~~  
10 ~~or~~] an electric transmission or distribution line [~~and ensuring the~~  
11 ~~necessary working pressure in an underground gas storage facility~~] shall  
12 be exempt from sales and compensating use taxes imposed by this article.  
13 Such exempt [~~gas or~~] electricity or [~~gas or~~] electric service of whatev-  
14 er nature shall include, but shall not be limited to, such [~~gas or~~]  
15 electricity or [~~gas or~~] electric service of whatever nature used or  
16 consumed directly and exclusively to (1) [~~ensure necessary working pres-~~  
17 ~~sure in a gas pipeline used to transport, transmit or distribute gas,~~  
18 ~~(2) operate compressors used to transport, transmit or distribute gas~~  
19 ~~through such a gas pipeline or distribution line or used to ensure~~  
20 ~~necessary working pressure in such a storage facility,~~ (3) operate heat-  
21 ~~ers to prevent gas in such a pipeline or distribution line from freez-~~  
22 ~~ing,~~ (4) operate equipment which removes impurities and moisture from  
23 ~~gas in such a pipeline or distribution line,~~ (5)] operate substations  
24 and equipment related to electric transmission and distribution lines  
25 such as transformers, capacitors, meters, switches, communication  
26 devices and heating and cooling equipment, and [~~(6)~~] (2) ensure the  
27 reliability of electricity or electric service transmitted or distrib-  
28 uted through such lines, for example, by operating reserve capacity  
29 machinery and equipment.

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

33 (k) "Commercial gallonage" means gallonage (1) which is non-highway  
34 diesel motor fuel or residual petroleum product, (2) [~~which is included~~  
35 ~~in the full measure of the non-highway diesel motor fuel component or~~  
36 ~~the residual petroleum product component of the tax imposed under~~  
37 ~~section three hundred one a of this article,~~ (3)] which does not (and  
38 will not) qualify (A) [~~for the utility credit or reimbursement provided~~  
39 ~~for in section three hundred one d of this article,~~ (B)] as "manufactur-  
40 ing gallonage", as such term is defined in subdivision (m) of this  
41 section, [~~(C)~~] or (B) for the not-for-profit organization exemption  
42 provided for in subdivision (h) of section three hundred one-b of this  
43 article, [~~or (D) for the heating exemption provided for in paragraph two~~  
44 ~~of subdivision (d) of section three hundred one-b of this article or the~~  
45 ~~heating reimbursement provided for in paragraph two of subdivision (a)~~  
46 ~~of section three hundred one c of this article,~~] and [~~(4)~~] (3) which  
47 will not be used nor has been used in the fuel tank connecting with the  
48 engine of a vessel. No gallonage shall qualify as "commercial gallonage"  
49 where such gallonage is eligible for the [~~(i) utility credit or~~  
50 ~~reimbursement under such section three hundred one d of this article,~~  
51 ~~(ii) "manufacturing exemption" under paragraph three of subdivision (f)~~  
52 ~~of section three hundred one a of this article,~~ (iii)] not-for-profit  
53 organization exemption under subdivision (h) of section three hundred  
54 one-b of this article[, or (iv) heating exemption provided for in para-  
55 ~~graph two of subdivision (d) of section three hundred one-b of this~~  
56 ~~article or the heating reimbursement provided for in paragraph two of~~

1 ~~subdivision (a) of section three hundred one e of this article~~. The  
2 commissioner shall require such documentary proof to substantiate the  
3 classification of product as "commercial gallonage" as the commissioner  
4 deems appropriate.

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

8 (1) Residual petroleum product and non-highway diesel motor fuel sold  
9 to an electric corporation, ~~[as described in subdivision (a) of section~~  
10 ~~three hundred one d of this article,~~ as defined in subdivision thirteen  
11 of section two of the public service law, subject to the supervision of  
12 the department of public service, which is registered with the depart-  
13 ment as a petroleum business tax direct pay permittee, and used by such  
14 electric corporation to fuel generators for the purpose of manufacturing  
15 or producing electricity where such electric corporation provides a copy  
16 of a direct pay permit authorized and issued by the commissioner, to the  
17 petroleum business making such sale. If so registered, such corporation  
18 shall be a taxpayer under this article and (i) such electric corporation  
19 shall file a return monthly and pay the applicable tax under this arti-  
20 cle, after the application of allowable credits, on all such purchases  
21 directly to the commissioner, (ii) such electric corporation shall be  
22 subject to all of the provisions of this article relating to the respon-  
23 sibilities and liabilities of taxpayers under this article with respect  
24 to such residual petroleum product and non-highway diesel motor fuel.

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

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

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

37 (c) "Qualified emerging technology company" shall mean a company  
38 located in New York state: (1) whose primary products or services are  
39 classified as emerging technologies and whose total annual product sales  
40 are ten million dollars or less; or (2) a company which has research and  
41 development activities in New York state and whose ratio of research and  
42 development funds to net sales equals or exceeds the average ratio for  
43 all surveyed companies classified as determined by the National Science  
44 Foundation in the most recent published results from its Survey of  
45 Industry Research and Development, or any comparable successor survey as  
46 determined by the department, and whose total annual product sales are  
47 ten million dollars or less. Qualified emerging technology company shall  
48 not include a company engaged in the production, transmission, distrib-  
49 ution, transportation, or storage of fossil fuels as defined in section  
50 1-103 of the energy law.

51 The definition of "research and development funds" shall be the same  
52 as that used by the National Science Foundation in the aforementioned  
53 survey.

54 § 32. Subparagraph (vi) of paragraph (a) of subdivision 1 of section  
55 210 of the tax law, as amended by section 1 of part D of chapter 59 of  
56 the laws of 2019, is amended to read as follows:

1 (vi) for taxable years beginning on or after January first, two thou-  
2 sand fourteen, the amount prescribed by this paragraph for a taxpayer  
3 that is a qualified New York manufacturer, shall be computed at the rate  
4 of zero percent of the taxpayer's business income base. The term  
5 "manufacturer" shall mean a taxpayer that during the taxable year is  
6 principally engaged in the production of goods by manufacturing, proc-  
7 essing, assembling, refining, mining, extracting, farming, agriculture,  
8 horticulture, floriculture, viticulture or commercial fishing. However,  
9 the generation and distribution of electricity, the distribution of  
10 natural gas, ~~and~~ the production of steam associated with the gener-  
11 ation of electricity, and the production, transmission, distribution,  
12 transportation, or storage of fossil fuels as defined in section 1-103  
13 of the energy law shall not be qualifying activities for a manufacturer  
14 under this subparagraph. Moreover, in the case of a combined report, the  
15 combined group shall be considered a "manufacturer" for purposes of this  
16 subparagraph only if the combined group during the taxable year is prin-  
17 cipally engaged in the activities set forth in this paragraph, or any  
18 combination thereof. A taxpayer or, in the case of a combined report, a  
19 combined group shall be "principally engaged" in activities described  
20 above if, during the taxable year, more than fifty percent of the gross  
21 receipts of the taxpayer or combined group, respectively, are derived  
22 from receipts from the sale of goods produced by such activities. In  
23 computing a combined group's gross receipts, intercorporate receipts  
24 shall be eliminated. A "qualified New York manufacturer" is a manufac-  
25 turer that has property in New York that is described in clause (A) of  
26 subparagraph (i) of paragraph (b) of subdivision one of section two  
27 hundred ten-B of this article and either (I) the adjusted basis of such  
28 property for New York state tax purposes at the close of the taxable  
29 year is at least one million dollars or (II) all of its real and  
30 personal property is located in New York. A taxpayer or, in the case of  
31 a combined report, a combined group, that does not satisfy the princi-  
32 pally engaged test may be a qualified New York manufacturer if the  
33 taxpayer or the combined group employs during the taxable year at least  
34 two thousand five hundred employees in manufacturing in New York and the  
35 taxpayer or the combined group has property in the state used in manu-  
36 facturing, the adjusted basis of which for New York state tax purposes  
37 at the close of the taxable year is at least one hundred million  
38 dollars.

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

42 (2) For purposes of subparagraph one of this paragraph, the term  
43 "manufacturer" shall mean a taxpayer that during the taxable year is  
44 principally engaged in the production of goods by manufacturing, proc-  
45 essing, assembling, refining, mining, extracting, farming, agriculture,  
46 horticulture, floriculture, viticulture or commercial fishing; provided,  
47 however, the production, transmission, distribution, transportation, or  
48 storage of fossil fuels as defined in section 1-103 of the energy law  
49 shall not be qualifying activities for a manufacturer under this subpar-  
50 agraph. Moreover, for purposes of computing the capital base in a  
51 combined report, the combined group shall be considered a "manufacturer"  
52 for purposes of this subparagraph only if the combined group during the  
53 taxable year is principally engaged in the activities set forth in this  
54 subparagraph, or any combination thereof. A taxpayer or, in the case of  
55 a combined report, a combined group shall be "principally engaged" in  
56 activities described above if, during the taxable year, more than fifty

1 percent of the gross receipts of the taxpayer or combined group, respec-  
2 tively, are derived from receipts from the sale of goods produced by  
3 such activities. In computing a combined group's gross receipts, inter-  
4 corporate receipts shall be eliminated. A "qualified New York manufac-  
5 turer" is a manufacturer that has property in New York that is described  
6 in clause (A) of subparagraph (i) of paragraph (b) of subdivision one of  
7 section two hundred ten-B of this article and either (i) the adjusted  
8 basis of that property for New York state tax purposes at the close of  
9 the taxable year is at least one million dollars or (ii) all of its real  
10 and personal property is located in New York. In addition, a "qualified  
11 New York manufacturer" means a taxpayer that is defined as a qualified  
12 emerging technology company under paragraph (c) of subdivision one of  
13 section thirty-one hundred two-e of the public authorities law regard-  
14 less of the ten million dollar limitation expressed in subparagraph one  
15 of such paragraph. A taxpayer or, in the case of a combined report, a  
16 combined group, that does not satisfy the principally engaged test may  
17 be a qualified New York manufacturer if the taxpayer or the combined  
18 group employs during the taxable year at least two thousand five hundred  
19 employees in manufacturing in New York and the taxpayer or the combined  
20 group has property in the state used in manufacturing, the adjusted  
21 basis of which for New York state tax purposes at the close of the taxa-  
22 ble year is at least one hundred million dollars.

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

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

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

34 (c) the amendments to subdivisions (k) and (l) of section 301-c of the  
35 tax law made by section thirteen of this act shall not affect the repeal  
36 of such subdivisions and shall be deemed repealed therewith; and

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